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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
TERRAVITA

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
TERRAVITA**

RECITALS

WHEREAS, Terravita Home Construction Co., d/b/a/ Del Webb Home Construction Co., an Arizona corporation, and Terravita Corp., d/b/a Del Webb Terravita Corp., an Arizona corporation (herein jointly referred to as the “Declarant”), recorded a Declaration of Covenants, Conditions and Restrictions for Terravita, on September 28, 1993, at recording number 93-0654653, and an Amendment to the Declaration of Covenants, Conditions and Restrictions for Terravita on June 27, 1994, at recording number 94-0497349, and an Amendment to the Declaration of Covenants, Conditions and Restrictions for Terravita on June 30, 1994, at recording number 94-0508842, and an Amendment to Exhibit C – Initial Use Restrictions – to the Declaration of Covenants, Conditions and Restrictions for Terravita, on October 13, 1995, at recording number 95-0627529, official records of Maricopa County, Arizona (collectively, the “Declaration”), and governs the following property:

SEE EXHIBIT A

WHEREAS, Terravita Community Association, Inc. (the “Association”), by and through its members, wishes to amend and restate the Declaration in its entirety as set forth herein; NOW, THEREFORE, the Association declares that all the properties described above shall hereafter be held, sold, conveyed and occupied subject to the following easements, restrictions, covenants and conditions; the purpose of which is to protect the value and desirability of all these properties, and which shall run with the real property. This Declaration shall be binding on all parties having any right, title, or interest in the described properties, or any part thereof, and also unto their heirs, successors and assigns; and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.01 “Area of Common Responsibility”. The Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the responsibility of the Association.

1.02 “Articles”. The Articles of Incorporation of Terravita Community Association, Inc., as filed with the Arizona Corporation Commission.

1.03 “Association”. Terravita Community Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

1.04 “Base Assessment”. Assessments levied on all Lots, except those owned by the Association, to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 10.01, 10.02, and 10.07.

1.05 “Benefitted Assessment”. Assessments levied under Section 10.05.

1.06 “Board of Directors” or “Board”. The body responsible for administration of the Association, selected as provided in the By-Laws.

1.07 “Builder”. Any Person purchasing one or more Lots to construct Dwelling Units thereon for later sale to Home Owners or one or more parcels of land within the Properties to subdivide, develop, and/or resell in the ordinary course of such Person’s business.

1.08 “Business” and “Trade” shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.09 “By-Laws”. The By-Laws of Terravita Community Association, Inc. incorporated by reference, as they may be amended from time to time.

1.10 “Common Area”. All real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including easements held by the Association for those purposes.

1.11 “Common Expenses”. The actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Declaration, the By-Laws, and the Articles.

1.12 “Community-Wide Standard”. The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Modifications Committee, as provided by Section 11.02(i).

1.13 “Covenant to Share Costs”. The Declaration of Easements and Covenant to Share Costs incorporated by reference, as it may be amended.

1.14 “Design Guidelines”. The architectural, design, development, and other guidelines, standards, controls, and procedures including but not limited to, application and review procedures, adopted pursuant to Article XI and applicable to the Properties.

1.15 “Dwelling Unit”. Any building or structure or portion of a building or structure situated upon a Lot and which is intended for use and occupancy as an attached or detached residence for a single family.

1.16 “Golf Course”. Any parcel of land adjacent to or within the Properties which is privately owned and which is operated as a golf course by Persons other than the Association, and related and supporting facilities and improvements operated and/or maintained in connection with or incidental to such golf course.

1.17 “Home Owner”. An Owner of a Lot.

1.18 “Lot”. A contiguous portion of the Properties, whether improved or unimproved, other than Common Area and property dedicated to the public, which may be independently owned and conveyed and which is intended to be developed, used, and occupied with an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Dwelling Unit, thereon. The term shall include, by way of illustration but not limitation, single-family detached houses on separately platted lots, as well as vacant land intended for development as such. In the case of any structure containing multiple Dwelling Units, each Dwelling Unit shall be deemed to be a separate Lot.

1.19 “Master Plans”. The Water, Waste Water and Drainage Master Plans, Reference No. 653E93; Circulation Master Plan, Reference No. 5 85E93, and Environmental Master Plan, Reference No. 1 MP93; for the development of Terravita filed with the City of Scottsdale, as they may be amended, updated, or supplemented from time to time.

1.20 “Member”. A Person entitled to membership in the Association.

1.21 “Mortgage”. A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.22 “Mortgagee”. A beneficiary or holder of a Mortgage.

1.23 “Natural Area Open Space” or “NAOS”. Areas of undisturbed natural desert with no man-made improvements and approved revegetated areas, as designated by the City of Scottsdale.

1.24 “Office of the County Recorder”. The Office of the County Recorder of Maricopa County, Arizona.

1.25 “Ordinance”. The ordinance number 2508 adopted by the Council of the City of Scottsdale, Maricopa County, Arizona, including the stipulations attached thereto, describing the zoning of the Properties, as such ordinance may be amended or superseded from time to time.

1.26 “Owner”. One or more Persons who hold the record title to any Lot, except Persons holding an interest merely as security for the performance of an obligation in which case the equitable owner will be considered the Owner.

1.27 “Person”. A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.28 “Properties”. The real property described in Exhibit “A,” together with such additional property as is subjected to this Declaration in accordance with Article IX. Exhibit “A” and each of the Supplemental Declarations which subject additional property to the Declaration shall provide a legal description of the Common Area included therein, if any.

1.29 “Public Report”. A public report issued by the Arizona Real Estate Commissioner for the Lots within any phase or subphase of the Properties which authorizes the offering and sale of the Lots in the State of Arizona.

1.30 “Quorum”. A Quorum shall mean one-third (1/3) of the total votes entitled to be cast in the Association (for example, if there are 1,380 votes entitled to be cast, the Quorum is 460 votes cast).

1.31 “Special Assessment”. Assessments levied under Section 10.04.

1.32 “Supplemental Declaration”. An amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration and identifies the Common Area within the additional property, if any, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.33 “Terravita”. The Properties as described in Section 1.28.

ARTICLE II

PROPERTY RIGHTS

2.01 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (i) This Declaration, the By-Laws and any other applicable covenants;
- (ii) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (iii) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Dwelling

Units and their guests, and rules limiting the number of occupants and guests who may use the Common Area;

- (iv) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (a) for any period during which any charge against such Owner's Lot remains delinquent, and (b) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association after notice and a hearing pursuant to the By-Laws;
- (v) The right of the Association to dedicate or transfer all or any part of the Common Area to governmental entities pursuant to Section 4.05;
- (vi) The right of the Board to impose reasonable membership requirements and charge reasonable membership admission, or other fees for the use of any recreational facility situated upon the Common Area;
- (vii) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (viii) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use, access and enjoyment in and to the Common Area to the members of his or her family, co-occupants, lessees, and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot, unless the Board adopts a resolution permitting Owners to reserve such rights and such Owner provides the Board with written notice of such reservation.

ARTICLE III

ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

3.01 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles, and Arizona law.

3.02 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.03 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.03 Voting. Members shall be Owners and shall be entitled to one equal vote for each Lot in which they hold the interest for membership under Section 3.02; there shall be only one vote per Lot. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In any situation in which there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves. If any co-Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he/she was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

3.04 Board of Directors. The Association will be governed by a Board of Directors, as further provided in the By-Laws. The total number of Directors will be seven (7). All Directors shall be individuals who are Association Members.

ARTICLE IV

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.01 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas) and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard.

4.02 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property.

4.03 Enforcement. The Association may impose sanctions for violations of this Declaration, the By-Laws, or rules, in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Lot of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Association may levy Benefitted Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Section 10.05(ii) and may seek relief in any court for any violations or to abate nuisances.

4.04 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in the Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.05 Dedication of Common Areas. The Association may dedicate or grant easements over portions of the Common Areas to any local, state, or federal government entity.

4.06 Security. The Association may maintain or support certain activities within the Properties designed to make the Properties safer than otherwise might be provided, however, that the Association shall not be obligated to maintain or support such activities except as provided in Section 4.08.

Neither the Association nor the management company of the Association shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association nor the management company of the Association shall be held liable for any loss or damage for failure to provide adequate security or ineffectiveness of security measures undertaken.

All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge that the Association and its Board of Directors, the management company of the Association, and the Modifications Committee of the Association, do not represent or warrant that any entry gate, patrolling of the Properties, any fire protection system, burglar alarm system, or other security system designated or installed according to guidelines established by the Modifications Committee may not be compromised or circumvented; nor that any entry gate, patrolling of the Properties, fire protection system, burglar alarm system, or other security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that entry gate, patrolling of the Properties, fire protection system, burglar alarm system, or other security systems will in all cases provide the detection or protection for which the system is designed or intended.

All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board and committees, the management company of the Association, are not insurers.

All Owners and occupants of any Lot and all tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, the management company of the Association, have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Properties, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Properties.

4.07 Recycling Programs. The Board may establish a recycling program and recycling center within the Properties, and in such event, all occupants of Dwelling Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

4.08 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.

4.09 Change of Use of Common Areas. Upon (a) adoption of a resolution by the Board stating that, in the Board's opinion, a service provided by the Association pursuant to Section 4.08 or the then present use of a designated part of the Common Areas is no longer in the best interest of the Owners or is no longer necessary or appropriate for the purposes intended, and (b) the approval of such resolution by Owners holding two-thirds (2/3) of the votes cast on the matter, so long as Quorum is met, the Board shall have the power and right to terminate such service or to sell, exchange, convey or abandon such Common Area or change the use thereof (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures or improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use (i) shall be for the benefit of the Owners, (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Areas.

4.10 View Impairment. The Association does not guarantee or represent that any view over and across the open space from adjacent Lots will be preserved without impairment. The Association does not have the obligation to prune or thin trees or other landscaping except as set forth in Article V. The Owner of the open space shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Design Guidelines, if applicable. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

ARTICLE V

MAINTENANCE

5.01 Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (i) all Common Area;
- (ii) all landscaping and other flora, parks, signage, and improvements, including any bike, pedestrian and equestrian pathways and trails, situated upon the Common Area;
- (iii) all private streets, including any asphalt and concrete repairs thereto, situated upon the Common Area;
- (iv) all walls and fences situated upon the Common Area, except that the allocation of responsibility for the maintenance and repair of party walls and party fences is set forth in Section 5.04;
- (v) open space corridors, vista corridors, scenic corridors, buffers, major boulder outcroppings, and washes situated upon the Common Area;
- (vi) landscaping, sidewalks, street lights and signage within public rights-of-way abutting the Properties;
- (vii) landscaping and other flora within any public utility easements and scenic easements within the Common Area (subject to the terms of any easement agreement relating thereto);
- (viii) any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, the Covenant to Share Costs, any plat of any portion of the Properties, or any contract or agreement for maintenance thereof entered into by the Association.

All watercourses with a 100 year flow of 750 cfs or greater shall be designated as "Vista Corridors" and shall generally be left in a natural state, except that a Vista Corridor may incorporate street and utility right-of-way crossing and stormwater management systems, which may include flood control structures, multi-use recreational facilities including golf courses, and other similar improvements, subject to review of the applicable governing jurisdiction. Vista Corridors shall be maintained in such a manner as to accommodate the passage of wildlife through the Properties.

The Association shall be responsible for the preservation and maintenance of all portions of the Properties designated as NAOS by the applicable governing authority in a natural state as provided by law.

The Association may also maintain other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such

maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons. Without limiting the generality of the foregoing, in the event that the need for maintenance or repair of an Area of Common Responsibility is caused by any Member, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be levied as a Benefitted Assessment against the Member's Lot.

5.02 Owner's Responsibility. Each Owner shall maintain his or her Lot, and Dwelling Unit, and all other structures, parking areas, landscaping, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed or assigned to the Association.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Benefitted Assessment in accordance with Section 10.05. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.03 Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board.

Portions of the Properties, including but not limited to some of the washes, buffers, and open space corridors, are environmentally sensitive and/or may provide greater aesthetic value than other portions of the Properties. The Board may establish a higher Community-Wide Standard for such areas and require additional maintenance for such areas to reflect the nature of such property.

Notwithstanding anything to the contrary contained herein, neither the Association, nor any Owner shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.04 Party Walls and Party Fences. Each wall and fence built as a part of the original construction on the Lots:

- (i) any part of which is built upon or straddling the boundary line between two adjoining Lots, between a Lot and the Common Area, or between the Lot and Golf Course, or
- (ii) which is constructed within four feet of the boundary line between adjoining Lots, between a Lot and the Common Area, or between a Lot and the Golf Course, has no windows or doors, and is intended to serve as a privacy wall for the benefit of the adjoining Lot; or
- (iii) which, in the reasonable determination of the Board, otherwise serves and/or separates two adjoining Lots or a Lot and the Golf Course or the Common Area, regardless of whether constructed wholly within the boundaries of one Lot;

shall constitute a party wall or party fence (herein referred to as “Party Structures”). The owners of the property served by a Party Structure (the “Adjoining Owners”) shall own that portion of the Party Structure lying within the boundaries of their respective properties and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the Party Structure lying within the boundaries of the adjoining property. Each Adjoining Owner shall be responsible for maintaining a property insurance policy on that portion of any Party Structure lying within the boundaries of such Owner’s Lot, as more particularly provided in Section 6.03, and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss.

With respect to Party Structures between Lots, the responsibility for the repair and maintenance of Party Structures and the reasonable cost thereof shall be shared equally by the Adjoining Owners. To the extent damage to a Party Structure from fire, water, soil settlement, or other casualty is not repaired out of the proceeds of insurance, any Adjoining Owner may restore it. If other Adjoining Owners thereafter use the Party Structure, they shall contribute to the restoration cost in equal shares without prejudice to any Owners’ right to larger contributions from other users under any rule of law. Any Owner’s right to contribution from another Owner under this Section shall be appurtenant to the land and shall pass to such Owner’s successors-in-title.

With respect to Party Structures between Lots and Common Areas or between Lots and the Golf Course, the Association shall be responsible for all maintenance and repair thereof, subject to the provisions of Section 10.05(ii), except that each Adjoining Owner shall be responsible for painting and cosmetic repairs to the portion of the Party Structure, other than any wrought iron comprising such Party Structure, facing his or her Lot. The Association shall be responsible for all maintenance and repair, including painting and cosmetic repairs, of all wrought iron comprising Party Structures between Lots and Common Area or between Lots and the Golf Course. The costs incurred by the Association in maintaining and repairing Party Structures pursuant to this Section shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

6.01 Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, if reasonably available, the following types of insurance:

- (i) Blanket property insurance covering risks of physical loss on an “all-risk” basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. Such insurance shall include coverage for flood and earth movement to the extent that such insurance is reasonably available. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property;
- (ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf and including coverage for non-owned automobile liability. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;
- (iii) Workers compensation insurance and employers liability insurance if and to the extent required by law;
- (iv) Directors and officers liability insurance or equivalent Association liability insurance;
- (v) Commercial crime insurance, including employee fidelity insurance, in an amount determined by its best business judgment but not less than one-sixth of the annual Base Assessments on all Lots plus reserves on hand. Such commercial crime insurance shall cover funds held by the Association’s management company, unless such management company’s insurance insures the Association against crimes committed by or against such management company. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

- (vi) Such additional insurance as the Board in its best judgment determines advisable.

The Association shall have no insurance responsibility for any part of property of any Private Amenity.

6.02 Association Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the Maricopa County, Arizona area.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful conduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with Section 10.05.

- (i) All insurance coverage obtained by the Board shall:
 - (a) Be written with a company authorized to do business in the State of Arizona which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board requires;
 - (b) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its Members;
 - (c) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;
 - (d) Include an agreed amount endorsement if the policy contains a co-insurance clause; and
 - (e) Contain replacement cost coverage.
- (ii) In addition, the Board shall secure, if reasonably available, insurance policies providing the following:

- (a) A waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager and Owners;
- (b) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (c) An endorsement preventing the Association's insurance carrier from invoking its "other insurance" clause to obtain any contribution from any insurance maintained by individual Owners;
- (d) An endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (e) A cross liability provision;
- (f) A provision vesting the Board with exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss; and
- (g) A provision listing the Lot Owners as additional insureds under the policy.

6.03 Owner's Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full insurable replacement cost on its Lot(s), less a reasonable deductible, unless the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of the Dwelling Unit or any other structures on or comprising his or her Lot, he or she shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

6.04 Damage and Destruction.

- (i) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

- (ii) Any damage or destruction of the Common Area shall be repaired or reconstructed unless Members approve a resolution not to repair or reconstruct, in accordance with the following procedure. Within 60 days after the loss the Board must receive a petition from the Members to call a special meeting, which petition shall meet the requirements set forth in the Bylaws. The resolution must be approved by Owners holding two-thirds (2/3) of the votes cast in person or by absentee ballot, at the Special Meeting where Quorum is present.
- (iii) If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within a 60 day period, then the period shall be extended for not more than 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.
- (iv) If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.05 Disbursement of Proceeds. Any insurance proceeds remaining after paying the cost of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in an account for capital improvements.

6.06 Owner's Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the membership, levy Benefitted Assessments against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.03.

ARTICLE VII

NO PARTITION

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

ARTICLE VIII

CONDEMNATION

Whenever any part of the Common Area shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, each Owner shall be entitled to notice thereof. The Board may convey Common Area under threat of condemnation only if approved by vote of the Members. The conveyance must be approved by Owners holding two-thirds (2/3) of the votes cast on the matter, so long as Quorum is met.

The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

- (i) If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless the Members shall otherwise disagree in accordance with the following procedure. Within 60 days after the taking the Board must receive a petition from the Members to call a special meeting, which petition shall meet the requirements set forth in the Bylaws. The restoration and/or replacement must be disapproved by Owners holding two-thirds (2/3) of the votes cast in person or by absentee ballot, at the special meeting where Quorum is present. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 6.05 and 6.06 regarding funds for the repair of damage or destruction shall apply;
- (ii) If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE IX

ANNEXATION OF PROPERTY

The Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property, and the affirmative vote of Owners holding two-thirds (2/3) of the votes cast on the matter, so long as Quorum is met.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the County Recorder describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

ARTICLE X

ASSESSMENTS

10.01 Creation of Assessments. The Association may levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments for Association expenses:

- (i) Assessments to fund Common Expenses for the general benefit of all Lots;
- (ii) Special Assessments as described in Section 10.04; and
- (iii) Benefitted Assessments as described in Section 10.05.

Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay these assessments.

All assessments (except as otherwise provided in Section 10.05(ii), together with interest from the due date of such assessment at a rate determined by the Association (not to exceed the highest rate allowed by Arizona law), late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is levied until paid, as more particularly provided in Section 10.07. Each such assessment, together with interest, late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. No first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, the Base Assessment shall be due and payable in four equal installments in advance of the first day of each quarter. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, within fifteen (15) days of a written request by an Owner, furnish to an Owner a certificate in writing signed by an officer of the Association setting forth whether assessments for such Owner's Lot have been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself or herself from liability for assessments, by nonuse of Common Area, abandonment of his or her Lot or Dwelling Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it or for inconvenience or discomfort arising from repairs or improvements or other action taken by it.

10.02 Computation of Base Assessment. The Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year pursuant to the terms and

provisions set forth in the By-Laws. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.03. The Base Assessment shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources funds available to the Association.

In accordance with the By-Laws, the Board shall send a copy of the budget, or a summary thereof, and notice of the amount of the Base Assessment for the following year to each Owner not less than 30 nor more than 60 days prior to the beginning of the fiscal year for which it is to be effective.

10.03 Reserve Budget and Capital Contribution. The Board shall prepare, on an annual basis, reserve budgets for all Association purposes, which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. The Board shall include in Base Assessments capital contributions in amounts sufficient to meet these projected needs.

10.04 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted subject to the limitations set forth in Section 10.06. Such Special Assessments may be levied against the entire membership for Common Expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

10.05 Benefitted Assessments. The Board may levy Benefitted Assessments against particular Lots for expenses incurred or to be incurred by the Association, as follows:

- (i) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, caretaker service, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and
- (ii) to cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws, the Design Guidelines, or rules of the Association, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Benefitted Assessment under this subsection (ii).

10.06 Limitation of Increases of Assessments. Notwithstanding any provisions to the contrary, the Board may not impose a Base Assessment that is more than twenty percent (20%) greater than the previous fiscal year's Base Assessment without the approval of Members representing at least a majority of the votes in the Association.

No Special Assessment may be levied by the Board that exceeds five percent (5%) of the budgeted Common Expenses except in emergency situations or unless such Special Assessment is approved by Members holding two-thirds (2/3) of the votes cast on the matter, so long as Quorum is met.

An emergency situation is any one of the following:

- (i) an extraordinary expense required by an order of a court;
- (ii) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible where a threat to personal safety on the Properties is discovered; or
- (iii) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing and distributing the pro forma budget pursuant to Section 10.02. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expenses involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment.

10.07 Lien for Assessments. All assessments authorized in this Article, excluding Benefitted Assessments under Section 10.05(ii), shall constitute a lien against the Lot against which they are levied until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of interest, late charges (subject to the limitations of Arizona law), and costs of collection (including attorneys' fees, lien fees and administrative costs). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when delinquent, by suit, judgment, and foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure:

- (i) no right to vote shall be exercised on its behalf;
- (ii) no assessment shall be levied on it; and

- (iii) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, a Mortgagee holding a first Mortgage of record or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under this Section 10.07, including such acquirer, its successors and assigns.

10.08 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.09 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (i) all Common Area; and
- (ii) all property dedicated to and accepted by any governmental authority or public utility.

ARTICLE XI

ARCHITECTURAL AND DESIGN STANDARDS

11.01 General. No improvements (including staking, clearing, excavation, grading and other site work), exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Lot, Dwelling Unit, other structure or the Common Area (e.g. fences, signs, antennae, clotheslines, playground equipment, lighting, temporary structures, and artificial vegetation), planting or removal of landscaping materials, or installation or removal of an irrigation system shall take place except in compliance with this Article and the Design Guidelines and upon approval of the appropriate committee under Section 11.02.

Any Owner may remodel, paint or redecorate the interior of structures, including the Dwelling Unit, on his or her Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the

Lot shall be subject to this Article and approval as set forth below. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specification.

This Article shall not apply to improvements to the Common Area by or on behalf of the Association.

11.02 Architectural and Design Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the Modifications Committee established by the Board as set forth in subsection (i) below. All members of the Modifications Committee must be Members of the Association. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

(i) Modifications Committee. The Board of Directors shall establish a Modifications Committee ("MC") to consist of at least three and no more than five persons, all of whom must be Association Members. Members of the MC shall be appointed by and shall serve at the discretion of the Board. The MC shall have exclusive jurisdiction over all construction on the Lots, including, but not limited to, modifications, additions, or alterations made on or to existing structures on Lots or containing Dwelling Units and the adjacent open space.

11.03 Guidelines and Procedures. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, intended use, the Master Plans, the Ordinance, and any other applicable zoning ordinances.

The MC shall have sole and full authority to amend or supplement the Design Guidelines from time to time. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The MC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Board's discretion, such Design Guidelines may be recorded in the Office of the County Recorder, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

11.04 Submission of Plans and Specifications.

(i) No construction shall be commenced, and no improvements shall be erected, placed or maintained on any Lot, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing site layout dimensions, structural design, exterior

elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout, and screening therefor shall have been submitted to and approved in writing by the MC. The Design Guidelines shall set forth the procedure for submission of the Plans.

- (ii) In reviewing each submission, the MC may consider visual and environmental impact, ecological compatibility, natural platforms, and finish grade elevation, harmony of exterior design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The committee may require relocation of native plants within the construction site or the installation of an irrigation system for the landscaping, including the natural plant life on the Lot as a condition of approval of any submission.
- (iii) The MC shall, within the period specified in the Design Guidelines, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (a) the approval of Plans, or (b) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the MC fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval and suggestions for curing the objections of the committee of the Plans, approval shall be deemed to have been given. Notwithstanding the foregoing, any construction or improvements deemed approved pursuant to this section shall comply with the restrictions and requirements contained in this Declaration and the Association rules. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.
- (iv) If construction does not commence on a project for which Plans have been approved within 120 days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the MC for reconsideration. If construction is not completed on a project for which plans have been approved within the period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

11.05 No Waiver of Future Approvals. Each Owner acknowledges that the members of the MC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or

drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.06 Variance. The MC may authorize variances in writing from its guidelines and procedures, but only:

- (i) in accordance with duly adopted rules and regulations;
- (ii) when unique circumstances dictate such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations require; and
- (iii) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance.

11.07 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the MC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

11.08 Enforcement. Any construction, alteration or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requestor or restore the property, Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a Benefitted Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the MC.

ARTICLE XII

USE RESTRICTIONS

12.01 Plan of Development; Applicability; Effect. There has been established a general plan of development for the Properties under this Declaration in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs and desires within the community. The Properties are subject to Design Guidelines as set forth in Article XI and other restrictions governing land development, architectural and design control, individual conduct and uses of or actions upon the Properties.

This Declaration, including the Initial Use Restrictions attached hereto as Exhibit "B" and incorporated by this reference, and the rules and resolutions adopted by the Board or the Members establish affirmative and negative covenants, easements and restrictions on the Properties.

All provisions of this Declaration and any rules shall apply to all Owners, occupants, tenants, guests and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

12.02 Authority to Promulgate Use Restrictions and Rules.

- (i) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the Initial Use Restrictions set forth on Exhibit "B." The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have reasonable opportunity to be heard at a Board meeting prior to such action being taken.
- (ii) Any such rules shall become effective after compliance with subsection (iii) of this Section unless such rules are disapproved by the Members in accordance with the following procedure. If, before the effective date, the Board receives a petition signed by Members holding at least five percent (5%) of the votes, requesting that a vote be taken on the proposed changes to Exhibit "B," the Board shall initiate a vote of all the Members. Any

such rules must then be approved by Members holding at least two-thirds (2/3) of the votes cast on the matter, so long as Quorum is met.

- (iii) At least 30 days prior to the effective date of any action under subsection (i) of this Section, the Board shall send a copy of the rule to each Owner specifying the effective date of such rule. The Association shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Mortgagee.

12.03 Owners' Acknowledgment. All Owners are subject to the Use Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Members may add, delete, modify, create exceptions to, or amend the Use Restrictions in accordance with Sections 12.02 and 17.02.

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

12.04 Rights of Owners. Except as may be specifically set forth in the Initial Use Restrictions, neither the Board nor the Members may adopt any rule in violation of the following provisions:

- (i) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.
- (ii) Speech. The rights of Owners and occupants to display on their Lot political signs and symbols of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods in individually owned property shall not be abridged, except that the Association may adopt reasonable time, place and manner restrictions regulating signs and symbols which are visible from outside the Lot.
- (iii) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions regulating displays which are visible from outside the Lot.
- (iv) Household Composition. No rule shall interfere with the freedom of occupants of Dwelling Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Dwelling Unit on the basis of the size and facilities of the Dwelling Unit and its fair share use of the Common Area.

- (v) Activities Within Dwelling Units. No rule shall interfere with the activities carried on within the confines of Dwelling Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Dwelling Units, that generate excessive noise or traffic, that create unsightly conditions outside the Dwelling Unit, or that create an unreasonable source of annoyance.
- (vi) Pets. The Association may adopt reasonable rules designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Lot and fair share use of the Common Area; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep animals or poultry of any kind for commercial or Business purposes.
- (vii) Allocation of Burdens and Benefits. The initial allocation of financial burdens and rights to use Common Areas among the various Lots shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Areas as provided in Section 4.09, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.
- (viii) Alienation. No rule shall prohibit the leasing or transferring of any Lot, or require consent of the Association or Board for leasing or transferring of any Lot; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the costs to the Association of its costs to administer that lease or transfer.
- (ix) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Properties shall apply

prospectively only and shall not require the removal of any property which was being kept on the Properties prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law.

The limitations in this Section 12.04 shall apply to rules only; they shall not apply to amendments to the Declaration adopted in accordance with Section 17.02.

ARTICLE XIII

EASEMENTS

13.01 Easements of Encroachment. There is hereby created easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the Declarant's unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with this Declaration) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of the Declarant.

13.02 Easements for Utilities, Etc. The Association is granted an easement for the purpose of access and maintenance upon, across, over, and under all of the Properties to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers meter boxes, telephone, gas, and electricity. The Association may assign these rights to any local utility supplier, cable company, security company, or other company providing a service of utility to Terravita subject to the limitations herein.

The easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities, over, under or through any existing Dwelling Unit on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

The Association specifically grants to the local utility suppliers easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Dwelling Unit on any Lot, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board.

13.03 Easements for Golf Course.

- (i) Every Lot and the Common Area are burdened with an easement permitting golf balls unintentionally to come upon such Common Area or Lots are for golfers at reasonable times and in a reasonable manner to come upon the Common Area or the exterior portions of a Lot to retrieve errant golf balls; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Association or its Members (in their capacity as such); the management company of the Association; the owner of the Golf Course; its successors, successors-in-title to the Golf Course, or assigns.
- (ii) The owner of the Golf Course, its respective agents, successors or assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary, with or without the use of maintenance vehicles and equipment, for the operation, maintenance, repair and replacement of the Golf Course.
- (iii) The Properties immediately adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the Golf Course for overspray of water from any irrigation system serving the Golf Course. Under no circumstances shall the Association or the owners of the Golf Course be held liable for damage or injury resulting from such overspray or the exercise of this easement.
- (iv) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from the Golf Course.
- (v) The owner of the Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, and authorized users of the Golf Course, shall at all times have a right and non-exclusive easement of access and use over all roadways located or to be located within the Properties reasonably necessary to travel to and from the Golf Course and the right to park their vehicles on the streets within the Properties at reasonable times before, during and after golf tournaments and other similar functions held at the Golf Course.
- (vi) The owner of the Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, and authorized users of the Golf Course, shall at all times have a right and non-exclusive easement of access to and use of any clubhouse and the

Common Areas adjacent to such clubhouse located or to be located within the Properties.

- (vii) The owner of the Golf Course, its respective agents, successors and assigns may maintain and carry on within any clubhouse within the Common Areas such facilities and activities as may be reasonably required, convenient, or incidental to the operation of and/or sale of memberships in the Golf Course, including, but not limited to, business offices, signs, and sales offices. The owner of the Golf Course, its respective agents, successors and assigns shall have easements for access to and use of such facilities. These rights to use any clubhouse within the Common Area for the purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Areas by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.
- (viii) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Properties, for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment, including, without limitation, wells, pumps and pipelines, serving all or portions of the Golf Course.
- (ix) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual, non-exclusive easement to the extent reasonably necessary, over the Properties, for the installation, maintenance, repair, replacement and monitoring and controlling of utility lines, wires, drainage pipelines and pipelines serving all or portions of the Golf Course.
- (x) The Properties are hereby burdened with easements in favor of the Golf Course for natural drainage of storm water runoff from the Golf Course.
- (xi) The Properties are hereby burdened with easements in favor of the Golf Course for golf cart paths serving the Golf Course. Under no circumstances shall the Association or the owner of the Golf Course, or their respective agents, successors, or assigns, be held liable for any damage or injury resulting from the exercise of this easement.
- (xii) The owner of the Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees, and authorized users of the Golf Course shall at all times have a right and non-exclusive easement of access and use over the golf cart paths, if any, and located within the Properties as reasonably necessary for the use and enjoyment of the Golf Course.

13.04 Easements for Cross-Drainage. Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property and the Board.

13.05 Right of Entry. Authorized agents of the Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot, for emergency, security, and safety reasons. Except in emergencies, entry on a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Lot to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any Dwelling Unit without permission of the Owner.

13.06 Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot to (a) perform its maintenance responsibilities under Article V, and (b) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owner's property, and any damage shall be repaired by the Association at its expense.

The Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing of condition which violates the Declaration, any Supplemental Declaration, the By-Laws, the Design Guidelines, or the rules. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefitted Assessment.

ARTICLE XIV

MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties, The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

14.01 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (i) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (ii) Any delinquency in the payment of assessment or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Lot or the Owner or Occupant which is not cured within 60 days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws which is not cured within 60 days;
- (iii) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (iv) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

14.02 Other Rights for First Lien Holders. To the extent possible under Arizona law:

- (i) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which at least 51% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.
- (ii) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which at least 51% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

14.03 No Priority. No provisions of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.04 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

14.05 Applicability to Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Arizona law for any of the acts set out in this Article.

14.06 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XV

GOLF COURSE

15.01 Right of Use. Neither membership in the Association nor ownership of Lot nor occupancy of a Dwelling Unit shall automatically confer any ownership interest in or right to use the Golf Course. Rights to use the Golf Course will be granted only to such owner of the golf course. The owner of the Golf Course shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the golf course, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

15.02 View Impairment. Neither the Association nor the owner or operator of the Golf Course guarantees or represents that any view over and across the Golf Course from adjacent Lots will be preserved without impairment. No provision of this Declaration shall be deemed to create an obligation of the owner of the Golf Course, if any, to its sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the golf course from time to time. Any such additions or changes to the golf course may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any such addition or change to the golf course may not adversely affect drainage flow across the Properties.

15.03 Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the owner of the golf course, no amendment to this Article, and no amendment in derogation of any rights reserved or granted to the owner of the golf course by other provisions of this Declaration, may be made without the written approval of the owner of the Golf Course.

15.04 Jurisdiction and Cooperation. The Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course. Each shall reasonably assist the other in upholding the Community-Wide Standard. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course.

ARTICLE XVI

DISPUTE RESOLUTION

The Association, Owners, all Persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that it shall attempt to resolve all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles of Incorporation (collectively "Claim") through alternative dispute resolution methods, such as mediation and arbitration.

Bound parties may pursue any lawful means, including alternative dispute resolution methods, to resolve (a) any suit by the Association against any Bound Party to enforce the provisions of Article X; or (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI and Article XII; or (c) any suit between Owners seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Arizona in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00. Any Bound Party may submit such Claims to alternative dispute resolution methods, but there shall be no obligation to do so.

To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures applicable to all Bound Parties.

ARTICLE XVII

GENERAL PROVISIONS

17.01 Term. This Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, unless and until terminated by the affirmative vote or written consent, or any combination thereof, of the Owners owning ninety percent (90%) of the Lots. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable.

17.02 Amendment. This Declaration may be amended by the affirmative vote or written consent, or any combination thereof, of the Owners holding not less than two-thirds (2/3) of the votes cast, provided that the total vote equals or exceeds Quorum.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Notwithstanding the foregoing, the Board, without obtaining the approval or consent of any Owner, may amend this Declaration solely to conform this Declaration to the law, so long as the following process is used. The Board of Directors must send a copy of the proposed amendments by mail to each Owner no less than thirty (30) days prior to the date the Board intends to record the amendments. Any such amendments may be recorded after compliance with this requirement unless such amendments are disapproved by the Members in accordance with the following procedure. If, before the recording date, the Board receives a petition signed by Members holding at least five percent (5%) of the votes, requesting that the amendment be approved by the Members, then the amendments must thereafter be approved by the Members in accordance with this Section 17.02 before the amendments may be recorded.

- (i) Validity and Effective Date of Amendment. Amendments to this Declaration shall become effective upon recordation in the Office of the County Recorder unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within ninety (90) days of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

17.03 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

17.04 Use of the Word "Terravita". No person shall use the word "Terravita" or any derivative in any printed or promotional material without the Association's prior written consent. However, Owners may use the word "Terravita" in printed or promotional matter solely to specify that particular property is located within the Properties and the Association shall be entitled to use the word "Terravita" in its name.

17.05 Compliance.

- (i) The Association or any Owner shall have the right to enforce the Declaration, By-Laws and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or Owners.
- (ii) This right of enforcement shall be in any manner provided for in the Declaration or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any improvements constructed in violation of this Declaration or to otherwise compel compliance with the Declaration or By-Laws. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Declaration or By-Laws shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Declaration or By-Laws in the future.
- (iii) In the event the Association acts to enforce the Declaration or By-Laws, regardless of whether suit is filed, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and shall also constitute a Benefitted Assessment against said Owner's Lot. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorneys' fees, court costs, costs of investigation and other related expenses incurred therewith. If any lawsuit is filed by any Owner to enforce the provisions of the Declaration or By-Laws or in any other manner arising out of the Declaration or By-Laws or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action.

17.06 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Owner or resident of any restriction or other provision of the Declaration. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner violating, or responsible for the violation of, the Declaration; (ii) the legal description of the Lot against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the recordation of such notice, it is determined

by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Declaration.

17.07 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

17.08 Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in this Declaration, the Articles of Incorporation, or the By-Laws, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefitted Assessment with respect to the Lot(s) involved in the action.

17.09 Laws, Ordinances and Regulations.

- (i) The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Modifications Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declarations shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.
- (ii) Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

17.10 Interpretation and Construction. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefitted or bound by this Declaration. In the event of

any conflict between this Declaration and the Articles, By-Laws, or Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the By-Laws, the Articles shall control. In the event of any conflict between the By-Laws and the Design Guidelines, the By-Laws shall control.

The President of the Association hereby certifies that the provisions contained within this Amended and Restated Declaration have been approved as required by the Declaration.

DATED this 10th day of February, 2010

Terravita Community Association, Inc.

By Patrick Maudsley
Its President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 10 day of Feb., 2010, before me the undersigned Notary Public, personally appeared Patrick Maudsley who acknowledged to me that s/he is the President of the Association and that s/he executed the foregoing agreement on behalf of the Association for the purposes expressed herein.

Romley D. Frazier
Notary Public

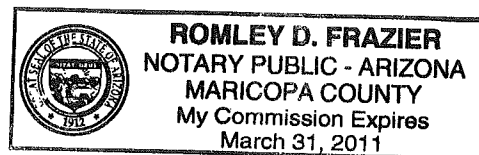


EXHIBIT A

LEGAL DESCRIPTION

Lots 1 through 44 and Tracts A through H, PARCEL Q/R AT TERRAVITA, according to the Plat recorded at Book 397 of Maps, Page 48, Records of Maricopa County, Arizona.

Lots 1 through 34 and Tracts A through E, PARCEL O AT TERRAVITA, according to the Plat recorded at Book 391 of Maps, Page 03, Records of Maricopa County, Arizona.

Lots 1 through 40 and Tracts A through K, PARCEL M AT TERRAVITA, according to the Plat recorded at Book 390 of Maps, Page 42, Records of Maricopa County, Arizona.

Lot 1 through 25 and Tracts A through F, PARCEL P AT TERRAVITA, according to the Plat recorded at Book 393 of Maps, Page 24, Records of Maricopa County, Arizona.

Lot 1 through 94 and Tracts A through K, PARCEL N UNIT ONE AT TERRAVITA, according to the Plat recorded at Book 382 of Maps, Page 47, Records of Maricopa County, Arizona.

Lots 1 through 40 and Tracts A through J, PARCEL N UNIT TWO AT TERRAVITA, according to the Plat recorded at Book 384 of Maps, Page 06, Records of Maricopa County, Arizona.

Lots 1 through 88 and Tracts A through H, PARCEL L AT TERRAVITA, according to the Plat recorded at Book 391 of Maps, Page 35, Records of Maricopa County, Arizona.

Lots 1 through 98 and Tracts A through I, PARCEL U AT TERRAVITA, according to the Plat recorded at Book 410 of Maps, Page 09, Records of Maricopa County, Arizona.

Lots 1 through 45 and Tracts A through C, PARCEL K AT TERRAVITA, according to the Plat recorded at Book 382 of Maps, Page 05, Records of Maricopa County, Arizona.

Lots 30 through 38 and Tract B, PARCEL K AT TERRAVITA, according to the Plat recorded at Book 387 of Maps, Page 32, Records at Maricopa County, Arizona.

Lots 1 through 33 and Tracts A through F, PARCEL D AT TERRAVITA, according to the Plat recorded at Book 374 of Maps , Page 36 , Records at Maricopa County, Arizona.

Lots 1 through 37 and Tracts A through E, PARCEL D AT TERRAVITA, according to the Plat recorded at Book 366 of Maps, Page 39, Records of Maricopa County, Arizona.

Lots 1 through 146 and Tracts A through L, PARCEL E AT TERRAVITA, according to the Plat recorded at Book 367 of Maps, Page 05, Records of Maricopa County, Arizona.

Lots 1 through 117 and Tracts A through G, PARCEL G AT TERRAVITA, according to the Plat recorded at Book 376 of Maps, Page 22, Records of Maricopa County, Arizona.

Lots 1 through 70 and Tracts A through I, PARCEL H AT TERRAVITA, according to the Plat recorded at Book 377 of Maps, Page 10, Records of Maricopa County, Arizona.

Lots 1 through 57 and Tracts A through O, PARCEL I AT TERRAVITA, according to the Plat recorded at Book 378 of Maps, Page 21 , Records of Maricopa County, Arizona.

Lots 1 through 55 and Tracts A through F, PARCEL C AT TERRAVITA, according to the Plat recorded at Book 368 of Maps, Page 26, Records of Maricopa County, Arizona.

Lots 1 through 67 and Tracts A through F, PARCEL B AT TERRAVITA, according to the Plat recorded at Book 366 of Maps, Page 38, Records of Maricopa County, Arizona.

Lots 1 through 81 and Tracts A through I, PARCEL J/V AT TERRAVITA, according to the Plat recorded at Book 406 of Maps, Page 17, Records of Maricopa County, Arizona.

Lots 1 through 90 and Tracts A through E, PARCEL T AT TERRAVITA, according to the Plat recorded at Book 395 of Maps, Page 20, Records of Maricopa County, Arizona.

Lots 1 through 42 and Tracts A through F, PARCEL S UNIT TWO AT TERRAVITA, according to the Plat recorded at Book 397 of Maps, Page 49, Records of Maricopa County, Arizona.

Lots 1 through 55 and Tracts A through J, PARCEL S UNIT ONE AT TERRAVITA, according to the Plat recorded at Book 396 of Maps, Page 01, Records of Maricopa County, Arizona.

Lots 2, 20 through 26 and Tracts B through F, RE-PLAT OF A PORTION OF PARCEL A AT TERRAVITA, according to the Plat recorded at Book 401 of Maps, Page 46, Records of Maricopa County, Arizona.

Lots 1 through 18 and Tracts A through C, FINAL PLAT OF TERRAVITA PARCEL A, according to the Plat recorded at Book 366 of Maps, Page 29, Records of Maricopa County, Arizona.

Lot 19 and Tract C, FINAL PLAT OF TERRAVITA PARCEL A REPLAT, according to the Plat recorded at Book 370 of Maps, Page 24, Records of Maricopa County, Arizona.

Tracts A through C, MAP OF DEDICATION VISTA CORRIDORS AT TERRAVITA PHASE ONE , according to the Plat recorded at Book 376 of Maps, Page 30, Records of Maricopa County, Arizona.

Tracts A through G, MAP OF DEDICATION FOR THE GOLF COURSE AT TERRAVITA, according to the Plat recorded at Book 404 of Maps, Page 32, Records of Maricopa County, Arizona.

EXHIBIT B

USE RESTRICTIONS

1. General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Association consistent with this Declaration and any Supplemental Declaration), subject to the applicable laws. Any Supplemental Declaration or additional covenants imposed on the property may impose stricter standards than those contained in this Declaration and the Association shall have standing and the power to enforce such standards.

2. Prohibited Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

- (i) Except as otherwise set forth in Article XII, Section 12.04(ii) of the Declaration, posting of signs of any kind on any Lot, except those required by law, required to be allowed by law, and those signs approved by the Modifications Committee;
- (ii) Subdivision of a Lot into two or more Lots after a subdivision plat including such Lot has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Lot;
- (iii) Active use of lakes, ponds, streams, or other bodies of water within the Properties or within the Golf Course, except that the owner of the Golf Course, and its agents, successors and assigns, shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas which are within range of golf balls hit from the Golf Course. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or other bodies of water within or adjacent to the Properties;
- (iv) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;
- (v) Occupancy of a Dwelling Unit by more than two persons per bedroom in the Dwelling Unit. For the purposes of this provision, "occupancy" shall be defined as staying overnight in the Dwelling Unit more than 30 days in any six-month period;
- (vi) Capturing, trapping or killing wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons or pets

using the Properties, and raising, breeding or keeping animals or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted on a Lot. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the Owners or occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet;

- (vii) Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Properties or which result in unreasonable levels of sound or light pollution;
- (viii) Discharge of firearms or explosives within the Properties. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size;
- (ix) Any Business, Trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (A) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (B) the business activity conforms to all zoning requirements for the Properties; (C) the business activity does not involve regular visitation of the Lot or Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (D) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The leasing of a Dwelling Unit shall not be considered a Business or Trade within the meaning of this section. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Dwelling Units may be leased only in their entirety. No fraction or portion may be leased. No structure on a Lot other than the primary residential Dwelling Unit shall be leased or otherwise occupied for residential purposes, except that any Lot comprised of more than one acre of land may make residential use of such structure for an ancillary use such as in-law suite or nanny suite, but not for independent leasing. There shall be no subleasing of Dwelling Units or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing.

No transient tenants may be accommodated in a Dwelling Unit, and all leases shall be for an initial term of no less than 30 days, except with the prior written consent of the Board.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations. The Board may adopt reasonable rules regarding and subleasing.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

- (i) Unless governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, no antenna or other device for the transmission or reception of television, internet or radio signals or any other form of electromagnetic radiation or any associated equipment shall be erected, used or maintained outdoors on any Lot or Parcel or Common Area, whether attached to a building or structure or otherwise, so as to be visible from outside the Lot, unless approved in writing by the Board. Any device governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, shall comply with the applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be visible from outside the Lot;
- (ii) Walls, dog runs, animal pens, or fences of any kind on any Lot except as approved in accordance with Article XI;
- (iii) Open garage doors. Garage doors shall remain closed at all times except when entering or exiting the garage;
- (iv) Excessive exterior lighting on any Lot. The Board shall in its sole discretion determine whether any exterior lighting is excessive;
- (v) Tents, shacks, or other structures of a temporary nature on any Lot except as approved in accordance with Article XI. Temporary structures used during the construction or repair of a Dwelling Unit or other improvements shall be removed immediately after the completion of construction or repair; and
- (vi) Storage of furniture, fixtures, appliances, machinery, equipment or other goods and chattels not in active use on the Common Area or any portion of a Lot which is visible from outside the Lot, except as approved in accordance with Article XI.

4. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Properties. Woodpiles or other material shall be stored in a manner so as not to be visible from outside the Lot and so as not to be attractive to native rodents, snakes, and other animals and to minimize the potential danger from fires. No other nuisance shall be permitted to exist or operate

upon any Lot so as to be offensive or detrimental to any other portion of the Properties. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Properties, except in a contained outdoor fireplace, fire pit, or barbecue unit while attended and in use for designed purposes or within a safe and well designed interior fireplace.

5. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved in accordance with Article XI or as required by the applicable governing jurisdiction. In no event shall such containers be maintained so as to be visible from outside the Lot unless they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

6. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot.

7. Vehicles and Parking. The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, golf carts, and recreational vehicles.

No vehicle may be left upon any portion of the Properties except in a garage, driveway, parking pad, or other area designated by the Board. Commercial vehicles, recreational vehicles, mobile homes, trailers, campers, golf carts, boats or other watercraft, or other oversized vehicles, stored vehicles, and unlicensed vehicles or inoperable vehicles shall not be parked within the Properties other than in enclosed garages; provided however, that one boat may be temporarily kept or stored completely in a driveway or completely on a parking pad on a Lot for not more than four nights within each calendar month. This Section shall not apply to emergency vehicle repairs.