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**AMENDED AND RESTATED**

**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS  
FOR PRONGHORN RANCH**



**Dated** February 14th, **2003**

When recorded mail to:

Mr. Robert Venberg  
Brown Family Communities  
2164 E. Broadway Rd. Ste. 300  
Tempe, AZ. 85282

231455.4

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AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS FOR PRONGHORN RANCH

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS is executed as of the 14<sup>th</sup> day of FEBRUARY, 2003, by ANTELOPE VILLAGE, L.L.C., an Arizona limited liability company.

**RECITALS**

A. Declarant is the beneficial owner and developer of land located in Prescott Valley, Arizona, portions of which are proposed, without warranty or representation, to be developed or offered for development, as a part of a community to be known as Pronghorn Ranch.

B. The property initially subject to this Declaration is described in Exhibit A attached hereto, and is defined herein as the "Covered Property." The Covered Property is subject to the terms and provisions hereof, and the remainder of the property described in Exhibit B hereto shall constitute the Annexable Property, as defined herein, and shall be subject to the terms and provisions hereof only if annexed. It is acknowledged that certain areas may never be annexed, including without limitation certain commercial and other areas.

C. Declarant desires to see the Covered Property developed as one or more planned communities with residential and other areas, together with recreational areas, developed and undeveloped open spaces, pedestrian trails, bicycle paths and other facilities.

D. As part of the development of the Covered Property, and without obligation to do so, Declarant intends to provide for the Recordation of various additional covenants, conditions and restrictions apart from this Declaration in the form of separate Tract Declarations which shall cover certain portions of the Covered Property to be specified in such Tract Declarations.

E. Declarant desires and intends that the Covered Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, which: (i) are for the purpose of protecting the value, desirability, attractiveness and character of the Covered Property; (ii) shall run with all of the real property comprising the Covered Property; (iii) shall be binding on all parties having any right, title or interest in the Covered Property, or any part thereof; and (iv) shall inure to the benefit of the aforementioned parties and their successors and assigns.

F. Declarant desires to form an Arizona nonprofit corporation to be known as the "Pronghorn Ranch Homeowners Association," for the purposes of, among other things: (i) holding title in fee or otherwise to the Common Areas; (ii) fostering the efficient preservation of the values and amenities of the Covered Property, in regard to which the Association will be delegated certain powers of administering and maintaining

the Common Areas and enforcing this Declaration and the Design Guidelines adopted pursuant hereto; and (iii) establishing, collecting, disbursing and enforcing the Assessments created herein.

G. Until such time as the Association is incorporated, Declarant shall and does hereby reserve to itself, its successors and assigns, the right to exercise the powers, rights and duties granted to or imposed upon the Association under this Declaration.

H. This Declaration shall amend and restate in its entirety that certain Declaration of Covenants, Conditions, Restrictions, and Easements for Pronghorn Ranch, dated June 10, 2002 and recorded June 13, 2002 in Docket 3933, Page 987, records of Yavapai County Records (the "Original Declaration")

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

#### **ARTICLE 1 DEFINITIONS**

As used in this Declaration, the following terms shall have following meanings:

1.1 "Additional Covenants" shall mean the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any Tract Declaration, any Recorded contract, deed, declaration or other instrument that may be permitted under this Declaration.

1.2 "Annexable Property" shall mean any real property near or adjacent to the Covered Property and which may be annexed under the purview hereof subject to Declarant's written consent and Recordation of a Tract Declaration approved by the Declarant. Annexable Property includes, without limitation the property identified in Exhibit B attached hereto.

1.3 "Agency" or "Agencies" shall mean the FHA, the VA, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and any other governmental agency or financial institution participating in the insuring or guaranteeing of home loans within the Covered Property.

1.4 "Annual Assessments" shall mean the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.

1.5 "Apartment Parcel" shall mean a Parcel designated in the Master Development Plan or in a Tract Declaration as having a Residential Apartment Land Use Classification.

1.6 "Apartment Unit" shall mean a Dwelling Unit located on a portion of the Covered Property which has been designated as being for Residential Apartment



Development use, the occupancy of which is or is planned to be governed by a rental agreement as defined in A.R.S. §33-1310(11).

1.7 "Articles" shall mean the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.

1.8 "Assessments" shall mean all Annual Assessments, Special Assessments and Maintenance Assessments.

1.9 "Assessment Lien" shall mean the charge and continuing servitude and lien against a Lot or Parcel for payment of Assessments and Special Use Fees as described in Section 8.1 of this Declaration.

1.10 "Assessment Period" shall mean each period for which Assessments are to be levied against a Lot or Parcel pursuant to this Declaration, as more particularly described in Section 8.9 below.

1.11 "Association" shall mean the "Pronghorn Ranch Homeowners Association," an Arizona nonprofit corporation, its successors and assigns.

1.12 "Association Rules" shall mean the rules and regulations adopted by the Association pursuant to Section 6.3 and 12.2 of this Declaration.

1.13 "Board" shall mean the Board of Directors of the Association.

1.14 "Bylaws" shall mean the Bylaws of the Association, as amended or restated from time to time.

1.15 "Common Areas" shall mean all real property and the improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled or operated by the Association (including, but not limited to, areas used for landscaping, flood control, drainage, bicycle or jogging paths, parks, recreational areas, open space, walkways and pedestrian and vehicular ingress and egress), or with respect to which the Association has undertaken administrative, maintenance or other similar responsibilities.

1.16 "Condominium Parcel" shall mean a Parcel designated in the Master Development Plan or in a Tract Declaration as having a Residential Condominium Development Land Use Classification.

1.17 "Condominium Unit" shall mean a Dwelling Unit constituting a "unit" in a "condominium," together with any appurtenant interest in all "common elements," as such terms are defined in Chapter 9, Title 33, Arizona Revised Statutes, as amended.

1.18 "Covered Property" shall mean the real property more particularly described on Exhibit A attached hereto, and such portions of the Annexable Property as

may be annexed pursuant to the provisions hereof by Recordation of a Tract Declaration, all subject to the further provisions hereof dealing with withdrawal of land.

1.19 "Declarant" shall mean Antelope Village, L.L.C., an Arizona limited liability company, and any Declarant Affiliate as well as any assignees of all or part of the rights and duties granted or reserved to Declarant herein, which assignment shall be evidenced by a Recorded instrument executed by the assigning Declarant. Without limiting the foregoing any rights, benefits or other privileges granted to the "Declarant" in this Declaration shall inure to the benefit of both Antelope Village, L.L.C. or its assignees and all Declarant Affiliates; provided, however, that in the event "Declarant" is granted any right to take affirmative action under this Declaration (e.g., the right to appoint and remove member of the Design Review Committee pursuant to Section 4.1.8), such action shall be taken by Antelope Village, L.L.C. or its assignees, unless such rights are delegated in whole or in part to one or more Declarant Affiliates.

1.20 "Declarant Affiliate" shall mean any Person directly or indirectly controlling, controlled by or under common control with Antelope Village, L.L.C. or its assignees, and shall include without limitation, any general or limited partnership, limited liability company, corporation in which Antelope Village, L.L.C. or its assignees or another Declarant Affiliate is a general partner, managing member, majority member or controlling shareholder, or a Trust in which Antelope Village, L.L.C. or its assignees or another Declarant Affiliate is a beneficiary, provided such Person or entity is designated in writing by Declarant as a Declarant Affiliate. Without limiting the foregoing, Declarant Affiliates shall include the following (and they are hereby designated as Declarant Affiliates): Brown Family Communities, Prescott Valley VII, L.L.C., Pronghorn Holdings L.L.C. and First American Title Insurance Agency of Yavapai, Inc., an Arizona corporation, as Trustee under Trust 4933.

1.21 "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch, as amended or supplemented from time to time.

1.22 "Delinquent Amount" shall mean any Assessment or Special Use Fee, or installment thereof, not paid when due.

1.23 "Design Guidelines" shall mean the rules and regulations adopted, amended and supplemented by the Design Review Committee pursuant to Section 4.4 of this Declaration, and shall include architectural and landscape Design Guidelines.

1.24 "Design Review Committee" shall mean the committee(s) formed pursuant to Article 4 of this Declaration. The Design Review Committee may elect to adopt any other name it may desire, including Architectural and Landscape Review Committee.

1.25 "Developer Owner" shall mean a Person in the business of developing, leasing and/or selling real property and who has in a single transaction acquired twenty-five (25) or more Lots or all or a portion of a Parcel in the Covered Property, in connection with, and in the course of, such business, for the purpose of developing,

leasing or selling such Lots or Parcel, or portion thereof. A Developer Owner must be designated as such in writing by Declarant.

1.26 "Dwelling Unit" shall mean any building, or part thereof situated upon a Lot or Parcel and intended for use and occupancy as a residence by a Single Family.

1.27 "Eligible Insurer or Guarantor" shall mean a governmental insurer or guarantor of a First Mortgage who has in writing requested notice of certain matters from the Association in accordance with Section 13.1 if this Declaration.

1.28 "Eligible Mortgage Holder" shall mean a First Mortgagee who has in writing requested notice of certain matters from the Association in accordance with Section 13.1 if this Declaration.

1.29 "Event of Foreclosure" shall mean the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust or other encumbrance inferior in priority to an Assessment Lien.

1.30 "Exempt Property" shall mean the following areas now or hereafter located within Pronghorn Ranch, none of which are subject to Assessment, and no voting rights shall be associated therewith:

1.30.1 All Government Property;

1.30.2 All Common Areas for so long as Declarant or the Association is the owner thereof;

1.30.3 All Limited Common Areas; and,

1.30.4 All unmanned utility substations which provide utility services to all or any portion of the Covered Property unless and to the extent that the applicable Tract Declaration or other appropriate Recorded instrument indicates such a Lot or Parcel is subject to Assessments.

1.31 "FHA" shall mean the Federal Housing Administration.

1.32 "First Mortgage" shall mean any mortgage or deed of trust on any Lot or Parcel, or portion thereof, with the first priority over any other mortgage or deed of trust encumbering such Lot or Parcel, or portion thereof.

1.33 "First Mortgagee" shall mean the holder of any First Mortgage.

1.34 "Funds" shall mean all funds and property collected and received by the Association from any source.

1.35 "Government Property" shall mean all land and improvements owned by or dedicated to a public or governmental agency or authority for so long as the public or

governmental agency or authority is the owner or beneficiary thereof, except for land or improvements, or both, owned and/or operated by a public or governmental agency or authority acting in a proprietary capacity, or owned and occupied as a residence by a Single Family.

1.36 "Land Use Classification" shall mean a classification of a portion of the Covered Property, as set forth in a Tract Declaration, restricting development to the applicable classification(s).

1.37 "Limited Common Areas" shall mean all areas of any Parcel now or hereafter designated on a Recorded Tract Declaration or a Recorded subdivision plat as an area to be used in common by the Owners or Occupants of a particular Parcel or subdivision, but not by all Owners or Occupants of the Covered Property, which areas shall also be maintained by and at the expense of the Owners or Occupants of such Parcel or subdivision, or by a homeowners or similar Subsidiary Association established with respect to such Parcel or subdivision.

1.38 "Lot" shall mean:

1.38.1 an area of real property within the Covered Property designated as a "Lot" on any Recorded subdivision plat and which has a designated Land Use Classification of Single Family Residential Use or Cluster Residential use; or

1.38.2 a Condominium Unit.

1.39 "Maintenance Assessments" shall mean the Assessments, if any, levied by the Board pursuant to Sections 8.7 and 11.2 through 11.5 of this Declaration.

1.40 "Master Development Plan" shall mean any conceptual or site development plan at any time in effect for the Covered Property and the Annexable Property, if annexed, or any portion thereof, and approved by the Town or any other governmental jurisdiction having the authority to approve and regulate master plans for planned area communities located within the Covered Property, as the same may be amended from time to time in Declarant's sole and absolute discretion, subject to necessary governmental approvals. A current copy of the then applicable Master Development Plan shall be on file at all times in the Association office.

1.41 "Member" shall mean any Owner, including Declarant.

1.42 "Membership" shall mean the amalgam of rights and duties of Owners, including Declarant, with respect to the Association.

1.43 "Net Acre" shall mean a gross acre of forty-three thousand five hundred sixty (43,560) square feet, less any dedicated rights-of-way for public roads, public and private drainage ways, and public utilities, and, except as the context may otherwise clearly indicate, less Common Areas accepted for ownership by the Association, if any. Net Acre computations shall be rounded to the nearest one-hundredth.

1.44 "Non-Developer Owner" shall mean any Owner who is not a Developer Owner.

1.45 "Occupant" shall mean:

1.45.1 each Tenant who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Tenant who reside on the Covered Property;

1.45.2 each Owner who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Owner who reside on the Covered Property; and

1.45.3 such other person or persons as the Board, in its absolute discretion, may designate.

1.46 "Owner" shall mean (a) a record holder of beneficial or equitable title, and legal title if legal title has merged with the beneficial or equitable title, to the fee simple interest in any Lot or Parcel, including without limitation Declarant and all Developer Owners or (b) the purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale, or any similar contract governed by A.R.S. § 33-741, et seq. The foregoing does not include persons or entities who hold an interest in any Lot or Parcel merely as security for the performance of an obligation, or a lessee or tenant of an Owner as defined above, or a purchaser or buyer under any executory contract of sale which has not been fully consummated with a Recorded deed to the purchaser.

1.47 "Parcel" shall mean any parcel of land within the Covered Property, including a Parcel designated for Residential Apartment Development Use or Residential Condominium Development Use, other than Common Areas to be owned in fee title by the Association, and including any portion, pad, or subparcel thereof, if such portion, pad, or subparcel shall have been created by a parcel split or subdivision approved or permitted in accordance with this Declaration. Notwithstanding the foregoing, a Parcel shall cease being a Parcel upon Recording of a subdivision plat or a declaration of condominium creating Lots or Condominium Units in regard thereto. In the case of the staged development of a Parcel having a Land Use Classification of Cluster Residential Use, Single Family Residential Use or Residential Condominium Development Use, those areas of such Parcel not yet covered by a Recorded subdivision plat or declaration of condominium creating Lots shall continue to be a Parcel for purposes of this Declaration.

1.48 "Party Wall" shall have the meaning set forth in Section 4.4 of this Agreement.

1.49 "Person" shall mean a corporation, partnership, limited liability company, joint venture, individual, trust or any other legal entity.

1.50 "Record", "Recording" and "Recorded" shall mean placing or having placed a document of public record, or the act of recording, in the Official Records of Yavapai County, Arizona.

1.51 "Residential Apartment Development" shall mean a development comprised of Apartment Units and the surrounding area which is intended to be integrated and under the same ownership.

1.52 "Residential Condominium Development" shall mean a development comprised of Condominium Units and the surrounding Limited Common Areas.

1.53 "Single Family" shall mean a group of persons living together and maintaining a single nonprofit housekeeping unit together with their domestic servants.

1.54 "Single Family Parcel" shall mean a Parcel designated in the Master Development Plan or in a Tract Declaration as having a Single Family Residential or Cluster Residential Land Use Classification.

1.55 "Special Assessments" shall mean the assessments, if any, levied by the Board pursuant to Section 8.4 of this Declaration.

1.56 "Special Use Fees" shall mean any fees charged by the Association for use of the Common Areas pursuant to Section 3.1, Section 8.1 and other provisions of this Declaration.

1.57 "Subsidiary Association" shall mean an Arizona nonprofit corporation, its successors and assigns, established for the purpose of administering and enforcing the provisions of any Tract Declaration.

1.58 "Taking" shall mean condemnation by eminent domain or sale or other transfer under threat of condemnation.

1.59 "Tenant" shall mean a Person occupying any part of the Covered Property under any type of rental agreement, whether such rental agreement is within the definition set forth in A.R.S. §33-1310(11) or otherwise.

1.60 "Town" shall mean the Town of Prescott Valley, Arizona.

1.61 "Tract Declaration" shall mean any declaration of covenants, conditions and restrictions or like instrument Recorded after the Recording of this Declaration in regard to one or more Parcels, or portions thereof, or group(s) of Lots, by the Owner of such Parcels or portions thereof, or group(s) of Lots, which shall in all cases be consistent with and subordinate to this Declaration.

1.62 "VA" shall mean the United States Veterans' Administration.

1.63 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a Person six feet tall, standing at ground

level on neighboring property (including Common Area) six feet back from the property line of the neighboring property, provided, however, that the Design Review Committee shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the determination of the Design Review Committee shall be binding in that regard, subject to any appeal rights to the Board.

**ARTICLE 2  
PROPERTY AND PERSONS BOUND  
BY THIS DECLARATION**

2.1 General Declaration. Declarant desires to see the Covered Property developed in accordance with the Master Development Plan, as may be amended from time to time in the sole and absolute discretion of Declarant, and to dedicate or convey to other Persons the Lots and Parcels or other portions of the Covered Property. As portions of the Covered Property are developed, Declarant, without obligation, intends to Record one or more Tract Declarations that will, among other things, create Parcels, designate Land Use Classifications, designate Common Areas and Limited Common Areas, and establish such additional covenants, conditions and restrictions as may be appropriate for the respective portions of the Covered Property. Declarant hereby declares that all of the Covered Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Tract Declarations applicable thereto, as amended or modified from time to time. Notwithstanding the preceding sentence, except as expressly provided herein, property owned by or dedicated to a governmental agency or to the public shall not be subject to this Declaration, provided, however, that any restrictions imposed in this Declaration upon the Owners and Occupants concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Covered Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Covered Property. This Declaration shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Covered Property and their successors in interest. Nothing in this Declaration or in any Tract Declaration shall be construed to prevent Declarant from modifying any part of the Master Development Plan with respect to property as to which a Tract Declaration has not been Recorded, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot, a Parcel, or Common Areas.

2.2 Owners and Occupants Bound. Upon the Recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Parcel or Lot to or from such Owners or Occupants.

2.3 Association Bound. Upon the incorporation of the Association, this Declaration shall be binding upon and benefit the Association, and its successors and assigns.

2.4 Subsidiary Associations Bound. Upon the incorporation or other formation of any Subsidiary Association, this Declaration shall be binding upon and shall benefit such Subsidiary Association, and its successors and assigns.

2.5 Government Property. Notwithstanding any other provision herein, Government Property comprising a park, or other property owned in fee by a town, city, or county, shall not be deemed encumbered by any of the provisions of this Declaration. Owners shall, however, be restricted in their use of Government Property consisting of roads (i.e., the parking, signage, and other regulations hereof).

**ARTICLE 3  
EASEMENTS AND RIGHTS OF ENJOYMENT  
IN THE COMMON AREAS**

3.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner's Lot or Parcel. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

3.1.1 The right of the Association pursuant to this Declaration to charge reasonable Special Use Fees for the use of the Common Areas. The Special Use Fees shall be set by the Board from time to time, in its absolute discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those Common Areas selected by the Board to be subject to a Special Use Fee, and shall be intended to collect revenue from the actual users of such selected Common Areas so that all of the costs of operating such selected Common Areas are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other persons utilizing such selected Common Areas;

3.1.2 The right of the Association to suspend the voting rights and the rights to use and enjoyment of the Common Areas (other than roadways) of any Owner or Occupant, as the case may be:

(a) for any period during which an Assessment remains delinquent;

(b) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Tract Declaration, the Association Rules, or the Design Guidelines, or for so long as the Owner remains in violation, whichever is longer; or



(c) for successive sixty (60) day periods if any such delinquency or infraction is not corrected during any preceding suspension period.

3.1.3 The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Areas; and,

3.1.4 The right of the Association to regulate use of the Common Areas in accordance with this Declaration, and to mortgage or convey portions of the Common Areas with the affirmative vote or written consent of Owners representing at least two-thirds (2/3rds) of the total votes held by the Membership, except that notwithstanding the foregoing, at any time during the pendency of the Class B Membership Declarant shall have the right to convey, or cause the Association to convey, minor, insignificant, or immaterial portions of the Common Areas (such as those caused by encroachment areas, boundary line discrepancies, survey errors and other such matters) without the consent or vote of any other Person or Member, should Declarant determine that such conveyance or transfer is in the best interests of the Covered Property and that the said interests of the Association are best served by disposing of same. Any sale or disposition of the Common Areas shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof. The rights of the Association hereunder with respect to the Common Areas shall include conveyance and dedication to the public of roads, streets, drainageways, culverts, and sewer facilities, none of which shall require the approval of any Owners or Members of the Association. In addition, the Association shall have the right without a vote of the Members to dedicate to the public any private park, school site or open space, including equestrian trails.

3.2 Delegation of Use. Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his/her rights of use and enjoyment in the Common Areas to the members of his/her family or occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules, provided, however, that the Association Rules may restrict or limit the use of Common Areas by Tenants, guests and invitees.

3.3 Waiver of Use. No Owner shall be exempted from personal liability for Assessments, nor shall the Owner's Parcel be released from liens or charges arising under this Declaration or any Tract Declaration, by waiver of any rights of use or enjoyment of the Common Areas.

3.4 Acceptance of Certain Common Areas. In the course of development and sale of Parcels within the Covered Property, fee title to land which is, or is to be, restricted to use as future common area (the "Restricted Tracts") may be transferred by Declarant to Persons acquiring fee title to one or more Parcels. In such event, and notwithstanding that fee title to the Restricted Tracts may be held by Persons other than the Association (or Declarant), such Restricted Tracts, unless designated as common area of a Subsidiary Association, shall upon acceptance by the Association, if such is the case, become Common Areas hereunder upon the platting thereof. If such areas become Common Area of the Association, all Owners and Occupants shall have the

easements, licenses and rights to the use and enjoyment of such Restricted Tracts as with respect to the other Common Areas generally, subject in all cases to the provisions of this Declaration and the Association Rules. In the event such areas are accepted by the Association, and the Person owning fee title to any such Restricted Tract transfers such fee title to the Association, the Association shall accept such fee title so long as, at the time of and in connection with such transfer, the Person transferring title to the Association provides to the Association, at no expense to the Association, a standard coverage owner's policy of title insurance in an amount reasonably acceptable to the Association (but in no event less than the minimum amount, if any, required for such policies by VA or FHA, if VA or FHA are involved in the insurance or guarantee of loans affecting portions of the Covered Property), issued by a title insurance company authorized to transact such business in the State of Arizona, insuring that the Association is the owner of fee title to the transferred Restricted Tract subject only to such liens or other matters as may be approved by the Association, which approval shall not be unreasonably withheld. The Association shall be conclusively deemed reasonable in withholding its approval of any monetary liens or encumbrances affecting title to any Restricted Tract proposed to be transferred to the Association.

3.5 Temporary Sign Easement. Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon and across those portions of the Common Areas adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property, and otherwise promoting the Covered Property or any property owned by Declarant. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities within the area of the Master Development Plan, including the Covered Property and Annexable Property, but in no event later than twenty five (25) years after the date this Declaration is recorded.

3.6 Exclusive Use and Benefit Easements. On certain Common Areas, including those along streets and thoroughfares, patio walls may with the approval of the Design Review Committee be constructed partially within the Common Area at varying minor distances from the adjacent Lot line, including for purposes of enhancing the visual appearance of the property and avoiding monotony of design that would otherwise be inherent in straight runs of patio walls or other yard walls, including perimeter walls. Portions of the Common Areas may be located on the Lot side of any such wall (each, an "Easement Area"). Each Easement Area may adjoin and be contiguous to a Lot (each, a "Dominant Lot"). In the case of a Dominant Lot, there shall be a perpetual exclusive use and benefit easement over the Easement Area abutting that Dominant Lot for the use, benefit and enjoyment of that Owner (each, an "Easement"). The Easements contemplated hereby are to be minor and limited in scope, and shall only be for the purposes stated. Each Easement shall be deemed to exist upon approval by the Design Review Committee of the improvements depicting the encroachment, but only after completion of construction in accordance with such approval, and no consent of the Owner of the Dominant Lot shall be required. Each Easement runs with the land and is appurtenant to the abutting Dominant Lot and may not be sold, transferred or otherwise conveyed apart therefrom. The Easements are

limited to the extent that no structure or improvement of any nature may be placed, maintained or permitted to remain in any Easement Area. The Association will have no possession or control of the Easement Areas. Each Easement Area must be possessed, controlled, maintained and insured by the Owner of the abutting Dominant Lot and not by the Association. Any separate insurance maintained by the Association is excess and non-contributory. Each Owner of a Dominant Lot shall indemnify, protect, defend and hold harmless the Association for, from and against any and all losses, costs, claims, actions, damages, expenses and liabilities of any kind whatsoever arising from or in connection with the Easement Area abutting that Owner's Dominant Lot.

3.7 Blanket Easements. There is hereby created a blanket easement in favor of Declarant and its assigns upon, over and under each Lot, each Parcel, the Common Areas and the Limited Common Areas for ingress to, and egress from, all portions of the Covered Property and the installation, replacement, repair and maintenance of all utility equipment and service lines and systems (including electric, gas, telephone, cable, water and sewer), as such equipment, lines and systems are installed in connection with the initial development of Lots, Parcels, Common Areas and Limited Common Areas and the construction of buildings thereon; provided that such easements shall be specifically and permanently described and fixed by Recorded instrument either:

(a) at the time a subdivision plat, approved as required by this Declaration, is Recorded with respect to the portion of the Covered Property to be served or burdened by such easement(s), as applicable; or

(b) within one hundred twenty (120) days following approval, as required by this Declaration and by the appropriate governmental agencies, of a site plan for the portion of the Covered Property to be served or burdened by such easement(s), as applicable.

3.8 Declarant's Use of Covered Property.

3.8.1 Declarant shall have the right to maintain sales or leasing offices, management and business offices and model Dwelling Units throughout the Covered Property (including in any building designated as a clubhouse or recreational amenity) and to maintain advertising, model and directional signs on the Common Areas while the Declarant is currently selling or intending in the future to sell Lots or Parcels in the Covered Property. Declarant reserves the right to place models, management, business, sales and leasing offices in any Dwelling Units owned by Declarant and on any portion of the Common Areas in such number, of such size and in such locations as Declarant deems appropriate, and to utilize the Common Areas for other business purposes, including, without limitation, marketing functions.

3.8.2 Declarant may from time to time relocate models, management and business offices and sales and leasing offices to different locations within the Covered Property. Upon the relocation of a model or management, business, sales or leasing office located on Common Areas, Declarant may remove all personal property and fixtures therefrom owned by Declarant.

3.8.3 So long as Declarant is currently selling or intending in the future to sell Lots or Parcels in the Covered Property, Declarant shall have the right to reserve parking spaces on the parking areas that are part of the Common Areas for use by prospective Lot or Parcel purchasers or lessees, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities on or about the Covered Property. Declarant also reserves the right to enter all or a portion of the Common Areas for purposes of showing the Common Areas to prospective purchasers or lessees.

3.8.4 Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Covered Property that has not been conveyed to of the Association. Declarant reserves the right to remove from the Covered Property any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

3.9 Temporary Sales Easement. Declarant hereby reserves to itself and its agents, successors and assignees a temporary non-exclusive blanket easement over, upon and across the Covered Property for purposes of ingress, egress and parking in connection with construction, display, maintenance, sales and exhibit purposes in connection with the erection of structures and sale or lease of Lots or Parcels within the area of the Master Development Plan. Such easements may be used by Declarant or its successors, assigns, guests and invitees for any purpose whatsoever relating to sales, advertising and promotional activities in relation to the Covered Property or in relation to land marketed and developed as part of the same general community. The easement reserved hereby shall expire and terminate when Declarant is no longer selling and has no intent to sell in the future Lots or Parcels within the area of the Master Development Plan, including the Covered Property and Annexable Property, but in no event later than twenty-five (25) years after the date this Declaration is recorded.

#### **ARTICLE 4 DESIGN REVIEW COMMITTEE**

4.1 Organization of Design Review Committee. The Board shall establish a Design Review Committee and shall adopt the procedural rules and regulations for the performance of the duties of the Design Review Committee. The Design Review Committee shall be organized as follows:

4.1.1 Powers and Duties. The Design Review Committee shall have all of the powers, authority, and duties conferred upon it by this Declaration or by the Articles, Bylaws, or Association Rules, or by any Tract Declaration or similar Recorded instrument approved in advance by the Board. Without limiting the generality of the foregoing, it shall be the duty of the Design Review Committee to consider and act upon all proposals or plans submitted to it pursuant to the provisions of this Declaration or the Design Guidelines, including approval of all landscaping to be planted or placed upon the Covered Property, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration. The Design Review

Committee shall have the right from time to time to assign certain of its powers, authority and duties hereunder to one or more Subsidiary Associations.

4.1.2 Committee Composition. The Design Review Committee shall consist of five (5) members; provided, however, that the number of members may be increased or decreased at any time by a vote of the Board. A member shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent or employee of Declarant.

4.1.3 Alternate Members. In the event of the absence or disability of a regular member or members of the Design Review committee, the remaining regular members, even though less than a quorum, may designate an alternate member to act as a substitute regular member of the Design Review Committee so long as any one or more regular members remain absent or disabled.

4.1.4 Term of Office. Unless a member of the Design Review Committee has resigned or been removed, his or her term of office shall be for a period of two (2) years, or until the appointment of his or her respective successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members of the Design Review Committee who have resigned, been removed or whose terms have expired may be reappointed.

4.1.5 Appointment and Removal. Except as hereinafter provided, the right to appoint and remove all regular and alternate members of the Design Review Committee at any time shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Design Review Committee by the Board except by the vote or written consent of at least fifty-one percent (51%) of the members of the Board.

4.1.6 Resignations. Any regular or alternate member of the Design Review Committee may at any time resign from the Committee by giving written notice thereof to the Board.

4.1.7 Vacancies. Vacancies on the Design Review Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Design Review Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

4.1.8 Control By Declarant. Notwithstanding the foregoing, in order to enhance the aesthetic and economic value of the Covered Property and to maintain uniformity of architectural and landscaping standards throughout the Covered Property, until the Class B Membership ceases, or so long as Declarant owns a single Lot or Parcel within the Covered Property, whichever is later, Declarant shall have the right:

(a) to appoint and remove all regular and alternate members of the Design Review Committee; and

(b) to supplement and amend the Design Guidelines, as deemed necessary by Declarant.

To better assist in the review and administration of submittals pursuant to the Design Guidelines, until such time as Declarant relinquishes its control of the Design Review Committee it may, in its sole and absolute discretion, appoint an advisory committee, of a size and composition determined solely by Declarant, and composed of representatives of Developer Owners.

4.2 Multiple Committees. The Board may, at its discretion, create more than one Design Review Committee and give each such Committee the authority to perform duties delegated to it by the Board with respect to specific portions of the Covered Property.

4.3 Meetings and Compensation of Design Review Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the members of the Design Review Committee or written consent of a majority of the members of the Design Review Committee shall constitute the act of the Design Review Committee. The Design Review Committee shall keep and maintain a written record of all actions taken by it. Although members of the Design Review Committee shall not be entitled to compensation for their services, consultants hired by such Committee, if such are authorized by the Board, may be, entitled to compensation at the discretion of the Board. Notwithstanding the foregoing, for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.1.8 of this Declaration, members of the Design Review Committee may be paid for their services at the discretion of the Board.

4.4 Design Guidelines. Subject to the written approval of the contents thereof by the Declarant for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.1.8 of this Declaration, the Board shall adopt, and may from time to time amend, supplement and repeal, the Design Guidelines, which may be different for various portions of the Covered Property. The Design Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for Design Review Committee review, standards for development within the Covered Property, fees and charges for the review of plans and other materials submitted, and such further content as may be appropriate. The Design Guidelines shall include, without limitation, provisions regarding:

- 4.4.1 the size of Single Family Dwelling Units;
- 4.4.2 architectural design, with particular regard to the harmony of the design with surrounding structures and topography;
- 4.4.3 placement of buildings;
- 4.4.4 landscaping design, content and conformity with the natural character of the Covered Property;

4.4.5 requirements concerning exterior color schemes, exterior finishes, and materials, and requirements concerning yard and building ornaments, recreational equipment, exterior lighting and exterior furniture, and other items or improvements Visible From Neighboring Property;

4.4.6 signage and mailboxes; and

4.4.7 perimeter and screen wall design and appearance.

The Design Guidelines may elaborate upon types of acceptable plants and shrubs and may contain rules for the treatment and control of plants which may pose a public or private nuisance. The Design Guidelines shall have the same force and effect as the Association Rules.

In addition to the foregoing, the Design Guidelines shall govern the placement of common or shared walls or fences between Lots or Parcels ("Party Walls"). Unless otherwise approved by the Design Review Committee, rear and side yard walls built upon any Lot shall be placed upon the dividing line between adjacent Lots and shall become Party Walls. Any Owner attaching to a Party Wall built by an adjacent Owner shall reimburse such Owner for one-half the reasonable cost of the shared portion of the wall to which attachment is made. The Design Review Committee shall in all cases have the discretion to mandate that patio or yard walls be Party Walls on the Lot line, and may mandate that attachment be made by an adjacent Owner. The Design Guidelines may further amplify upon the provisions hereof.

#### 4.5 Obligation to Obtain Approval.

4.5.1 No building, fence, wall, pool, roadway, driveway, or other structure or improvement, nor any excavation, grading, landscaping, or other work, shall be commenced, erected, repaired, or maintained within the Covered Property, nor shall any exterior addition or change or alteration be made to or in any such structure or improvement (irrespective of whether any improvement, change or alteration is affixed to an exterior surface), including, without limitation, awnings, rolling shutters (interior or exterior) patio covers, antennas, exterior walls, fences, or the color of any structure or improvement on any Parcel, except in compliance with plans and specifications therefor that have been submitted to and approved by the Design Review Committee and any applicable Subsidiary Committee in accordance with this Declaration and the Design Guidelines. All approvals must be in writing, and no Owner may rely on oral statements, nor shall any member of the Design Review Committee be deemed to have apparent authority.

Notwithstanding the foregoing, no review or approval by the Design Review Committee shall be deemed to represent concurrence, acquiescence, approval, or evaluation of code compliance or proper construction or engineering techniques, nor shall the Design Review Committee, by reason of its function or processes, in any way be responsible for defects in construction, design or other aspects of development or improvement of real property. Each Owner fully releases and

discharges the Design Review Committee from all liability and responsibility in any way relating to or arising out of the nature of improvements built following plan submittal, review and approval. Without limitation, the Design Review Committee shall in no way be deemed to have condoned any particular construction method or means, including, but not limited to, any grading, filling, compaction, drainage facility, engineering design or feature, or other matter.

4.5.2 No trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with this Declaration and the Design Guidelines.

4.5.3 No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the Design Review Committee, shall be permitted without approval of the change or deviation by such Committee.

4.6 Waiver. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

4.7 Liability. Neither Declarant nor the Design Review Committee nor any member thereof shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

4.7.1 the approval or disapproval of any plans, drawings or specifications, whether or not defective;

4.7.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

4.7.3 the development of any Lot or Parcel; or

4.7.4 the execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct.

4.8 Appeal to Board. Except as provided in this Declaration, any Owner or Occupant who submitted plans or specifications to the Design Review Committee for improvement, alteration, landscaping or other change to such Owner's Lot or Parcel, and who is aggrieved by a decision of the Design Review Committee may appeal the decision to the Board in accordance with procedures to be established in the Design Guidelines. In the event the decision of the Design Review Committee is overruled by the Board on any issue or question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, for so long as Declarant retains control over the Design Review Committee as provided in herein, no Owner or Occupant shall have the right to appeal any decision



of the Design Review Committee to the Board and the decisions of the Design Review Committee shall be final.

4.9 Fee. The Board may establish reasonable processing fees, and classifications of fees, to defer the costs of the Design Review Committee in considering any requests for approvals submitted to the Design Review Committee or for appeals to the Board, which fees shall be paid at the time the request for approval or review is submitted. The Board may set fees for custom homes, production homes, and commercial buildings in different amounts, and may adjust such fees from time to time.

4.10 Inspection. Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Parcel, after reasonable notice to the Owner or Occupant of such Lot or Parcel, in order to inspect the improvements constructed or being constructed on such Lot or Parcel to ascertain that such improvements have been, or are being, built in compliance with the Design Guidelines, this Declaration, and any applicable Tract Declaration.

#### **ARTICLE 5 LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS**

5.1 Land Use Classifications. As portions of the Covered Property are readied for development, the Land Use Classifications shall be fixed in a Tract Declaration which may be Recorded at such time as the applicable portion of the Covered Property is conveyed by deed or, if retained by Declarant, at such time as Declarant begins development thereof. Each Tract Declaration shall be construed as a supplement to this Declaration and fully a part hereof as if all of the provisions thereof were set forth herein; provided, however, that if any provision of a Tract Declaration is inconsistent with any provision of this Declaration, the provision of this Declaration shall control.

Except with respect to Covered Property owned by Declarant, no Tract Declaration, or further covenants, conditions, restrictions, or easements, or any amendments or modifications thereto, shall be Recorded against any Lot or Parcel without the written approval of the Declarant or, if Declarant has waived and relinquished such right, of the Board, which approval shall be evidenced on the Recorded instrument, and without such approval such Tract Declaration or further covenants, conditions, restrictions, and easements, or any amendments or modifications thereto, shall be null and void. All Tract Declarations or other Recorded covenants, conditions, or restrictions, or any amendments or modifications thereto, shall be consistent with and subordinate to this Declaration and shall contain such provisions as Declarant shall reasonably require. A Tract Declaration shall not be amended except as specifically permitted by this Declaration or by such Tract Declaration.

The Land Use Classifications contemplated as of the date of this Declaration are:

5.1.1 "Cluster Residential Use," consisting of Lots with Dwelling Units including those types of single family residential housing arrangements known as "townhouses," "clustered housing," "zero-lot line housing," and similar arrangements (but not including Condominium Units), together with related amenities;

5.1.2 "Residential Apartment Development Use," which shall include congregate care or similar facilities;

5.1.3 "Residential Condominium Development Use;"

5.1.4 "Single Family Residential Use;"

5.1.5 "Common Areas."

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of the Land Use Classifications and specific permitted and prohibited uses of the real property within a particular Land Use Classification shall be set forth in the respective Tract Declarations. Such uses may at any time be amended to permit other uses, provided the provisions of the Tract Declaration dealing with amendment have been met. In the event of any ambiguity or dispute regarding the nature and scope of permitted and prohibited uses of the real property within a particular Land Use Classification, the provisions of Section 19.1 hereof shall apply. Notwithstanding the foregoing listing, Declarant shall not be obligated to establish within the Covered Property each of the uses listed above, nor shall such listing prohibit the establishment by Declarant of other Land Use Classifications. Without limitation, certain commercial uses may be established near or adjacent to the Covered Property, and the Covered Property may or may not actually contain any commercial uses. Should Declarant determine that a particular commercial use should be a portion of the Covered Property, Declarant may annex such land as a part of the Covered Property and establish a Tract Declaration therefor, setting forth uses, voting rights, assessment obligations, and other restrictions.

Each Owner acknowledges the existence of the Master Development Plan and understands that the initial plan for the land, including land which may never be annexed, includes certain adjacent uses such as commercial sites, a school site, a fire station, public open space or park areas and other areas, all subject to change at the discretion of the Declarant.

A Lot or Parcel shall, prior to being used or improved, be defined and limited to a specific development type or land use by a Tract Declaration approved by Declarant in accordance with the provisions hereof. Declarant may require imposition of special conditions in a Tract Declaration in any case where deemed appropriate in the sole and absolute discretion of said Declarant, and may require adequate provisions for assessments, maintenance of property and improvements and such other provisions as are deemed proper. Should for any reason a Parcel be subdivided and developed or partially developed prior to Declarant's Recordation of a Tract Declaration establishing the Land Use Classification therefor, then Declarant may later record the appropriate

Tract Declaration with the consent of the Owner of the property in question, and until such time the Land Use Classification shall be deemed to be Single Family Residential Use.

No Condominium Parcel or subdivision containing common area may be developed nor shall a Tract Declaration therefor be approved, unless an incorporated owners association is established for the maintenance and repair of common elements or common area, except in cases where the Association may elect to accept ownership of same.

Declarant may approve of other Land Use Classifications in the case of additional property annexed under the purview hereof, in which case the Tract Declaration shall set forth such Land Use Classification.

5.2 Covenants, Conditions, Restrictions, and Easements Applicable to All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels in the Covered Property included within all Land Use Classifications, and to the Owners and Occupants thereof:

5.2.1 Single Family Residential Use. No structure whatsoever, other than one private, Single Family residence, together with a private garage for not more than four (4) cars and one (1) guest residence, one gazebo, one tennis court, one swimming pool, and one storage facility shall be erected, placed or permitted on any Lot designated in a Tract Declaration as having Single Family Residential Use Land Use Classification. No mobile homes, manufactured homes or prefabricated homes shall be permitted unless approved in writing by Declarant and set forth in an amendment hereto.

5.2.2 Plat Notes. In addition to the restrictions contained herein, the Covered Property shall be subject to all restrictions and limitations set forth on the Recorded plat for Pronghorn Ranch, as it may be amended from time to time.

5.2.3 Prohibited Uses. The following uses are prohibited:

(a) any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Lot, Parcel or Owner; and,

(b) any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the Town or any other governmental entity having jurisdiction over the Covered Property.

5.2.4 Temporary Occupancy and Temporary Buildings; Outside Storage. No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the

construction process, a temporary building or structure may be erected, installed or maintained on a Lot or Parcel with the prior written approval of the Design Review Committee, including the approval of the structure's location and appearance. Such temporary structures shall be removed immediately after completion of such construction, and that portion of the Lot or Parcel from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semifinished products or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article 4. Any permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of improvements on any Lot or Parcel, necessary construction materials and supplies may be stored on the Lot or Parcel without the need for a solid visual barrier providing such materials and supplies are kept in neat order considering the construction activities. The Design Review Committee is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

5.2.5 Repair of Buildings. No building or improvement on any Lot or Parcel shall be permitted to fall into disrepair and each such building and improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the building or improvement. In the event any building or improvement is damaged or destroyed, then, subject to approval in accordance with Article 4, such building or improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs within the time limits established by the Board, the Board and its agents and representatives are empowered to enter on the Lot or Parcel and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments. Any such entry shall be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

5.2.6 Maintenance of Landscaping and Driveways. Unless otherwise provided in a Tract Declaration, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

(a) on the Owner's Lot or Parcel (including set back areas), except that in the event the maintenance of any portions of such Owner's Lot or Parcel is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility;

(b) portions of the Common Areas adjacent to an Owner's Lot or Parcel and which are on the Lot's or Parcel's side of any wall erected on the Common Areas; and,

(c) public right-of-way area; between sidewalks (or bicycle paths or equestrian trails) and the street curb on the Owner's Lot or Parcel, or other public or easement areas adjacent to the Owner's Lot or Parcel, except that in the event the maintenance of such areas is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

As used herein, maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, and unsightly materials. All lawn areas shall be timely mowed as needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive. All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately. Landscaping may be required to be placed on a Lot or Parcel within certain time frames established by the Design Review Committee. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways and parking areas, located on the Owner's Lot or Parcel. Any Owner who fails to properly maintain the landscaping upon the Lot or Parcel, shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot or Parcel, after receiving notice from the Board to do so, the Association is empowered to enter upon the Lot or Parcel, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as assessments.

5.2.7 Nuisances; Dust Control; Construction Activities. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot or Parcel so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Each Lot and Parcel shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots and Parcels must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot or Parcel, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or Parcel, or which shall interfere with another Owner's or Occupant's quiet enjoyment of his/her Lot or Parcel.

5.2.8 Diseases and Insects. No Owner or Occupant shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

5.2.9 Antennas and Dishes; Solar Devices. No television, radio, or other electronic towers, aeriels, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of

communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to Declarant's rights pursuant to Section 5.2.25 nor to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not Visible From Neighboring Property, or integrated with the Residence and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

No solar heating or cooling equipment or other visible solar device may be installed or erected without approval of the Design Review Committee, which shall give due regard to state law restricting the limitation of such devices.

5.2.10 Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for, quarry, mine, remove or transport any oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, except in each case as Declarant shall specifically approve. No well may be drilled or operated on any Lot unless owned and operated by a city, town or public service corporation and approved by the Board. This provision shall not prohibit the operation of wells on Common Area if approved either by Declarant or the Board.

5.2.11 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot or Parcel without the prior written consent of the Design Review Committee unless they are not Visible from Neighboring Property.

5.2.12 Party Walls. Except as hereinafter provided, the rights and duties of Owners of Party Walls shall be as follows:

(a) each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof;

(b) if a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests or family, the Owner or Occupant as the case may be, shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided in Subsection 5.2.12(d) below;

(c) in the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants,

agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots or Parcels adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots or Parcels on the damaged or destroyed Party Wall;

(d) in the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Design Review Committee; whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final;

(e) notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (a) between Common Areas and Lots or Parcels; or, (b) situated on Common Areas within or adjacent to a Lot or Parcel, the Owners and Occupants of such Lots or Parcels shall be responsible, at their expense, for all maintenance, repair, painting and replacement thereof. Further, unless otherwise approved in writing by the Board, any wall situated generally between a Lot or Parcel and Common Areas shall be situated entirely upon such Lot or Parcel, and not upon the Common Areas, immediately adjacent to the boundary line between the Lot or Parcel and the Common Areas; and

(f) this Section 5.2.12 does not and is not intended to control or relate to Party Walls between Residential Condominium Developments or Condominium Units.

5.2.13 Overhead Encroachments. No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of eight (8) feet, without the prior written approval of the Design Review Committee. The Association shall have the right to trim any offending tree, shrub or planting.

5.2.14 Trucks, Trailers, Campers, Boats and Motor Vehicles. No motor vehicle, motor home, mobile home, trailer, camper shell, detached camper, boat, boat trailer, snow mobile, jet ski or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed, repaired or stored on any Lot or Parcel or on any street so as to be Visible From Neighboring Property (including but not limited to any Common Areas, Limited Common Areas or street). The foregoing limitation on parking shall not apply to:

(a) automobiles, trucks or vans, or mini-motor homes not exceeding seven (7) feet in height from ground level and twenty-two (22) feet in length, so long as such automobiles, trucks or vans or mini-motor homes (i) are parked as provided in Section 5.2.31 and (ii) are used on a regular and recurring basis for basic transportation. The Board or the Design Review Committee shall have the authority, however, to adopt and enforce regulations regarding parking of such vehicles on a Lot or Parcel (including, but not limited to, regulations requiring the screening of delivery trucks and vans, or other business vehicles) if, in the sole discretion of the Board or the

Design Review Committee, such regulations are necessary to prevent such vehicles from being or becoming an eyesore or nuisance to the Owners or Occupants of adjacent property; or

(b) temporary facilities maintained during, and used exclusively in connection with, construction activities, provided, however, that such activities are approved in advance and in writing by the Design Review Committee.

Notwithstanding subsection 5.2.14(a) above: 1) no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, repaired or, if inoperable, stored upon any Lot, Parcel or street so as to be Visible From Neighboring Property; and 2) the Design Review Committee may in its discretion adopt rules to allow the parking of recreational vehicles, motorhomes, campers and other operative vehicles in rear yard areas provided there is adequate access, and further provided that there is compliance with screening, height and other requirements of the Design Guidelines. Subject to such regulations as the Design Guidelines may impose, recreational vehicles, motorhomes campers, and other operative vehicles may be kept in a fenced rear yard area of a Lot, provided the fence is a solid structure providing screening, if the vehicle does not extend more than two (2) feet above the height of the fence.

5.2.15 Health, Safety and Welfare. In the event uses of, activities on, or facilities upon or within a Parcel or Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or Occupants, the Board or the Design Review Committee may make rules restricting or regulating their presence.

5.2.16 Incidental Uses. Subject to the provisions of any applicable Tract Declaration, the Board may approve, regulate and restrict incidental uses of property within a Land Use Classification. By way of example and not of limitation, the Board may permit: private roadways; tennis and/or swimming clubs intended primarily for the benefit of all or certain Owners or Occupants; tennis courts; swimming pools; and other recreational facilities.

5.2.17 Window Coverings. No exterior window covering, awning, rolling shutter or reflective covering may be placed, or permitted to remain, on or adjacent to any window of any building, structure or other improvement without the prior written approval of the Design Review Committee. No interior window screening may be of highly reflective material.

5.2.18 Parcel Coverage. The percentage of each Lot or Parcel which may be covered by buildings within a Residential Land Use Classification (as well as the location of such buildings and other improvements on each Lot or Parcel) shall be subject to the review and approval of the Design Review Committee, as part of the Design Review Committee's review of plans for proposed improvements on such Lot or Parcel pursuant to this Declaration, but shall in no event violate Town ordinances and regulations in effect from time to time or impose onerous conditions on any Owner thereby frustrating the development of an allowed use.



5.2.19 Duty of Maintenance. Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot or Parcel, including buildings, improvements, private drives, easement areas and grounds thereon, in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements.

5.2.20 Utility Lines and Connections. All utility wires, lines, pipes, conduits, facilities, connections and installations, including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer, shall be installed and maintained underground or concealed in, under, or on structures approved in writing in advance by the Design Review Committee, except that Declarant, in its discretion, may install or cause to be installed certain overhead utility lines and facilities if made reasonably necessary due to existing overhead facilities. All transformers shall be placed on or below the surface of the Lot or Parcel. Temporary aboveground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of the Design Review Committee.

5.2.21 On-Site Grading and Drainage. No water shall be drained or discharged from any Lot or Parcel, or building thereon, except in accordance with: (a) the master drainage study, if any, including any amendments thereto, approved by the appropriate governmental agency(ies) and the Design Review Committee (or other drainage study approved by such Committee, if no such master drainage study exists); and (b) grading plans approved by the Design Review Committee in accordance with Article 4 and applicable Town ordinances.

5.2.22 Building Exteriors. All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved in accordance with Article 4. All materials used for the exterior of the buildings shall be quality, long-life, low maintenance materials.

5.2.23 Restrictions on Further Subdivision, Property Restrictions, and Rezoning.

(a) All proposed site plans, subdivision plats, condominium declarations, easements or further covenants, conditions or restrictions, or applications for rezoning, variances or use permits for any Lot or Parcel, or any portion of a Lot or Parcel, other than those owned by Declarant, must be approved in writing by the Declarant. Declarant may relinquish its right of approval herein reserved, in which case the Board shall succeed to such right of approval. All submittals shall be reasonably reviewed and approved. The required approval shall be evidenced by the signature of the Declarant or of an authorized representative of the Board, as applicable. Except for property owned by the Declarant, after a subdivision plat has been approved, no Lot or Parcel, or any portion of a Lot or Parcel, shall be further subdivided and no portion less than all of the Lot or Parcel, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Declarant or, if applicable the Board, unless such subdivision, conveyance or transfer:

(i) is made in connection with the development of one or more pads, lots or other subdivisions of a Parcel for commercial or industrial use; and,

(ii) is made in accordance with a site plan for such Lot or Parcel approved by the Board.

(b) No site plan, subdivision plat, condominium declaration, or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits, shall be made, filed, submitted to, or recorded with Town or any other governmental authority or agency unless it has first been approved as provided in this Section. No changes or modifications shall be made in any such documents, instruments or applications once they have been approved as provided in this Section (whether requested by the Town or otherwise) unless such changes or modifications have also been approved in advance, in writing, in accordance with this Section. This Section 5.2.23 does not apply to portions of the Covered Property owned by Declarant or to site plans, subdivision plats, condominium declarations, or further covenants, conditions, restrictions or easements, or applications for rezoning, variances or use permits, made, filed, submitted or recorded by Declarant and pertaining to portions of the Covered Property owned by Declarant.

5.2.24 Permissible Encroachments. Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by a Developer Owner may from time to time encroach in minor degree upon the Common Areas or other Lots in the Covered Property. Such encroachments caused incidentally and which are minor in scope and degree, such as those caused by good faith survey error, and where removal of improvements would cause gross economic waste, shall be deemed acceptable. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments is conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

5.2.25 No Commercial Use. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on or in any Lot or Parcel except as set forth in this subparagraph. The Declarant and a Developer Owner may maintain sales offices, construction offices and sales models on the Covered Property and an Owner or Occupant may carry on a "Home Occupation" as provided below. A "Home Occupation" as permitted hereby means work within the Dwelling Unit (such as the performance of accounting work, creation of art work, etc.) provided that:

(a) the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;

(b) the business activity conforms to all zoning requirements for the Lot;

(c) the business activity does not involve frequent or annoying traffic by persons who do not reside therein, nor regular arrival of employees of the Owner; and

(d) the business activity is consistent with the residential character of the neighborhood and does not constitute a nuisance or hazard or offensive use, nor threaten the security or safety of other residents of the Covered Property as determined in the discretion of the Board.

If the Board determines that the Home Occupation violates the provisions hereof, then the Board shall have the authority to require that the Home Occupation in question cease immediately.

Notwithstanding any provision of this Declaration, Declarant shall not be prohibited from erecting or maintaining on the Covered Property wireless antennas and devices for the transmission or reception of data, communication, sound, video or other signals, whether or not such facilities serve more than just the Covered Property, or may be considered "hub" facilities under the federal Telecommunications Act of 1996, or amendments thereto, or under any regulations or rulings of the Federal Trade Commission. Such activities shall not constitute prohibited activity hereunder. The facilities governed by this paragraph shall be limited to antennas either reasonably hidden from sight within other structures, or which are no more than one meter in diameter, and which have appurtenant facilities no more than seven (7) feet in height and which are reasonably screened from view.

5.2.26 Leasing. The entire (but not less than all) area of a Dwelling Unit or Apartment Unit may be leased to a Single Family Tenant from time to time by the Owner, subject to the provisions of this Declaration, any applicable Tract Declaration and the Association Rules.

5.2.27 Animals. No animal, livestock, poultry or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot or Parcel and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any permitted pet shall be Visible From Neighboring Property. Notwithstanding the foregoing, no permitted pets may be kept on or in any Lot or Parcel which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is a Tenant, guest or invitee. Persons walking pets shall carry a "pooper scooper" (a hand held shovel or other instrument designed for removing animal excrement from the ground) with them at all times and shall remove the pet's excrement from the Covered Property.

5.2.28 Garbage. No garbage or trash shall be allowed, stored or placed on a Lot or Parcel except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time

immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and Parcel and shall not be allowed to accumulate thereon. The Board may also determine to require that the Association or individual Owners shall employ one or more of a limited number of waste management or pick-up companies to retrieve waste and refuse from the Covered Property or portions thereof. The Board may establish regulations as to the times and duration that waste containers may be visible from Neighboring Property for pick-up, and may determine and regulate the type and appearance of waste containers.

5.2.29 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot or Parcel, except:

(a) during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a building, appurtenant structures or improvements thereon;

(b) that which Declarant or the Association may require for the development, operation and maintenance of the Covered Property or other portions of the Covered Property; or

(c) personal items ordinarily associated with the Covered Property such as lawn mowers, tools, gardening equipment and the like.

5.2.30 Signs. No signs of any nature shall be placed on the Common Areas except with respect to Association or Common Areas matters as approved by the Board and except as allowed by Declarant. No signs of any nature shall be placed on any Lot or Parcel, except:

(a) signs required by legal proceedings;

(b) a maximum of two (2) identification signs for Dwelling Units, each with a maximum face area of seventy-two (72) square inches or less;

(c) "for sale" and "for lease" signs, and subdivision, condominium and apartment identification signs, the nature, number, location, content and design of which shall comply with the Design Guidelines; and

(d) such other signs as the Design Review Committee shall approve.

5.2.31 Parking. It is the intent of Declarant to eliminate on-street parking as much as possible within the Covered Property. No vehicle shall be parked on any street or roadway shown on any map of dedication, or similar instrument, Recorded by Declarant unless otherwise expressly provided either:

(a) in or on such Recorded map of dedication or similar instrument showing the street or roadway; or

(b) in a separate Recorded instrument executed by Declarant.

Vehicles shall be kept in garages to the extent of available room, other designated parking areas or as otherwise required in a Tract Declaration. No Owner shall convert a garage into a living area without approval of the Design Review Committee, which approval may be denied in the sole discretion of such committee, nor may a garage be used as a storage area thereby precluding the parking of vehicles. No garage doors shall be permitted to remain open except for a temporary purpose. The Association may adopt additional parking restrictions including the establishment of fines and assessments for their violation. The Association may also delegate its authority to enforce such parking restrictions to the appropriate Subsidiary Association. Nothing in this Section prohibits temporary street parking for special events or temporary large gatherings where parking in individual Lots is inadequate.

5.2.32 Commercial Vehicles. No vehicle shall be permitted to park on a Lot of Parcel if the exterior of the vehicle contains or exhibits any signage relating to a commercial enterprise or commercial activity that is visible from the exterior of such vehicle (and the vehicle is not kept in an approved enclosed garage), except such signage that is limited to the exterior driver or passenger door of such vehicle shall be permitted if the vehicle is used by the Owner as regular transportation in commuting to work. No vehicle shall be permitted to park on a Lot or Parcel, even if such vehicle otherwise qualifies under Section 5.2.14(a) and 5.2.14(b) herein, if such vehicle is used for a commercial enterprise or activity and such vehicle has ladders, work beds, lights and/or other commercial items attached to or hanging from such vehicle so as to be visible from the exterior of such vehicle (and the vehicle is not kept in an approved enclosed garage). The foregoing restrictions shall not apply to vehicles parked within an enclosed structure approved by the Design Review Committee, nor to commercial vehicles of contractors, Developer Owners and others working on the Covered Property.

5.2.33 Model Homes, etc. Nothing contained herein or in any applicable Tract Declaration shall prohibit the construction and maintenance of model homes, model apartments, sales offices, apartment rental offices, property management offices and parking incidental thereto by Declarant and Developer Owners, provided, however, that the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and local ordinances of the Town. No other model homes or offices shall be maintained on the Covered Property by persons other than the Declarant and Developer Owners, unless approved in writing by the Declarant or by the Board.

Notwithstanding the foregoing, unless Declarant should in writing grant special permission to the contrary, the Board shall have the right to require that an Owner (other than Declarant) limit its sales and management offices and model homes to locations in subdivisions or areas where it continues to own one or more Lots.

5.3 Covenants, Conditions and Restrictions Applicable to Commercial Use. Should any portion of the Covered Property be permitted by Declarant to be used for a nonresidential use, Declarant may record Additional Covenants as a part of a Tract

Declaration therefor, and may establish in such Tract Declaration special provisions for voting rights, assessment obligations, and other pertinent restrictions under the purview of the Association.

5.4 Variances. The Board may, at its sole discretion, grant variances from the restrictions set forth in Article 5 hereof or in any Tract Declaration if the Board determines that:

5.4.1 either (a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; or (b) a change of circumstances has rendered the particular restriction obsolete; and

5.4.2 the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants. The request for a variance must be made in writing and be accompanied by adequate supporting documentation. The Board shall approve or disapprove the request, in writing, as promptly as possible under the particular circumstances. All decisions of the Board shall be final and nonappealable.

5.5 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent, restrict or otherwise limit the construction, installation or maintenance by Declarant or Declarant's agents during the period of development and construction on the Covered Property of improvements, landscaping or signs deemed necessary or convenient by Declarant, in Declarant's sole discretion, to the development or sale of property within the Covered Property. Declarant may assign, in whole or in part, its rights and privileges under this Section, and Declarant may grant, in its sole discretion, any similar rights and privileges to any Developer Owner.

#### ARTICLE 6 ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During the pendency of the Class B Membership, the Board shall consist of at least three (3) directors who shall be Members or individuals designated by a corporate, partnership or other non-individual Member, and a majority of the directors may be appointed by the Declarant during the pendency of the Class B Membership (without in any way limiting the right of Declarant to elect the remaining directors). Commencing with the first annual meeting of the Members when there is no longer a Class B Membership, the Board shall consist of, and the voting Members shall elect, not more than seven (7) directors, but never an

even number, all of whom must be Members, or an individual designated by a corporate, partnership or other non-individual Member.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by the Class B Members to the Class A Members.

6.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Areas, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property, the Common Areas and the Limited Common Areas. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association.

6.4 Personal Liability. No Board member, officer, committee member, employee or representative of the Association, or the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.5 Subsidiary Associations. In the event any homeowners or similar Subsidiary Association is formed by a Developer Owner of a Parcel or portion thereof, or group of lots, such Subsidiary Association's governing documents shall not be effective unless they have been approved in advance by the Board and they specify that such governing documents, such Parcel or portion thereof, or group of Lots, the Subsidiary Association, and the Subsidiary Association's members are subject and subordinate to this Declaration, the Design Guidelines, the Articles, the Bylaws and the Association Rules. The Board shall not disapprove any such governing documents unless, in the Board's sole discretion, either:

6.5.1 they are inconsistent or in conflict with this Declaration, the Articles, the Bylaws, the Association Rules, the Design Guidelines and any applicable Tract Declaration; or

6.5.2 they fail to contain the specification required by the preceding sentence.

Subsidiary Associations shall have the right to own, operate and maintain Limited Common Areas and shall not be required to dedicate same as Common Area

hereunder. The Board may delegate to a Subsidiary Association the responsibility and duty of billing and collecting for some or all of the Assessments.

6.6 Mergers or Consolidations. The Association shall have the right, power and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association (a "Merger Candidate"). Merger or consolidation of the Association with a Merger Candidate must, in addition to other requirements at law, be approved in advance by Members holding at least two-thirds (2/3) of the votes in each class of Members of the Association, whether in Person or by proxy, at a meeting duly called for such purpose. The Association's properties, rights and obligations shall be transferred to and assumed by the surviving or consolidated corporation by operation of law, or, alternatively, the properties, rights and obligations of the Merger Candidate shall be transferred by operation of law to the Association as the surviving corporation. The surviving or consolidated corporation, at a minimum, shall have the same administrative responsibilities and enforcement rights established by this Declaration in regard to the Covered Property. In addition, for so long as there is a Class B Member and to the extent Declarant has theretofore sought the approval of an Agency in regard to the Association or any Subsidiary Association, any such merger or consolidation will be subject to the approval by such Agency if so required by the rules and regulations of the Agency.

#### **ARTICLE 7 MEMBERSHIPS AND VOTING**

7.1 Votes of Owners of Lots and Parcels. Every Owner of a Lot or Parcel (but not an Owner who owns solely Exempt Property) shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner shall have the following applicable number of votes in regard to votes of the Members of the Association:

In the case of Lots, one (1) vote for each Class A Member and three (3) votes for the Class B Member for each Lot owned;

In the case of a Single Family Residential Parcel which has not been divided into Lots by a Recorded subdivision plat or other Recorded instrument, six (6) votes for each Class A Member and eighteen (18) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounded to the nearest whole vote with each Member to have at least one whole vote).

In the case of a Residential Condominium Development Parcel for which a condominium declaration has not been Recorded, six (6) votes for each Class A Member and eighteen (18) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounded to the nearest whole vote with each Member to have at least one whole vote).



In the case of a an Apartment Parcel upon which construction has not yet been completed, six (6) votes for each Class A Member and eighteen (18) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounded to the nearest whole vote with each Member to have at least one whole vote); provided, however, that upon completion of construction upon an Apartment Parcel, the Class A owner thereof shall have the greater of six (6) votes for each Net Acre or one-half (1/2) of a vote for each Apartment Unit built upon the Parcel, with the Class B Member to continue to have eighteen (18) votes for each Net Acre owned within the Parcel.

If a subdivision plat, condominium declaration or other instrument creating Lots is Recorded which covers all or part of a Parcel, then the votes attributable to the Lots shall be determined as set forth above. If a subdivision plat, condominium declaration or other instrument creating Lots for such Parcel is later Recorded showing a different number of Lots, the number of votes shall be adjusted to reflect the actual number of Lots as set forth in the Recorded subdivision plat, condominium declaration or other instrument creating Lots. All votes attributed to an unsubdivided Parcel as a "Parcel" shall cease and be made applicable to Lots when all of the area is platted or otherwise divided into Lots.

Solely for purposes of determining the votes of the Class B Member, all land within the Annexable Land shall be considered, and solely for such purposes, the areas planned for development therein shall be deemed Parcels, with voting rights determined on an acreage basis. Should Declarant record a binding declaration waiving rights of annexation, or should such rights expire, then and only then shall such land not be included in calculating voting right of the Class B Member.

7.2 Membership is Appurtenant to Ownership. Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable. There shall be only the Memberships for each Lot and Parcel as are described herein. Joint ownership or ownership of undivided interests in any property as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot or Parcel.

7.3 Declarant. Declarant shall be a member of the Association for so long as it holds a Class A or Class B Membership.

7.4 Voting Classes. The Association shall have two classes of voting Members:

7.4.1 Class A. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1. Notwithstanding the foregoing, a Class A Member shall not be entitled to vote with respect to any Lots or Parcels in

regard to which the Owner is paying only a reduced Assessment pursuant to Section 8.3.1 unless otherwise determined in writing by Declarant in its sole discretion on a case by case basis, and Declarant's determination in such regard shall be final and conclusive. In order to effectively pursue the development of the Covered Property as contemplated in the Master Development Plan, and solely for the purposes of calculating voting rights of the Class B Member pursuant to this Article, Declarant shall at all times during the pendency of the Class B Membership be deemed to possess, in addition to its votes by reason of its ownership of Lots and Parcels, those additional three to one weighted votes determined by assuming that Declarant is the Owner of those Lots and Parcels owned by a Developer Owner paying partial or reduced Assessments pursuant to Section 8.3.1 below (and not determined by Declarant to have voting rights); provided, however, that upon expiration of the Class B Membership, Declarant shall be deemed to have relinquished its votes with respect to Lots or Parcels owned by Class A Members paying reduced Assessments pursuant to Section 8.3.1, in which case said Class A Members shall have the votes Class A Members would otherwise have with respect to such Lots or Parcels.

7.4.2 Class B. The Class B Member(s) shall be any entity which is included in the definition of Declarant that owns any portion of the Covered Property. The Class B Member(s) shall have the number of votes as provided in Section 7.1 of this Declaration for all property owned in the Covered Property identified herein or in a Tract Declaration. The Class B Membership shall terminate and be converted to a Class A Membership upon the happening of the first of the following events:

(a) subject to the provisions of Section 7.4.1 above, the date which is 120 days after the date upon which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Member(s) (including the three to one weighted votes Declarant is entitled to cast as a result of Developer Owners paying partial Assessments as provided herein);

(b) the date which is ten (10) years after the date this Declaration is recorded; or

(c) the date on which the Class B Member(s) relinquishes its Class B Membership by notifying the Class A Members in writing.

The Class B Membership shall revive if, once the Class B previously expired, subsequent acquisitions, annexations or other events should cause the votes of the Class B Member to exceed those of the Class A Members, allowing the same weighted voting previously allowed to the Class B Member for all Lots and Parcels owned.

Declarant shall have the right to assign its rights and privileges as the Declarant and as the Class B Member, which assignment may be in whole or in part. Such assignment may include the special voting provisions set forth herein.

7.5 Right to Vote. No change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives written notice of such change

together with satisfactory evidence thereof, for example, the Recorded deed showing the name of the Owner of such Lot or Parcel. The vote for each Member must be cast as a single unit. Fractional votes shall not be allowed, except as provided in Section 7.1 relating to apartments. In the event that a Lot or Parcel is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot or Parcel, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot or Parcel unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot or Parcel all such votes shall be deemed void.

7.6 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the Design Guidelines.

7.7 Transfer of Membership. The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Parcel, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a nonapproved form of transfer shall be void. Any transfer of ownership in a Lot or Parcel shall operate to transfer the Membership appurtenant to ownership to the new Owner.

#### **ARTICLE 8 ASSESSMENTS AND CREATION OF LIEN**

8.1 Creation of Assessment Lien; Personal Obligation of Lot or Parcel Owner. Each Owner, other than Declarant, by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument) is deemed to covenant and agree, to pay to the Association the Assessments and Special Use Fees when due. The amount and time for payment of the Special Use Fees and the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Special Use Fees and the Assessments, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate. Special Use Fees and the Assessments, together with interest thereon and the costs and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which such Special Use Fees or Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time when such Special Use Fees or Assessments become due and payable.

8.2 Annual Assessments. The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth hereinbelow. The Annual Assessments levied by the Association shall be used to promote the recreation, health and welfare of the Owners and Occupants, to enhance the quality of life within the Covered Property, to preserve and enhance the value of the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Areas, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the provisions hereof.

8.3 Rate of Assessment. The amount of the Annual Assessments, Maintenance Assessments and Special Assessments shall be established by the Board, in its sole discretion.

In establishing its budget and creating its plan for Assessments each year, the Board shall first establish an Annual Assessment per Lot payable for each Lot (the "Base Assessment"). In the case of a Single Family Residential Parcel or Cluster Residential Use Parcel that has not been subdivided into Lots, the Annual Assessment shall be three (3) times the Base Assessment for each Net Acre in the Parcel.

In the case of a Residential Apartment Development Use Parcel upon which construction has not been completed, or a Residential Condominium Development Use Parcel for which a condominium declaration has not been Recorded, the Annual Assessment shall be six (6) times the Base Assessment for each Net Acre in the Parcel. Provided, however, that upon completion of construction upon an Apartment Parcel, the Class A owner thereof shall pay the greater of six (6) times the Base Assessment for each Net Acre or one-half (1/2) of the Base Assessment for each Apartment Unit built upon the Parcel.

8.3.1 Obligation of Developer Owner. In the Board's sole discretion, the Board, in writing may require the Developer Owner of a Lot or Parcel to pay only fifty percent (50%) of the Annual Assessments and Special Assessments for such Lot or Parcel until the earlier of twenty-four (24) months from the date of the initial conveyance by Declarant of the Lot or Parcel (or the Parcel from which such Lot was established) to the first Developer Owner thereof, or:

(a) in the case of a Single Family Residential Use Lot or Cluster Residential Use Lot, the date of the initial conveyance of the Lot with a completed Dwelling Unit thereon to a Non-Developer Owner; or

(b) in the case of a Parcel designated for Residential Apartment Development Use, Residential Condominium Development Use, the date of completion of construction of improvements on the Parcel as determined by the Board in its sole discretion.

In the case of a site plan approved by the Design Review Committee for a Parcel which contemplates the construction of more than one building, the Parcel shall, for the purposes of this Section only, be deemed subdivided into the number of sub-parcels equal to the number of approved buildings set forth on the approved site plan.

If a Developer Owner ceases to qualify for the reduced rate as provided herein during any Assessment Period, that Developer Owner shall immediately notify the Board, in writing, of its change in status. If an Owner of a Lot or Parcel who qualifies to pay a reduced Assessment amount as provided for in this Declaration, fails to notify the Board of the date the payment amount is to be increased, that Owner shall still be liable for the full amount of the Assessment as of the date it was required to pay the full amount of the Assessment and such Owner's failure to notify the Board shall not relieve the Owner of liability for the full amount of the Assessment. The Association may at any time request that any Developer Owner which is being assessed at a reduced rate furnish the Association with evidence that such Developer Owner continues to be qualified for a reduced assessment rate under this Section. If such Developer Owner fails to produce such evidence within thirty (30) days of the date of the Association's request, or if the evidence which is furnished is unsatisfactory, in the Board's reasonable discretion, to demonstrate that Developer Owner's continued qualification for the reduced assessment rate, the Board may terminate the reduced assessment rate as of a date reasonably deemed appropriate by the Board.

**8.3.2 Obligation of Non-Developer Owner.** A Non-Developer Owner (not including Declarant) is not entitled to the reduced assessment rates set forth in the above Sections and a Developer Owner only qualifies for such reduced rates if it is a Developer Owner of the specific Lot or Parcel being assessed.

**8.4 Special Assessments.** In addition to the Annual Assessments, the Board may levy a special Assessment a) for the purpose of constructing improvements to Common Area; b) correcting an inadequacy in the Association's accounts; c) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owed by the Association; or d) defraying other extraordinary expenses or paying other expenses the Board may deem appropriate. The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments shall be approved at any annual or special meeting of the Members with the approval of two-thirds of the total votes of Owners voting in person or by proxy.

**8.5 Working Capital Fund.** To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, each purchaser of a Lot or Parcel upon which the construction of improvements is complete, as evidenced by a certificate of occupancy or similar instrument which allows the Lot or Parcel to be used as a residence or in trade or business, shall pay to the Association immediately upon becoming the Owner of a Lot or Parcel a sum equal to twenty-five percent (25%) of the then-current Annual Assessment applicable to such Lot or Parcel (the "Working Capital Fund Contribution"). A Working Capital Fund Contribution shall continue to be payable upon each subsequent sale of a Lot or Parcel.

Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration and the Articles and Bylaws. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.6 Notice and Quorum for Any Action Authorized Under This Article. Written notice of any meeting of the Members of the Association called for the purpose of conducting a vote required under this Article shall be sent to all Owners not less than fifteen (15) days nor more than fifty (50) days in advance of such meeting. At such meeting, the presence of Members or of proxies entitled to cast twenty-five percent (25%) of all the votes of the Members (without segregation as to class of Member) shall constitute a quorum. If the required quorum is not present, another meeting shall be called for such purpose, subject to the foregoing notice requirements, and the required quorum at the subsequent meeting shall be one-half of the quorum required at the initially scheduled meeting. The subsequent meeting shall be held within sixty (60) days following the date of the initially scheduled meeting.

8.7 Maintenance Assessments. In addition to any Annual Assessment or Special Assessment, the Board has the authority to levy and collect Maintenance Assessments for costs and expenses arising out of any special characteristics or needs of a particular Lot or Parcel, or if the Owner of a Lot or Parcel contracts with the Association for the Association to provide particular maintenance services to such Owner's Lot or Parcel. Furthermore, if any common expense is caused by the misconduct of an Owner of a Lot or Parcel, his/her tenants, guests, invitees or licensees, including any misconduct leading to the imposition of any fine or penalty against such Owner, or expense by the Association to bring such Owner into compliance with the provisions hereof, the Association may assess that expense exclusively against that Owner and such Owner's Lot or Parcel, but in such events only after notice and an opportunity for a hearing, including as required by law. Maintenance Assessments may be enforced in the same manner as Annual Assessments.

8.8 Fines and Penalties. If any Owner, his or her family, or any licensee, invitee, tenant or lessee violates the provisions hereof, or any provision of any of the Design Guidelines or other rules of the Association, the Board after providing the Owner with notice of the violation and an opportunity for a hearing, may levy a fine upon the Owner and may suspend the violator's right to use the Common Area. The Board may impose a fine for each day a violation continues after the Board has provided the Owner with written notice of the violation. The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within fifteen (15) days of notice of the due date may be collected in the same manner as delinquent Assessments.

8.9 Annual Assessment Period. Except as otherwise provided herein below, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence upon conveyance of the first Lot or Parcel from Declarant to a Developer

Owner, and shall terminate on December 31 of the same year. The Annual Assessments shall be prorated for the initial Assessment Period.

If any installment permitted for the payment of Assessments is not paid when due, the Board may accelerate the entire Annual Assessment or other Assessment. Late fees and interest may be added to the delinquent amount of any Assessment and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law. Delinquent payments shall, to the extent permitted by law, apply first to delinquent Assessments, including late fees and other sums due, and then to accrued interest and attorneys fees and other legal costs, including litigation related expenses and expert witness fees, if any.

8.10 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments and Special Use Fees, which procedures may include delegating to the applicable Subsidiary Association the authority and obligation of billing and collecting some or all of the Assessments and Special Use Fees. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. No Assessment Lien shall be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice thereof prior to the commencement of such foreclosure or enforcement. The notice shall be addressed to the Owner at the address of the Owner on the records of the Association. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Parcel changes during an Assessment Period. Any successor Owner shall be given credit for any nonrefunded prepayments made by a prior Owner. In case the Owner of a Lot or Parcel having a right to pay a reduced payment amount as provided herein fails to notify the Board at such time as the payment amount should be increased, such Owner shall nonetheless be liable for the increased amount of the Assessment and such Owner's failure to notify the Board shall not relieve such Owner of the liability for such increased Assessment.

8.11 Collection Costs and Interest on Delinquent Amounts. Any Delinquent Amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within thirty (30) days after notice thereof, addressed to the Owner at the address of the Owner on the records of the Association, is given. In addition, the Delinquent Amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, or the then prevailing interest rate on loans insured by FHA or VA. The Owner shall be liable for all costs, including but not limited to attorneys' fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount.

8.12 Statement of Payment. Upon receipt of a written request therefor from any Owner or Resident, the Board, within a reasonable time thereafter, shall issue to the requesting party a written statement stating that as of the date of that statement:

8.12.1 all Assessments and Special Use Fees (including collection fees, if any in regard thereto), have been paid with respect to such Owner's or Occupant's Lot or Parcel; or

8.12.2 if such have not been paid, the amount then due and payable.

The Association may make a reasonable charge for the issuance of such statement. Any such statement shall be conclusive and binding with respect to any matter set forth therein.

8.13 Exempt Property. Exempt Property shall be exempt from Assessments and the Assessment Lien, and shall have no voting rights in the Association, provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Assessments (prorated as of the date it ceased to be Exempt Property) and the Assessment Lien, and shall have voting rights in the Association as otherwise determined in this Declaration. Notwithstanding the foregoing, any Owner of Exempt Property, except Government Property comprising a park, and except for Common Area of the Association and property of a utility company, shall nevertheless remain subject to reasonable architectural review and approval by the Design Review Committee, and the owners thereof shall be required to submit plans and specifications for approval of improvements, structures and landscaping as required herein.

8.14 Declarant's Exemption. Anything in this Declaration to the contrary notwithstanding, the Declarant shall not be liable for and shall not be required to pay Assessments upon Lots or Parcels owned by Declarant, except that Declarant shall pay Assessments on Completed Lots owned by Declarant. For purposes of this Section, "Completed Lots" shall mean any Lot owned by Declarant within the Covered Property with a Dwelling Unit ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living in the Covered Property (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed), but shall not include any Lots with improvements thereon used by Declarant as models or sales offices. Nor shall Declarant be liable for the payment of any Assessments for any Lot or Parcel that, having been previously sold to a purchaser, has been deeded back to the Declarant by foreclosure or deed in lieu of foreclosure, unless such Lot is a Completed Lot.

8.15 Deficiency. Declarant and any Developer Owner of a Lot or Parcel agree to pay, on a pro rata basis, as reasonably determined by the Board, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Areas, but only up to the full Annual Assessment for each such Lot or Parcel actually owned by Declarant or Developer Owner. A shortfall or deficiency shall exist if current ordinary expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that Declarant shall not be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year, nor for any shortfall



or deficiency incurred after expiration of the Class B Membership. Declarant may at any time at its sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay up to the full Annual Assessment for each Lot or Parcel owned by Declarant instead. Declarant's obligation to contribute toward a deficiency as provided herein is supported by a lien on Declarant's Lots and Parcels.

Should Declarant assign its rights to the exemption from Assessments as provided herein, whether such assignment be in whole or in part, then the assignees shall, in the case of any deficiency as described above (and meeting the conditions set forth above), be liable for its ratable share of same, up to the full amount of the Annual Assessment for each Lot or Parcel owned, and not more. In addition, such assignees' exemption, if any, shall expire with respect to any Lot or Parcel upon which construction of improvements has been completed.

In no event shall Declarant be required to contribute to any deficiency after the termination of the Class B Membership.

#### **ARTICLE 9 ENFORCEMENT AND THE ASSESSMENT LIEN**

9.1 Association Remedies to Enforce Assessments. If any Owner fails to pay any Assessments or Special Use Fees when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking either or both of the following actions, concurrently or separately (and by exercising either remedy the Association does not prejudice or waive its right to exercise the other remedy):

9.1.1 Bring an action at law against the Owner to recover judgment against the Owner who is personally liable for the Assessments or Special Use Fees; and

9.1.2 Foreclose the Assessment Lien against the appropriate Lot or Parcel in accordance with then prevailing Arizona law, and the Association may bid for and purchase the Lot or Parcel at any foreclosure sale.

9.2 Subordination of Assessment Lien. The Assessment Lien shall have priority from the date of recording of this declaration, and shall be superior to all charges, liens or encumbrances which hereafter are or may be imposed on any Lot or Parcel except as provided by law. Without limitation, the Assessment lien is junior to:

9.2.1 the lien of any First Mortgage encumbering the Lots and Parcels; and

9.2.2 the lien for taxes or other governmental assessments which are deemed superior hereto by applicable law.

Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien provided, however, the sale or transfer of any Lot or Parcel pursuant to any First

Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien only as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Parcel, or the Owner thereof, for liability from any Assessment theretofore becoming due nor from the Assessment Lien arising in regard thereto. In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a Person obtaining an interest in a Lot or Parcel through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

#### **ARTICLE 10 USE OF ASSOCIATION FUNDS**

10.1 Use of Association Funds. In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all Funds to the performance of the duties and obligations of the Association and the Board hereunder, or under the Articles and Bylaws, and toward such other ends and purposes as the Board may reasonably determine. The Funds may be used, among other things, to insure, acquire, construct, alter, maintain, provide and operate, in any manner whatsoever, any and all land, properties, improvements, services, projects, programs, studies and systems, within the Covered Property and the Common Areas, which may be necessary, desirable or beneficial to the interests of the Owners and the Occupants.

10.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate.

10.3 Association's Rights in Spending Funds from Year to Year. The Association shall not be obligated to spend in any year all Funds received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year.

#### **ARTICLE 11 MAINTENANCE**

##### 11.1 Common Areas and Public Rights-of-Way.

11.1.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, provided, however, that the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas located on or within Lots or Parcels unless:

(a) such landscaping or structures are intended for the general benefit of the Owners and Occupants; and

(b) the Association assumes in writing the responsibility for such maintenance and such instrument is Recorded.

Common Areas to be maintained by the Association may be identified on Recorded subdivision plats approved by Declarant, or in a Tract Declaration or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto. The Association may also in its discretion elect to maintain landscaping and similar improvements within public rights of way located within the Covered Property to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity to such public rights of way.

The Association shall also maintain any license or easement areas near or adjacent to the Covered Property, including any facilities therein, which may consist of entry monuments, special entry features, gated entries and similar features, and the Association shall assume the obligations thereunder.

11.1.2 Delegation of Responsibilities. In the event any Recorded subdivision plat, Tract Declaration, Recorded map of dedication, Recorded deed restriction or this Declaration permits the Association to determine whether Owners of certain Lots or Parcels shall be responsible for maintenance of certain Common Areas or public rights-of-way, the Board shall have the sole discretion to determine whether the Association or an individual Owner or group of Owners should be responsible for such maintenance, considering cost, uniformity of appearance, location and other relevant factors. The Board may also cause the Association to contract with others for the performance or such maintenance and other obligations of the Association and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as the Association and the Owner may agree.

11.1.3 Standard of Care. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas so that the Covered Property will reflect a high degree of pride of ownership. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Areas.

11.2 Assessment of Certain Maintenance Costs. In the event the need for maintenance or repair of areas maintained by the Association is caused through the willful or negligent act or omission of any Owner (or of any other person for whom such Owner is legally responsible under applicable state law), the cost of such maintenance or repair shall be added to and become a part of the Assessments to which such Owner and such Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. Any charges to be paid by an Owner in connection with a maintenance contract entered into by the Association shall also become a part of such Assessments and be secured by the Assessment Lien.

11.3 Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot, Parcel, or Apartment Unit is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring

Lot, Parcel or other area, or is used in a manner which violates this Declaration or any applicable Tract Declaration, or in the event the Owner of any Lot or Parcel fails to perform such Owner's obligations under this Declaration, any applicable Tract Declaration, the Association Rules, or the Design Guidelines, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot or Parcel that unless specified corrective action is taken within a specified time period the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association is hereby authorized and empowered, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys, fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. The provisions of this Section shall not apply to Declarant nor to Lots or Parcels owned by Declarant.

11.4 Excess Maintenance Costs. In the event any use of, or activity on, any Lot or Parcel causes the maintenance or repair costs incurred or to be incurred by the Association with respect to any portion of the Common Areas to be substantially greater than those costs which would typically be incurred for such portion of the Common Areas whether such use or activity is of a continuing nature or an isolated event, the Board may, by resolution, make a finding to such effect, of the amount of the excess costs incurred or expected to be incurred by the Association and of the method of determining such excess costs. Upon the adoption of such a resolution, the amount of such excess costs at any time or from time to time incurred by the Association for the reasons specified in the resolution shall be added to and become a part of the Assessments for which the Owner of any Lot or Parcel upon which such use or activity is conducted is liable and all of such Assessments shall be secured by the Assessment Lien on such Owner's Lot or Parcel.

11.5 Certain Maintenance Activities. Where the Association has undertaken, by virtue of its obligations hereunder or pursuant to any special contract executed by the Association, the responsibility to maintain, repair, replace, repave, resurface or operate private streets or private roadways or any open space, recreational or other common facilities or any guard gates, the Board, if in its discretion determines that such private streets or private roadways (or appurtenant equipment and facilities) or open space, recreational or other common facilities or guard gates, exclusively or disproportionately benefit the Owners of Lots within a particular subdivision of other Lots or Parcels, may assess all (or such appropriate portion as the Board shall determine in its discretion) of the cost of such maintenance, repair, replacement, repaving, resurfacing and operation solely against the Lots within such subdivision (and the respective Owners thereof) as additional Maintenance Assessments, which shall be assessed equally against each of the Lots within such subdivision and shall be secured by the lien for Assessments as described herein. Such additional Maintenance Assessments may also include amounts to establish and fund reserves as the Board may deem reasonable and appropriate. One of the purposes of this Section is to establish a mechanism whereby various

facilities intended and designed solely or primarily for use by the Owners of Lots within a particular subdivision may be owned and maintained by the Association at the sole and primary expense of such Owners rather than require formation of a Subsidiary Association to undertake such ownership and maintenance.

**ARTICLE 12  
RIGHTS AND POWERS OF ASSOCIATION**

12.1 Rights, Powers and Duties of the Association. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

12.2 Rules and Regulations. In addition to the right to adopt, amend and repeal rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, the Articles, and the Bylaws. Upon adoption, the Association Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

12.3 Association's Rights of Enforcement. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration and all Additional Covenants that shall have been executed pursuant or subject to the provisions of this Declaration or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. If the Association shall fail or refuse to enforce the provisions of this Declaration or the Additional Covenants after receipt of written request to enforce from any Owner, then any Owner shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

12.4 Enforcement Methods and Means. The Association may enforce the provisions hereof at law or in equity, including, but not limited to:

12.4.1 Imposing reasonable monetary penalties after notice and an opportunity to be heard, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her guests, invitees and Tenants or residents;

12.4.2 Suspending an Owner's right to vote;

12.4.3 Suspending any services provided by the Association to an Owner or the Owner's property if the Owner is more than fifteen (15) days delinquent in paying any Assessment or other charge owed to the Association;

12.4.4 Exercising self-help or taking action to abate any violation of the provisions hereof;

12.4.5 Requiring an Owner at the Owner's expense to remove any offending condition, structure or Improvement on the Owner's property, and further requiring the said Owner to restore his or her property to the condition in which it previously existed, without such action being a trespass;

12.4.6 Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration from continuing to perform and further activities on the Covered Property;

12.4.7 Towing vehicles which are parked in violation of the provisions hereof; and

12.4.8 Filing suit at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate;

The Board may weigh financial and other factors, such as possible defenses, legal merit and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to take legal action shall not limit or waive the right of any Owner to pursue proper action, nor the right of the Association to pursue action at a future time should it so desire.

12.5 Contracts with Others. Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with the other contracting party, provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association be for a term not exceeding one year and must be terminable, without penalty, by the Association for cause at any time and without cause upon no more than thirty (30) days notice.

**ARTICLE 13  
RIGHTS OF FIRST MORTGAGEES**

13.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from an Eligible Insurer or Guarantor or Eligible Mortgage Holder informing the Association of its correct name and mailing address and identifying the Lot or Parcel, or portion thereof, to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

13.1.1 Any condemnation loss or any casualty loss that affects a material portion of the Common Areas;

13.1.2 Any default in the performance of any obligation to be performed pursuant to this Declaration, including without limitation any delinquency in the payment of Assessments or any other charges owed by an Owner whose Lot or Parcel, or portion thereof, is encumbered by a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, if such default or delinquency is not cured within sixty (60) days;

13.1.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

13.1.4 Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 13.2 of this Declaration.

13.2 Approval Required for Amendment to Declaration. In the event this Declaration has received formal written approval by the Federal National Mortgage Association, then after expiration of the Class B Membership, the approval of Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes in the Association that are allocated to Owners whose Lots or Parcels which are subject to a Tract Declaration restricting the Lots or Parcel to Single Family Residential Use as a Single Family Parcel, and whose Lots or Parcels are subject to First Mortgages held by Eligible Mortgage Holders, shall be required to make amendments of a material nature to this Declaration which specifically impact such Single Family Residential properties. A substantial amendment to this Declaration for the purpose of materially revising terms governing and administering the following matters shall be considered material:

13.2.1 Voting rights;

13.2.2 Assessments, Assessment Liens, or subordination of Assessment Liens;

13.2.3 Reserves for maintenance, repair, and replacement of Common Areas;

13.2.4 Responsibility for maintenance and repairs;

13.2.5 Reallocation of interests in the Common Areas or Limited Common Areas or rights to their use;

13.2.6 Boundaries of any Lot or Parcel, other than minor or insubstantial changes to avoid hardship, encroachment, boundary disputes, or which are approved by the applicable governmental agency;

13.2.7 Convertibility of Lots or Parcels into Common Areas or vice versa, other than as provided herein;

13.2.8 Expansion or contraction of the Covered Property, or the addition, annexation, or withdrawal of property to or from the Covered Property, other than as contemplated hereby or in order to confirm such annexation or withdrawal;

13.2.9 Insurance or fidelity bonds;

13.2.10 Leasing of Lots or Parcels;

13.2.11 Imposition of any restrictions on an Owner's right to sell the Owner's Lot or Parcel;

13.2.12 A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;

13.2.13 Restoration or repair of any Common Areas (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;

13.2.14 Any action to terminate this Declaration after substantial destruction or condemnation occurs; or

13.2.15 Any provisions that expressly benefit First Mortgagees, Eligible Mortgage Holders, or Eligible Insurers or Guarantors.

Any actions to terminate this Declaration for reasons other than substantial destruction or condemnation of the Covered Property shall require the approval of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes in the Association that are allocated to Owners whose Lots or Parcels are subject to First Mortgages held by Eligible Mortgage Holders.

Any First Mortgagee who receives a written request to approve additions or amendments to this Declaration, the Articles, or the Bylaws and who does not submit a response to the requesting party within thirty (30) days after the request is made shall be deemed to have approved such request. As an example and without limiting the determination of materiality in any way, any addition or amendment to this Declaration, the Articles, or the Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.



13.3 Condemnation or Insurance Proceeds. No Owner, or any other party, shall have priority over any rights of any First Mortgagee pursuant to its mortgage or deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a Taking of Common Areas.

13.4 Payment of Charges by First Mortgagees. First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Areas, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Areas in the case of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Association.

13.5 Right of Inspection of Records. Any Owner, First Mortgagee, or Eligible Insurer or Guarantor shall be entitled to: (a) inspect current copies of this Declaration, the Articles, the Bylaws, the Design Guidelines, the Association Rules, and the books, records, and financial statements of the Association during normal business hours; and (b) receive, upon written request therefor, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party.

#### **ARTICLE 14 EMINENT DOMAIN INVOLVING THE COMMON AREA**

14.1 Eminent Domain. The term "Taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association. In the event of a total Taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, and all holders of liens and encumbrances, as their interest may appear of Record.

14.2 Representative of Owners. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under or relating to any Taking of Common Area. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee to negotiate on its behalf.

#### **ARTICLE 15 INSURANCE**

15.1 Association's Insurance Requirements. The Association shall purchase and maintain at all times the following types of insurance, but only to the extent

reasonably available and reasonably priced, and any other insurance the Association deems appropriate:

15.1.1 Commercial General Liability and Property Insurance.

Commercial general liability insurance covering bodily injury and property damage liability insurance covering all Common Area maintained by the Association, if any, and all other areas under the jurisdiction or control of the Association, excluding the Lots and Parcels. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or of any other Owners.

The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use to the Properties. Coverage shall be for at least one million dollars (\$1,000,000.00) combined single limit.

Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Common Area maintained by the Association; legal liability arising out of lawsuits related to employment contracts of the Association; and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Such coverage shall also include standard directors and officers coverage in amounts determined reasonably necessary by the Board, insuring the members of the Board, the officers of the Association, and any property managers to the extent the Board shall so determine.

15.1.2 Insurance of Common Area. Fire and other hazard insurance covering improvements constructed on the Common Area. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in the area of Prescott Valley.

Such policies of property insurance shall contain a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement," if possible. The Association shall also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and coverage on personal property owned by the Association.

If the Common Area or any portion thereof is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage for improvements on the Common Area has been made available under the National Flood Insurance Program, then such a policy of flood insurance shall, if deemed necessary by the Board, be obtained on the Common Area in an amount at least equal to the lesser of:

(a) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(b) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

15.1.3 Worker's Compensation Insurance. Worker's Compensation insurance to the extent necessary to comply with any applicable laws.

15.1.4 Fidelity Insurance. At the Board's discretion, fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, that is, in no event, less than one and one-half times the insured's estimated annual operating expenses and reserves, and provide for at least thirty (30) days' notice to the Association before cancellation or substantial modification thereof. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

15.2 Exceptions. The foregoing insurance and endorsements shall be maintained only to the extent available and reasonably priced and, without limitation, the Board of Directors may elect to dispense with certain endorsements if, in the discretion of the Board of Directors, it is determined that the cost of such endorsements is excessive or the coverage not reasonably available.

15.3 Waiver of Subrogation; Claims Against Declarant, etc. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, each Developer Owner, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees and a provision, if reasonably available in the discretion of the Board, preventing any cancellation or modification thereof, except upon at least thirty (30) days' written notice to the insureds.

Liability insurance hereinabove specified shall name as separately protected insureds Declarant, the Association, the Board and such other persons or entities affiliated with the Association such as a manager and its representatives, members and

employees as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property.

To the extent that each such policy will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Declarant, the Board, and each Developer Owner and such other persons or entities named in said insurance policies, and against the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

15.4 Association's Insurance Premiums a Common Expense. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and Parcels, and all such insurance coverage obtained by the Board shall be written in the name of the Association.

15.5 Insurance for Residences and Lots. All Owners shall at their own expense obtain insurance for their Dwelling Units, Lots, and Parcels insuring against fire, accident and casualty, which insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of any such loss or losses.

15.6 Use of Insurance Proceeds. In the event of damage or destruction by fire or other casualty to any Dwelling Unit, Lot or other property covered by insurance written in the name of an individual Owner, said Owner shall use any insurance proceeds for the repair of the damaged property.

## ARTICLE 16 DISPUTE RESOLUTION

### 16.1 Consensus for Association Action.

16.1.1 Except as provided in this Article, the Association may not commence a legal proceeding or an action without the approval of at least two-thirds of the votes of the Members eligible to vote. This Article shall not apply, however, to (i) actions brought by the Association to enforce governing documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

16.1.2 Prior to the Association or any Member commencing any proceeding to which Declarant or any Developer Owner is a party, including but not limited to an alleged defect of any improvement, Declarant and each Developer Owner shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

16.2 Alternative Method for Resolving Disputes. Declarant, its officers, directors employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Members of the Association; any Developer Owner, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 16.3 (singularly, "Claim," and collectively, "Claims") to the procedures set forth in 16.4.

16.3 Claims. Unless specifically exempted below, all claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of this Declaration, or to the Articles or Bylaws ("Governing Documents") or the rights, obligations and duties of any Bound Party under the Governing Documents; (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of 16.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of 16.4:

(a) any suit by the Association against any Bound Party to enforce the provisions hereof pertaining to assessments, fines or charges (other than against Declarant);

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (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 act under and enforce the provisions hereof;

(c) any suit between or among Owners, which does not include Declarant, a Developer Owner or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(d) any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above identified in this Section may be submitted to the alternative dispute resolution procedures set forth herein.

#### 16.4 Mandatory Procedures.

16.4.1 Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to

herein being individually, as a "Party" or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (c) the proposed remedy; and
- (d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

16.4.2 Negotiation and Mediation.

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(c) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall, issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth herein. In such event the Party taking action

to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

**16.4.3 Binding Arbitration.**

(a) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(b) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(c) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

**16.5 Amendment of Article.** Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty (20) years from the effective date of this Declaration.

**ARTICLE 17  
TERM; AMENDMENTS; TERMINATION**

**17.1 Term; Method of Termination.** This Declaration shall be effective upon its Recordation and, as amended from time to time, shall continue in full force and effect unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%) of the total votes entitled to be cast by the entire Membership. Upon the Recording of a Certificate of Termination executed by the President and Secretary of the Association confirming such vote, this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona.

**17.2 Amendments.** Until the first conveyance of a Lot within the Covered Property to a Non-Developer Owner for use and occupancy as a Dwelling Unit, this

Declaration may be amended by Recorded instrument duly executed by Declarant, without the necessity of calling a meeting of Owners or obtaining the consent of Owners. Thereafter, this Declaration may be amended by Recording an amendment, duly executed by the President or Vice President of the Association, which amendment shall set forth in full the text of the amendment adopted, and, except as provided in Section 17.3, or except as otherwise provided below, shall certify that, with or without a meeting, Owners representing two thirds (2/3) of the total votes entitled to be cast by the entire Membership consented to or voted affirmatively for such amendment.

Any amendment during such time as Declarant is a Member of the Association shall require the written approval of the Declarant.

In addition to the foregoing, Declarant shall have the right, so long as it owns any Lot or Parcel, to amend this Declaration of its own volition, and without the requirement of any further consent or approval if such amendment is to correct errors or eliminate ambiguities, and to make changes designed to further the intent of this instrument by further elaborating on existing powers, privileges and restrictions in cases where correction, clarification or elaboration is warranted.

A Tract Declaration may be amended as provided in such Tract Declaration, but only with the consent of Declarant so long as Declarant owns a single Lot or Parcel in the Covered Property. Thereafter, a Tract Declaration may be amended as provided therein, and with the approval of the Board.

17.3 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institution. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration or a Tract Declaration as may be requested or required by the FHA, VA or any other Agency with whom Declarant elects to do business as a condition precedent to such Agency's approval of this Declaration or an applicable Tract Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot or Parcel or purchasing loans secured thereby. Any such amendment shall be effected by Declarant Recording an amendment duly executed and acknowledged by Declarant specifying the Agency or the lending institution requesting the amendment and setting forth the requested or required amendment(s). Recordation of such amendment shall be deemed conclusive proof of the Agency's or institution's request or requirement and such amendment, when Recorded, shall be binding upon all of the Covered Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of planning and development of the Covered Property. If any amendment requested or required pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions which shall be binding upon the Covered Property and Owners without a vote of the Owners.



**ARTICLE 18  
ANNEXATION AND WITHDRAWAL OF PROPERTY**

18.1 Annexation by Declarant. Declarant may, at its sole discretion and without the approval, assent, or vote of the Association or other Owners, from time to time until fifteen (15) years after Recordation of this Declaration, annex to the Covered Property the Annexable Property or any portion or portions thereof. To effect such annexation, a Tract Declaration covering the Annexable Property (or the applicable portion or portions thereof) shall be executed and Recorded by Declarant. The Recordation of such Tract Declaration shall constitute and effectuate the annexation of the Annexable Property (or the applicable portion or portions thereof) described therein, making such Annexable Property (or the applicable portion or portions thereof) and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association. In addition to the foregoing, and notwithstanding any decision not to annex the additional property or any portion thereof, Declarant may grant easements for ingress, egress, utilities, and other purposes for the benefit of such Annexable Property, all on terms deemed by Declarant to be reasonable.

18.2 Annexation by Owners. The Association may, from time to time, annex to the Covered Property additional property ("Annexation Land") provided that such annexation has been approved by the Owners possessing at least seventy-five percent (75%) of the total votes then entitled to be cast by the Membership (both Classes, not each Class separately) with or without a meeting. To effect such annexation, a Tract Declaration covering the Annexation Land shall be executed by the President or Vice-President of the Association and attested to by the Secretary of the Association, and executed by the owner of the Annexation Land. The recordation of such Tract Declaration shall constitute and effectuate the annexation of the Annexation Land described therein, making such Annexation Land and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association.

Any annexation during the pendency of the Class B Membership shall have the written approval of the Class B Member and, for a period of ten years after recording hereof, the Declarant as well. Absent such approval, any such annexation shall be deemed void.

18.3 Tract Declarations. The annexations authorized hereunder shall be made by Recording a Tract Declaration, in like fashion as for any Parcel originally subject to this Declaration. A Tract Declaration may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof). In no event, however, shall any such Tract Declaration revoke or conflict with this Declaration or any Tract Declaration. If the Annexable Property (or the applicable portion or portions thereof) is annexed, the number of Parcels shall be adjusted accordingly, and the Annexable Property (or applicable portion or portions thereof) shall thereupon become fully a part of the Covered Property subject to all provisions of this Declaration, including without limitation the provisions regarding Assessments.

18.4 Withdrawal of Covered Property. Declarant may, at its sole discretion and without the approval, assent, or vote of the Association or other Owners or Members, from time to time until twenty (20) years after Recordation of this Declaration, withdraw any real property subject to this Declaration by executing and Recording a Notice of Withdrawal, making reference to this Declaration, and specifically describing the withdrawn property. The property so described shall be deemed completely excluded from this Declaration and shall no longer be a part of the Covered Property. Declarant may, in connection therewith, cancel any Tract Declaration for the land withdrawn.

Notwithstanding the foregoing, except as otherwise provided in the applicable Declaration of Withdrawal, withdrawal of any portion or portions of the Covered Property will not be effective until the Owner of the property to be withdrawn has paid all unpaid Assessments applicable to such property, prorated to the date of withdrawal.

It is specifically understood that this right of withdrawal may be exercised in Declarant's sole and absolute discretion, and that once withdrawn, none of the provisions hereof shall apply to or encumber the land. Further, Declarant may cause the Association to grant and convey such easements as may be necessary to benefit such land withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

#### **ARTICLE 19 MISCELLANEOUS**

19.1 Interpretation of the Covenants. Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions contained herein and in any Tract Declarations. In the absence of any adjudication to the contrary by an arbitrator, or if permitted hereunder, 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 benefited or bound by this Declaration.

19.2 Severability. Any determination by an arbitrator, or if permitted hereunder, by a court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

19.3 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

19.4 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Pronghorn Ranch can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it

has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Parcel agrees to hold Declarant harmless therefrom.

19.5 Successors and Assigns; Assignees of Declarant. Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder, to the extent of such assignment, which may be in whole or in part, and to the extent such assignment is in writing making reference to such rights. Any such assignment shall be evidenced by a recorded instrument executed by Declarant and its successors or assigns. Without limitation, Declarant may assign, in whole or in part, its various exemptions and privileges hereunder, including but not limited to such exemptions and privileges as may relate to signage, business use during development, voting rights and assessments, design review, its status as a Class B member, and other matters, and Declarant may grant, in its sole discretion, any similar exemptions and privileges to any Developer Owner.

19.6 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders. Words in the singular shall include the plural; and vice versa.

19.7 Captions. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

19.8 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or any resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Yavapai County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

19.9 FHA/VA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA in regard to the Covered Property, then for so long as there is a Class B Member of the Association, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: annexation of additional property (other than the Annexable Property), mortgaging or

dedication of Common Areas (except where such dedication is required as of the date hereof by the Town, or is a dedication of minor interests such as trails, drainageways and parks requested to be dedicated by a public entity), and amendments of this Declaration which concern or effect Lots or Parcels with a Land Use Classification of Single Family Residential Use, Cluster Residential Use or Residential Condominium Development Use in a project for which FHA or VA approval has previously been given. With respect to any action required by this Declaration to be approved by the FHA or the VA, the proposed action may be submitted to the FHA or the VA for approval, and if the agency whose approval is requested does not approve or disapprove the proposed action by written notice to the Association, Declarant or other Person requesting approval within fifteen (15) days after delivery to that agency of the request for approval, the proposed action in question will be deemed approved by that agency.

19.10 Restatement. The Association is empowered to amend the Original Declaration pursuant to Arizona law and the terms and provisions of the Declaration. The Association joins in this Declaration for purposes of evidencing that the Owners of a sufficient number of Lots and Parcels in Pronghorn Ranch desire to amend the Original Declaration to the extent and in the manner set forth herein. Accordingly, this Declaration shall supercede and replace in its entirety the Original Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

**DECLARANT:**

Antelope Village, L.L.C., an Arizona limited liability company

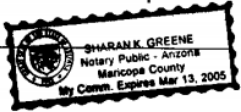
By: [Signature]  
Name: ROBERT C. VENBERG  
Title: Vice President

STATE OF ARIZONA )  
                                  )    ss.  
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of February, 2003, by Robert C. Venberg, the Vice President of Antelope Village, L.L.C., an Arizona limited liability company, on behalf of the limited liability company.

[Signature]  
Notary Public

My commission expires:



**CONSENT**

The undersigned, as the owner of legal simple title to the Covered Property and the Annexable Property, executes this Declaration for purposes of subjecting the Covered Property hereto.

First American Title Insurance Agency of  
~~Yavapai~~ Inc., an Arizona corporation,  
as Trustee under Trust 4933

By: *Jeffrey Graham*  
Name: Jeffrey Graham  
Title: Trust Officer

STATE OF ARIZONA     )  
                                  )     ss.  
COUNTY OF ~~MARICOPA~~ )  
                                  )     Yavapai

The foregoing instrument was acknowledged before me this 25th day of February, 2003, by Jeffrey Graham, the Trust Officer of First American Title Insurance Agency of ~~Yavapai~~, Inc., an Arizona corporation, as trustee under Trust No. 4933.

*Lynne M. Pena*  
Notary Public

My commission expires:

10-13-06



**CERTIFICATION**

The undersigned executes this Declaration for purposes of certifying that Owners representing two thirds (2/3) of the total votes entitled to be cast by the entire Membership consented to or voted affirmatively for the amendments reflected in this Declaration.

PRONGHORN RANCH HOMEOWNERS  
ASSOCIATION, an Arizona nonprofit  
corporation

By: MICHAEL D. BROWN  
Name: \_\_\_\_\_  
Title: President

STATE OF ARIZONA     )  
                                  ) ss.  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of February, 2003, by MICHAEL D. BROWN, the President of Pronghorn Ranch Homeowners Association, an Arizona nonprofit corporation, on behalf of the corporation.

Sharan K. Greene  
Notary Public

My commission expires:



**EXHIBIT A**

(Covered Property)

The initial Covered Property shall consist of those certain subdivisions of Yavapai County described as follows:

1. Pronghorn Ranch, Unit I, Lots 1 through 54, and Tract A, a subdivision of Yavapai County recorded Book 44 of Maps and Plats at Page 43 thereof.
2. Pronghorn Ranch, Unit II A, Lots 55 through 132, and Tracts B, 7 and 8, a subdivision of Yavapai County recorded Book 44 of Maps and Plats at Page 44 thereof.
3. Pronghorn Ranch, Unit III A, Lots 133 through 203, and Tracts 9, 10 and 11, a subdivision of Yavapai County recorded Book 44 of Maps and Plats at Page 47 thereof.

231455.4



**EXHIBIT B**  
(Annexable Property)

231455.4

2



When recorded, return to:

Brown Family Communities  
2164 E. Broadway #300  
Tempe, Arizona 85282  
Attn: Ginger Swainston

**AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR PRONGHORN RANCH**

THIS AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR PRONGHORN RANCH (this "Amendment") is made and entered into as of June 7, 2006, by ANTELOPE VILLAGE, L.L.C., an Arizona limited liability company ("Declarant").

RECITALS

A. Declarant entered into that certain Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Pronghorn Ranch dated February 14, 2003 and recorded on February 25, 2003 in Docket 4005 Page 313 of the Official Records of Yavapai County, Arizona (the "Declaration").

B. Pursuant to Section 17.2 of the Declaration, Declarant has the right to amend the Declaration.

C. Declarant desires to amend the Declaration as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is understood and agreed as follows:

1. Transfer Fees. Section 8.5 of the Declaration is hereby deleted in its entirety and replaced with the following new Section 8.5:

8.5 Fees Upon Transfer. Certain fees shall be payable upon the transfer of a Lot or Parcel as described in this Section. Such fees shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.5.1 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, any Person who purchases a Lot or Parcel upon which the construction of improvements is complete shall pay to the Association immediately upon becoming the Owner of a Lot or Parcel an amount established by the Board, in its sole discretion ("Working Capital Fund Contribution"); provided, however, that the Working Capital Fund Contribution shall not exceed fifty percent (50%) of the then-current Annual Assessment applicable to such Lot or Parcel. The Working



Capital Fund Contribution shall be charged to the initial purchaser of the Lot or Parcel following completion of improvements thereon, shall continue to be payable upon each subsequent sale of a Lot or Parcel, shall be payable to the Association at the closing of the transfer, and shall be secured by the Association's lien for assessments. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration and the Articles and Bylaws.

Notwithstanding the above, no Working Capital Fund Contribution shall be levied upon transfer of title to property:

- (a) to the Declarant;
- (b) by or to the Board or the Association;
- (c) to a Developer Owner;
- (d) to a co-owner to any Person who was a co-owner immediately prior to such transfer;
- (e) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (f) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Working Capital Fund Contribution shall become due;
- (g) to a corporation, limited liability company partnership or other entity in which the Owner owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Fund Contribution; or
- (h) to an institutional lender as security for the performance of an obligation pursuant to a mortgage.

8.5.2 *Reserve Fee.* To ensure that the Association shall have adequate reserves and for any other expenses the Board deems appropriate, each purchaser of a Lot or Parcel upon which the construction of improvements is complete, as evidenced by a certificate of occupancy or similar instrument which allows the Lot or Parcel to be used as a residence or in trade or business, shall pay to the Association immediately upon becoming the Owner of a Lot or Parcel an amount established by the Board, in its sole discretion (the "Reserve Fee"); provided, however, that the Reserve Fee shall not exceed an amount equal to .25% of the gross sales price of the Lot or Parcel. The Reserve Fee shall be charged to the initial purchaser of the Lot or Parcel following completion of improvements thereon, shall continue to be payable upon each subsequent sale of a Lot or Parcel,

shall be payable to the Association at the closing of the transfer, and shall be secured by the Association's lien for assessments.

Notwithstanding the above, no Reserve Fee shall be levied upon transfer of title to property:

- (a) to the Declarant;
- (b) by or to the Board or the Association;
- (c) by a Developer Owner;
- (d) by a co-owner to any Person who was a co-owner immediately prior to such transfer;
- (e) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (f) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Reserve Fee shall become due;
- (g) to a corporation, limited liability company partnership or other entity in which the Owner owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Fee; or
- (h) to an institutional lender as security for the performance of an obligation pursuant to a mortgage.

8.5.3 *Notice of Transfer.* Each Owner transferring a Lot shall notify the Board's secretary at least seven days prior to the scheduled transfer. Such notice shall include the name of the buyer, the date of title transfer, and other information the Board reasonably may require.

2. General. Capitalized terms not defined in this Amendment shall have the same meanings as set forth in the Declaration. Except as specifically and expressly amended by this Amendment, the Declaration shall remain in full force and effect in accordance with all of its covenants, terms and provisions. This Amendment shall be governed under the laws of the State of Arizona.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, Declarant has executed this Amendment the day and year first written above.

DECLARANT:

ANTELOPE VILLAGE, L.L.C., an Arizona limited liability company

By: [Signature]  
Name: Robert C. Venberg  
Title: President

STATE OF ARIZONA )  
                                  ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 14th day of June, 2006, by Robert C. Venberg, the President of Antelope Village, L.L.C., an Arizona limited liability company, on behalf of the company.

[Signature]  
Notary Public

My commission expires:

Dec. 3, 2006



**SEAL**

Recorded at the request of:  
James D. Atkinson

When recorded mail to:  
James D. Atkinson  
Carpenter Hazlewood Delgado & Bolen, P.L.C.  
1550 Plaza West Drive  
Prescott, AZ 86303

---

SECOND AMENDMENT TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
PRONGHORN RANCH

THIS SECOND AMENDMENT to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch (the "Second Amendment") is made effective as of the date of its recording in the Official Records of Yavapai County, Arizona.

RECITALS:

A. On June 13, 2002, the Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated June 10, 2002 was recorded in Book 3933, Page 987 of the Official Records of Yavapai County, Arizona, by Antelope Village, L.L.C., an Arizona limited liability company (the "Declarant").

B. On February 25, 2003, the Declarant recorded the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated February 14, 2003, in Book 4005, Page 313, of the Official Records of Yavapai County, Arizona (as subsequently amended by the First Amendment, the "Amended and Restated Declaration"). Except as otherwise defined herein, the capitalized terms used herein shall have the meanings as defined in the Amended and Restated Declaration.

C. On March 3, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated February 27, 2003, in Book 4007, Page 46, of the Official Records of Yavapai County, Arizona (the "First Tract Declaration") annexing the "Annexation Property" (as defined in the First Tract Declaration, the "First Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the First Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the First Tract Declaration.

D. On May 15, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated May 12, 2003, in Book 4031, Page 776, of the Official



Records of Yavapai County, Arizona (the “Second Tract Declaration”) annexing the “Annexation Property” (as defined in the Second Tract Declaration, the “Second Tract Declaration Annexation Property”) as being under the purview of the Amended and Restated Declaration and declaring the Second Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Second Tract Declaration.

E. On July 17, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated July 15, 2003, in Book 4052, Page 365, of the Official Records of Yavapai County, Arizona (the “Third Tract Declaration”) annexing the “Annexation Property” (as defined in the Third Tract Declaration, the “Third Tract Declaration Annexation Property”) as being under the purview of the Amended and Restated Declaration and declaring the Third Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Third Tract Declaration.

F. On November 17, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4751, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated November 13, 2003, in Book 4094, Page 380, of the Official Records of Yavapai County, Arizona (the “Fourth Tract Declaration”) annexing the “Annexation Property” (as defined in the Fourth Tract Declaration, the “Fourth Tract Declaration Annexation Property”) as being under the purview of the Amended and Restated Declaration and declaring the Fourth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Fourth Tract Declaration.

G. On May 27, 2004, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated May 27, 2004, in Book 4151, Page 804, of the Official Records of Yavapai County, Arizona (the “Fifth Tract Declaration”) annexing the “Annexation Property” (as defined in the Fifth Tract Declaration, the “Fifth Tract Declaration Annexation Property”) as being under the purview of the Amended and Restated Declaration and declaring the Fifth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Fifth Tract Declaration.

H. On April 14, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated April 14, 2005, in Book 4253, Page 154, of the Official Records of Yavapai County, Arizona (the “Sixth Tract Declaration”) annexing the “Annexation Property” (as defined in the Sixth Tract Declaration, the “Sixth Tract Declaration Annexation Property”) as being under the purview of the Amended and Restated Declaration and declaring the Sixth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Sixth Tract Declaration.

I. On August 3, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated August 3, 2005, in Book 4294, Page 172, of the Official Records of Yavapai County, Arizona (the “Corrective Fifth Tract Declaration”) to correct an error in the language of the Fifth Tract Declaration.



J. On August 22, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated August 15, 2005, in Book 4301, Page 592, of the Official Records of Yavapai County, Arizona (the "Corrective Sixth Tract Declaration") to correct an error in the language of the Sixth Tract Declaration.

K. On June 15, 2006, the Declarant recorded the Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated June 7, 2006, in Book 4406, Page 671, of the Official Records of Yavapai County, Arizona (the "First Amendment").

L. On November 1, 2007, the Declarant, First American Title Insurance Agency, as trustee under Trust No. 4933, First American Title Insurance Company, as Trustee under Trust 8308, and Brown Family Communities, an Arizona Limited Partnership, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated October 31, 2007, in Book 4551, Page 545, of the Official Records of Yavapai County, Arizona (the "Seventh Tract Declaration") annexing the "Annexation Property" (as defined in the Seventh Tract Declaration, the "Seventh Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Seventh Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Seventh Tract Declaration.

M. On February 9, 2010, Declarant recorded the Designation as Declarant Affiliate and Removal of Designation as Declarant Affiliate dated February 1, 2010, in Book 4722, Page 691, of the Official Records of Yavapai County, Arizona, pursuant to which Declarant (i) designated STO Investments, LLC ("STO") as a "Declarant Affiliate" effective December 30, 2008 and Benjamin Snyder and Robin Snyder as "Declarant Affiliates" effective October 31, 2007, in each case under Section 1.20 of the Amended and Restated Declaration and (ii) revoking the previous designation of Brown Family Communities as a "Declarant Affiliate" effective as of February 5, 2008 under Section 1.20 of the Amended and Restated Declaration.

N. On January 29, 2013, Declarant recorded the Assignment of Declarant's Rights dated December 20, 2012, in Book 4934, Page 245, of the Official Records of Yavapai County, Arizona, pursuant to which Declarant assigned and transferred to Pronghorn Development, LLC all non-exclusive rights of Declarant under the Amended and Restated Declaration.

O. Pursuant to Section 17.2 of Article 17 of the Amended and Restated Declaration, the Amended and Restated Declaration may be amended by Recording an amendment, duly executed by the President or Vice President of the Association, which amendment shall set forth in full the text of the amendment adopted, and, shall certify that, with or without a meeting, Owners representing at least two-thirds (2/3) of the total votes entitled to be cast by the entire Membership consented to or voted affirmatively for such amendment.

P. Any amendment of the Amended and Restated Declaration made during such time as the Declarant is a Member of the Association requires the written approval of the



Declarant. As of the date of the recording of this Second Amendment, the Declarant is a Member of the Association.

NOW THEREFORE, the Amended and Restated Declaration is hereby amended as follows:

1. Section 1.19 of Article 1 of the Amended and Restated Declaration is hereby amended in its entirety to provide as follows:

1.19 “Declarant” shall mean Antelope Village, L.L.C., an Arizona limited liability company, Pronghorn Development, LLC, an Arizona limited liability company, and any Declarant Affiliate as well as any assignees of all or part of the rights and duties granted or reserved to Declarant herein, which assignment shall be evidenced by a Recorded instrument executed by the assigning Declarant. Without limiting the foregoing any rights, benefits or other privileges granted to the "Declarant" in this Declaration shall inure to the benefit of Antelope Village, L.L.C., Pronghorn Development, LLC or their respective assignees and all Declarant Affiliates; provided, however, that in the event "Declarant" is granted any right to take affirmative action under this Declaration (e.g., the right to appoint and remove member of the Design Review Committee pursuant to Section 4.1.8), such action shall be taken by Antelope Village, L.L.C. or its assignees, unless such rights are delegated in whole or in part to one or more Declarant Affiliates.

2. The last sentence of Section 1.20 of Article 1 of the Amended and Restated Declaration is hereby amended in its entirety to provide as follows:

Without limiting the foregoing, Declarant Affiliates shall include Pronghorn Holdings L.L.C., Pronghorn Builders, LLC and STO Investments, LLC, and they are hereby designated as Declarant Affiliates.

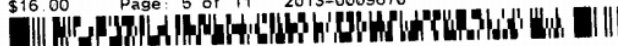
3. Subsection (b) of Section 7.4.2 of Article 7 of the Amended and Restated Declaration is amended in its entirety to provide as follows:

(b) February 25, 2023; or

4. Section 1.25 of Article 1 of the Amended and Restated Declaration is hereby amended in its entirety to provide as follows:

1.25 “Developer Owner” shall mean a Person that meets all of the following requirements:

- (i) The Person is in the business of developing, leasing and/or selling real property; and
- (ii) The Person in a single transaction acquired twenty-five (25) or more Lots or all or a portion of a Parcel in the Covered Property, in connection



- with, and in the course of, such business for the purpose of developing, leasing or selling such Lots or Parcel, or portion thereof; and
- (iii) The Person is designated in writing as a Developer Owner by the Declarant and such written designation is Recorded.

Without limiting the foregoing, Lexin Pronghorn, LLC, a Delaware limited liability company, is hereby designated by the Declarant as a Developer Owner effective as of July 1, 2012. Excepting only Lexin Pronghorn, LLC which is designated as a Developer Owner effective as of July 1, 2012, any Person meeting all such requirements shall become a Developer Owner effective as of the date of the Recording of the written designation signed by the Declarant.

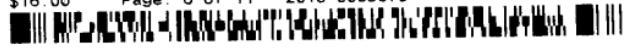
5. Section 8.3.1 of Article 8 of the Amended and Restated Declaration entitled "Obligation of Developer Owner" is hereby amended to add the following paragraph:

Notwithstanding anything to the contrary contained in this Section 8.3.1 or in any other provision of this Declaration, Lexin Pronghorn, LLC shall remain a Developer Owner and shall be required to pay only fifty percent (50%) of the Annual Assessments and Special Assessments for each Lot or Parcel owned by Lexin Pronghorn, LLC for so long as Lexin Pronghorn, LLC owns Lots for development within the Covered Property. The provisions set forth in this paragraph of Section 8.3.1 may be not amended without the written consent of Lexin Pronghorn, LLC.

6. Each Owner consenting to this Second Amendment is conclusively presumed to have the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such consent to this Second Amendment.

7. Except as specifically modified by this Second Amendment, the Amended and Restated Declaration shall remain in full force and effect in accordance with its terms. In the event of any conflict or inconsistency between the terms of this Second Amendment and the Amended and Restated Declaration, the terms of this Second Amendment shall control.

[SIGNATURES ON THE FOLLOWING PAGES]



IN WITNESS WHEREOF, Declarant has caused this Second Amendment to be duly executed on the 19<sup>TH</sup> day of February 2013.

Antelope Village, L.L.C., an Arizona limited liability company

By: Robeki Holdings, LLC, an Arizona limited liability company, Its Manager

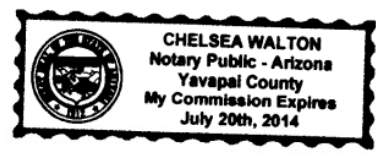
By:   
Name: Benjamin G. Snyder, Jr.  
Its: Member

STATE OF ARIZONA )  
 ) ss:  
COUNTY OF YAVAPAI )

The foregoing instrument was acknowledged before me this 19<sup>TH</sup> day of February 2013 by Benjamin G. Snyder, Jr., Member of Robeki Holdings, LLC, an Arizona limited liability company, the Manager of Antelope Village, L.L.C., an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal  
  
NOTARY PUBLIC

My Commission will expire July 20<sup>TH</sup>, 2014



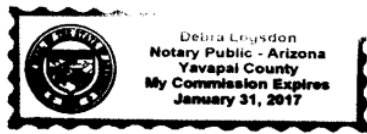


IN WITNESS WHEREOF, Declarant has caused this Second Amendment to be duly executed on the 15<sup>th</sup> day of February 2013.

Pronghorn Development, LLC, an Arizona limited liability company

By: Thomas Anthony Corkery  
Name: Thomas Anthony Corkery  
Its: managing member

STATE OF ARIZONA )  
 ) SS:  
COUNTY OF YAVAPAI )



The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of February 2013 by Thomas A. Corkery, the Managing member of Pronghorn Development, LLC, an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

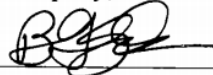
Debra Leysdon  
NOTARY PUBLIC

My Commission will expire 01/31, 2017

IN WITNESS WHEREOF, Declarant Affiliate has caused this Second Amendment to be duly executed on the 19<sup>TH</sup> day of February 2013.

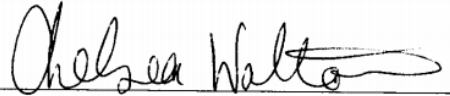
Pronghorn Holdings, L.L.C., an Arizona limited liability company

By: Robeki Holdings, LLC, an Arizona limited liability company, Its Manager

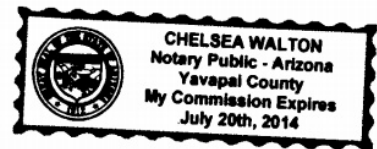
By:   
Name: Benjamin G. Snyder, Jr.  
Its: Member

STATE OF ARIZONA )  
 ) ss:  
COUNTY OF YAVAPAI )

The foregoing instrument was acknowledged before me this 19<sup>TH</sup> day of February 2013 by Benjamin G. Snyder, Jr., Member of Robeki Holdings, LLC, an Arizona limited liability company, the Manager of Pronghorn Holdings, L.L.C., an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal  
  
NOTARY PUBLIC

My Commission will expire July 20<sup>TH</sup>, 2014





IN WITNESS WHEREOF, Declarant Affiliate has caused this Second Amendment to be duly executed on the 19<sup>TH</sup> day of February 2013.

Pronghorn Builders, L.L.C., an Arizona limited liability company

By Its Manager: Capital Multiplier, LLC, a Delaware limited liability company

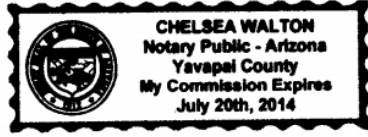
By: Erin Immegart  
Name: Erin Immegart  
Its: Authorized Agent

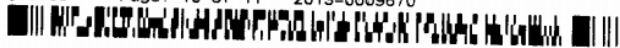
STATE OF ARIZONA                     )  
  ) ss:  
COUNTY OF YAVAPAI                 )

The foregoing instrument was acknowledged before me this 19<sup>TH</sup> day of February 2013 by Erin Immegart, Authorized Agent of Capital Multiplier, LLC, a Delaware limited liability company, Manager of Pronghorn Builders, L.L.C., an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal  
Chelsea Walton  
NOTARY PUBLIC

My Commission will expire July 20<sup>TH</sup> 2014





IN WITNESS WHEREOF, Declarant Affiliate has caused this Second Amendment to be duly executed on the 19<sup>th</sup> day of February 2013.

STO Investments, LLC, an Arizona limited liability company

By:   
Name: Benjamin G. Snyder, Jr.  
Its: Manager

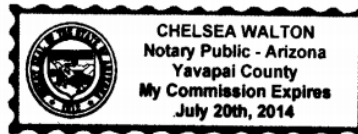
STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF YAVAPAI        )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of February 2013 by Benjamin G. Snyder, Jr., the Manager of STO Investments, LLC, an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

NOTARY PUBLIC

My Commission will expire July 20<sup>th</sup> 2014

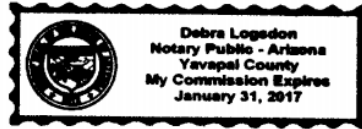


CERTIFICATION

The undersigned executes this Second Amendment to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch for the purpose of certifying that Owners representing at least two-thirds (2/3) of the total votes entitled to be cast by the entire Membership consented to or voted affirmatively for the amendments set forth in this Second Amendment.

Pronghorn Ranch Homeowners Association,  
an Arizona nonprofit corporation

By: [Signature]  
Name: Luther Krausberger  
Its: President  
Dated: February 15, 2013



STATE OF ARIZONA )  
 ) ss:  
COUNTY OF YAVAPAI )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of February 2013 by Luther Krausberger, the President of Pronghorn Ranch Homeowners Association, an Arizona nonprofit corporation, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

[Signature]  
NOTARY PUBLIC

My Commission will expire 01/31/2017



Recorded at the request of:  
James D. Atkinson



When recorded mail to:  
James D. Atkinson  
Carpenter Hazlewood Delgado & Bolen, P.L.C.  
1550 Plaza West Drive  
Prescott, AZ 86303

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THIRD AMENDMENT TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
PRONGHORN RANCH

THIS THIRD AMENDMENT to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch (the "Third Amendment") is made effective as of the date of its recording in the Official Records of Yavapai County, Arizona.

RECITALS:

A. On June 13, 2002, the Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated June 10, 2002 was recorded in Book 3933, Page 987 of the Official Records of Yavapai County, Arizona, by Antelope Village, L.L.C., an Arizona limited liability company (the "Declarant").

B. On February 25, 2003, the Declarant recorded the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated February 14, 2003, in Book 4005, Page 313, of the Official Records of Yavapai County, Arizona (the "Amended and Restated Declaration"). Except as otherwise defined herein, the capitalized terms used herein shall have the meanings as defined in the Amended and Restated Declaration.

C. On March 3, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated February 27, 2003, in Book 4007, Page 46, of the Official Records of Yavapai County, Arizona (the "First Tract Declaration") annexing the "Annexation Property" (as defined in the First Tract Declaration, the "First Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the First Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the First Tract Declaration.

D. On May 15, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated May 12, 2003, in Book 4031, Page 776, of the Official Records of Yavapai County, Arizona (the "Second Tract Declaration") annexing the "Annexation Property" (as defined in the Second Tract Declaration, the "Second Tract Declaration Annexation Property") as being under the purview of the Amended and Restated

Declaration and declaring the Second Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Second Tract Declaration.

E. On July 17, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated July 15, 2003, in Book 4052, Page 365, of the Official Records of Yavapai County, Arizona (the "Third Tract Declaration") annexing the "Annexation Property" (as defined in the Third Tract Declaration, the "Third Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Third Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Third Tract Declaration.

F. On November 17, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4751, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated November 13, 2003, in Book 4094, Page 380, of the Official Records of Yavapai County, Arizona (the "Fourth Tract Declaration") annexing the "Annexation Property" (as defined in the Fourth Tract Declaration, the "Fourth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Fourth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Fourth Tract Declaration.

G. On May 27, 2004, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated May 27, 2004, in Book 4151, Page 804, of the Official Records of Yavapai County, Arizona (the "Fifth Tract Declaration") annexing the "Annexation Property" (as defined in the Fifth Tract Declaration, the "Fifth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Fifth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Fifth Tract Declaration.

H. On April 14, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated April 14, 2005, in Book 4253, Page 154, of the Official Records of Yavapai County, Arizona (the "Sixth Tract Declaration") annexing the "Annexation Property" (as defined in the Sixth Tract Declaration, the "Sixth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Sixth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Sixth Tract Declaration.

I. On August 3, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated August 3, 2005, in Book 4294, Page 172, of the Official Records of Yavapai County, Arizona (the "Corrective Fifth Tract Declaration") to correct an error in the language of the Fifth Tract Declaration.

J. On August 22, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated August 15, 2005, in Book 4301, Page

592. of the Official Records of Yavapai County, Arizona (the "Corrective Sixth Tract Declaration") to correct an error in the language of the Sixth Tract Declaration.

K. On June 15, 2006, the Declarant recorded the Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated June 7, 2006, in Book 4406, Page 671, of the Official Records of Yavapai County, Arizona (the "First Amendment").

L. On November 1, 2007, the Declarant, First American Title Insurance Agency, as trustee under Trust No. 4933, First American Title Insurance Company, as Trustee under Trust 8308, and Brown Family Communities, an Arizona Limited Partnership, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated October 31, 2007, in Book 4551, Page 545, of the Official Records of Yavapai County, Arizona (the "Seventh Tract Declaration") annexing the "Annexation Property" (as defined in the Seventh Tract Declaration, the "Seventh Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Seventh Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Seventh Tract Declaration.

M. On February 9, 2010, Declarant recorded the Designation as Declarant Affiliate and Removal of Designation as Declarant Affiliate dated February 1, 2010, in Book 4722, Page 691, of the Official Records of Yavapai County, Arizona, pursuant to which Declarant (i) designated STO Investments, LLC ("STO") as a "Declarant Affiliate" effective December 30, 2008 and Benjamin Snyder and Robin Snyder as "Declarant Affiliates" effective October 31, 2007, in each case under Section 1.20 of the Amended and Restated Declaration and (ii) revoking the previous designation of Brown Family Communities as a "Declarant Affiliate" effective as of February 5, 2008 under Section 1.20 of the Amended and Restated Declaration.

N. On January 29, 2013, Declarant recorded the Assignment of Declarant's Rights dated December 20, 2012, in Book 4934, Page 245, of the Official Records of Yavapai County, Arizona, pursuant to which Declarant assigned and transferred to Pronghorn Development, LLC all non-exclusive rights of Declarant under the Amended and Restated Declaration.

O. On February 19, 2013, the Declarant recorded the Second Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch, in Book 4938, Page 440, of the Official Records of Yavapai County, Arizona (the "Second Amendment").

P. On July 31, 2015, the Declarant and Pronghorn Development, LLC, recorded the Amendment to Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, as Document 2015-0036336, of the Official Records of Yavapai County, Arizona to correct an error in the language of the Corrective Sixth Tract Declaration.

Q. Pursuant to Section 17.2 of Article 17 of the Amended and Restated Declaration, the Amended and Restated Declaration may be amended by Recording an amendment, duly executed by the President or Vice President of the Association, which amendment shall set forth

in full the text of the amendment adopted, and, shall certify that, with or without a meeting, Owners representing at least two-thirds (2/3) of the total votes entitled to be cast by the entire Membership consented to or voted affirmatively for such amendment.

R. Any amendment of the Amended and Restated Declaration made during such time as the Declarant is a Member of the Association requires the written approval of the Declarant. As of the date of the recording of this Third Amendment, the Declarant is a Member of the Association.

NOW THEREFORE, the Amended and Restated Declaration is hereby amended as follows:

1. Section 7.1 of Article 7 of the Amended and Restated Declaration entitled "Votes of Owners of Lots and Parcels" is hereby amended in its entirety to provide as follows:

7.1 Votes of Owners of Lots and Parcels. Every Owner of a Lot or Parcel (but not an Owner who owns solely Exempt Property) shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner shall have the following applicable number of votes in regard to votes of the Members of the Association:

In the case of Lots, one (1) vote for each Class A Member and twenty (20) votes for the Class B Member for each Lot owned;

In the case of a Single Family Residential Parcel which has not been divided into Lots by a Recorded subdivision plat or other Recorded instrument, six (6) votes for each Class A Member and twenty (20) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounded to the nearest whole vote with each Member to have at least one whole vote).

In the case of a Residential Condominium Development Parcel for which a condominium declaration has not been Recorded, six (6) votes for each Class A Member and twenty (20) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounded to the nearest whole vote with each Member to have at least one whole vote).

In the case of a an Apartment Parcel upon which construction has not yet been completed, six (6) votes for each Class A Member and twenty (20) votes for the Class B Member for each Net Acre owned within such Parcel (in the case of fractional Net Acres, rounded to the nearest whole vote with each Member to have at least one whole vote); provided, however, that upon completion of construction upon an Apartment Parcel, the Class A Owner thereof shall have the greater of six (6) votes for each Net Acre or one-half (1/2) of a vote for each Apartment Unit built upon the Parcel, with the Class B Member to continue to have twenty (20) votes for each Net Acre owned within the Parcel.

If a subdivision plat, condominium declaration or other instrument creating Lots is Recorded which covers all or part of a Parcel, then the votes attributable to the Lots shall be determined as set forth above. If a subdivision plat, condominium declaration or other instrument creating Lots for such Parcel is later Recorded showing a different number of Lots, the number of votes shall be adjusted to reflect the actual number of Lots as set forth in the Recorded subdivision plat, condominium declaration or other instrument creating Lots. All votes attributed to an unsubdivided Parcel as a "Parcel" shall cease and be made applicable to Lots when all of the area is platted or otherwise divided into Lots.

Solely for purposes of determining the votes of the Class B Member, all land within the Annexable Land shall be considered, and solely for such purposes, the areas planned for development therein shall be deemed Parcels, with voting rights determined on an acreage basis. Should Declarant record a binding declaration waiving rights of annexation, or should such rights expire, then and only then shall such land not be included in calculating voting right of the Class B Member.

2. Section 7.4 of Article 7 of the Amended and Restated Declaration entitled "Voting Classes" is hereby amended in its entirety to provide as follows:

7.4 Voting Classes. The Association shall have two classes of voting Members:

7.4.1 Class A. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1. Notwithstanding the foregoing, a Class A Member shall not be entitled to vote with respect to any Lots or Parcels in regard to which the Owner is paying only a reduced Assessment pursuant to Section 8.3.1 unless otherwise determined in writing by Declarant in its sole discretion on a case by case basis, and Declarant's determination in such regard shall be final and conclusive. In order to effectively pursue the development of the Covered Property as contemplated in the Master Development Plan, and solely for the purposes of calculating voting rights of the Class B Member pursuant to this Article, Declarant shall at all times during the pendency of the Class B Membership be deemed to possess, in addition to its votes by reason of its ownership of Lots and Parcels, those additional twenty to one weighted votes determined by assuming that Declarant is the Owner of those Lots and Parcels owned by a Developer Owner paying partial or reduced Assessments pursuant to Section 8.3.1 below (and not determined by Declarant to have voting rights); provided, however, that upon expiration of the Class B Membership, Declarant shall be deemed to have relinquished its votes with respect to Lots or Parcels owned by Class A Members paying reduced Assessments pursuant to Section 8.3.1, in which case said Class A Members shall have the votes Class A Members would otherwise have with respect to such Lots or Parcels.

7.4.2 Class B. The Class B Member(s) shall be any entity which is included in the definition of Declarant that owns any portion of the Covered Property. The Class B Member(s) shall have the number of votes as provided in Section 7.1 of this Declaration for all property owned in the Covered Property identified herein or in a Tract Declaration. The Class B Membership shall terminate and be converted to a Class A Membership upon the happening of the first of the following events:

(a) subject to the provisions of Section 7.4.1 above, the date which is 120 days after the date upon which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Member(s) (including the twenty to one weighted votes Declarant is entitled to cast as a result of Developer Owners paying partial Assessments as provided herein);

(b) February 25, 2023; or

(c) the date on which the Class B Member(s) relinquishes its Class B Membership by notifying the Class A Members in writing.

The Class B Membership shall revive if, once the Class B previously expired, subsequent acquisitions, annexations or other events should cause the votes of the Class B Member to exceed those of the Class A Members, allowing the same weighted voting previously allowed to the Class B Member for all Lots and Parcels owned.

Declarant shall have the right to assign its rights and privileges as the Declarant and as the Class B Member, which assignment may be in whole or in part. Such assignment may include the special voting provisions set forth herein.

3. Section 8.3.1 of Article 8 of the Amended and Restated Declaration entitled "Obligation of Developer Owner" is hereby amended to add the following paragraph:

In the event the Declarant designates DH Pronghorn, LLC, an Arizona limited liability company ("DH Pronghorn, LLC") as a Developer Owner in accordance with this Declaration, notwithstanding anything to the contrary contained in this Section 8.3.1 or in any other provision of this Declaration, DH Pronghorn, LLC:

- (i) shall remain a Developer Owner for so long as DH Pronghorn, LLC owns any Parcel or Lot for development within the Covered Property; and
- (ii) shall not be required to pay any of the Annual Assessments and Special Assessments for any Parcel owned by DH Pronghorn, LLC; and
- (iii) shall not be required to pay any of the Annual Assessments and Special Assessments for a Lot owned by DH Pronghorn, LLC until the date the Town of Prescott Valley, Arizona issues to DH Pronghorn, LLC a building permit for the construction of a Dwelling Unit thereon, and
- (iv) shall be required to pay only fifty percent (50%) of the Annual Assessments and Special Assessments for a Lot owned by DH Pronghorn,

LLC from the date the Town of Prescott Valley, Arizona issues to DH Pronghorn, LLC a building permit for the construction of a Dwelling Unit thereon until the date of the transfer of the title to such Lot to another Owner.

The provisions set forth in this paragraph of Section 8.3.1 may be not amended without the written consent of DH Pronghorn, LLC.

4. Section 17.2 of Article 17 of the Amended and Restated Declaration entitled "Amendments" is hereby amended in its entirety to provide as follows:

17.2 Amendments.

17.2.1 Until the termination of the Class B Membership in the Association, this Declaration and any subdivision plat may only be amended by the Declarant which may amend this Declaration and any subdivision plat without the consent or approval of any other Owner.

17.2.2 After the termination of the Class B Membership in the Association, this Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners representing more than sixty-seven percent (67%) of the total votes in the Association, except for amendments made pursuant to Section 17.2.3 of this Declaration.

17.2.3 So long as the Declarant owns any Parcel or Lot, the Declarant, and thereafter, the Board, may amend this Declaration and any Recorded subdivision plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the subdivision plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the development of the Covered Property, the subdivision plat or this Declaration, the Articles or the Bylaws is required by law or requested by the Declarant or the Board.

17.2.4 So long as the Declarant owns any Parcel or Lot, any amendment to this Declaration or any subdivision plat must be approved in writing by the Declarant.

17.2.5 Any amendment approved pursuant to Section 17.2.2 of this Declaration or by the Board pursuant to Section 17.2.3 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Yavapai County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Unless a later effective date is provided for in the amendment, any such amendment shall be effective upon the Recording of the amendment. Any amendment made by the Declarant pursuant to Section 17.2.1 or 17.2.3 of this

Declaration shall be executed by the Declarant and shall be recorded with the County Recorder of Yavapai County, Arizona.

5. Each Owner consenting to this Third Amendment is conclusively presumed to have the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such consent to this Third Amendment.
6. Except as specifically modified by this Third Amendment, the Amended and Restated Declaration shall remain in full force and effect in accordance with its terms. In the event of any conflict or inconsistency between the terms of this Third Amendment and the Amended and Restated Declaration the terms of this Third Amendment shall control.

[SIGNATURES ON THE FOLLOWING PAGES]



IN WITNESS WHEREOF, Declarant has caused this Third Amendment to be duly executed on the 31 day of March 2016.

Antelope Village, L.L.C., an Arizona limited liability company

By: Robeki Holdings, LLC, an Arizona limited liability company, Its Manager

By: [Signature]

Name: Benjamin G. Snyder, Jr.

Its: Member

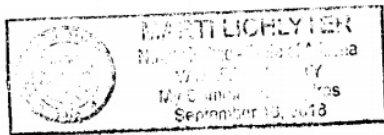
STATE OF ARIZONA )  
 ) ss:  
COUNTY OF YAVAPAI )

The foregoing instrument was acknowledged before me this 30 day of March 2016 by Benjamin G. Snyder, Jr., Member of Robeki Holdings, LLC, an Arizona limited liability company, the Manager of Antelope Village, L.L.C., an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

[Signature]  
NOTARY PUBLIC

My Commission will expire 9-16, 2018



IN WITNESS WHEREOF, Declarant has caused this Third Amendment to be duly executed on the 31 day of March 2016.

Pronghorn Development LLC, an Arizona limited liability company

By: Thomas Anthony Corkery  
Name: Thomas Anthony Corkery  
Its: Manager

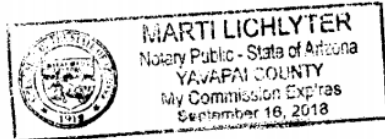
STATE OF ARIZONA )  
 ) ss:  
COUNTY OF YAVAPAI )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of March 2016 by Thomas Anthony Corkery, the Manager of Pronghorn Development, LLC, an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

Marti Lichlyter  
NOTARY PUBLIC

My Commission will expire 9-14, 2018



IN WITNESS WHEREOF, Declarant Affiliate has caused this Third Amendment to be  
duly executed on the 31 day of MARCH 2016.

Pronghorn Holdings, L.L.C., an Arizona limited  
liability company

By: Robeki Holdings, LLC, an Arizona limited  
liability company, Its Manager

By: [Signature]  
Name: Benjamin G. Snyder, Jr.  
Its: Member

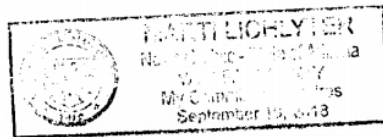
STATE OF ARIZONA                    )  
  ) ss:  
COUNTY OF YAVAPAI                )

The foregoing instrument was acknowledged before me this 30 day of March 2016 by  
Benjamin G. Snyder, Jr., Member of Robeki Holdings, LLC, an Arizona limited liability  
company, the Manager of Pronghorn Holdings, L.L.C., an Arizona limited liability company, the  
person to me known as the person described in and who executed the foregoing instrument and  
acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

[Signature]  
NOTARY PUBLIC

My Commission will expire 9-16, 2018



IN WITNESS WHEREOF, Declarant Affiliate has caused this Third Amendment to be duly executed on the 31 day of March 2016.

STO Investments, LLC, an Arizona limited liability company

By: [Signature]  
Name: Benjamin G. Snyder, Jr.  
Its: Manager

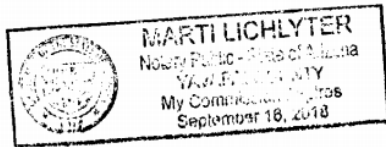
STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF YAVAPAI        )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of March 2016 by Benjamin G. Snyder, Jr., the Manager of STO Investments, LLC, an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

[Signature]  
NOTARY PUBLIC

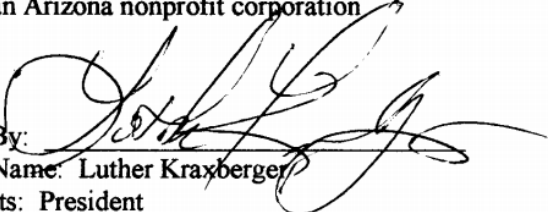
My Commission will expire 9-16, 2018



CERTIFICATION

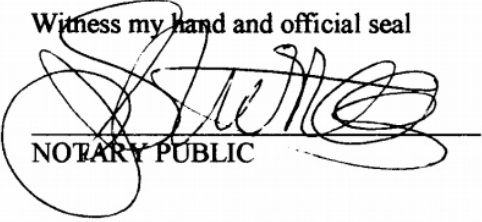
The undersigned executes this Third Amendment to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch for the purpose of certifying that Owners representing at least two-thirds (2/3) of the total votes entitled to be cast by the entire Membership consented to or voted affirmatively for the amendments set forth in this Third Amendment.

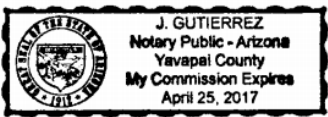
Pronghorn Ranch Homeowners Association,  
an Arizona nonprofit corporation

By:   
Name: Luther Kraxberger  
Its: President  
Dated: 2/1, 2016

STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF YAVAPAI        )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of April 2016 by Luther Kraxberger, the President of Pronghorn Ranch Homeowners Association, an Arizona nonprofit corporation, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal  
  
NOTARY PUBLIC



My Commission will expire 4/25, 2017

**Recording requested by**  
**Empire West Title**

When recorded mail to:  
Carpenter Hazlewood Delgado & Bolen, LLP  
1550 Plaza West Drive  
Prescott, AZ 86303

*35359 EW-ML*  
*3 of 6*

FOURTH AMENDMENT TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
PRONGHORN RANCH

THIS FOURTH AMENDMENT to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch (the "Fourth Amendment") is made effective as of the date of its recording in the Official Records of Yavapai County, Arizona.

RECITALS:

A. On June 13, 2002, the Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated June 10, 2002 was recorded in Book 3933, Page 987 of the Official Records of Yavapai County, Arizona, by Antelope Village, L.L.C., an Arizona limited liability company (the "Declarant").

B. On February 25, 2003, the Declarant recorded the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated February 14, 2003, in Book 4005, Page 313, of the Official Records of Yavapai County, Arizona (the "Amended and Restated Declaration").

C. On March 3, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated February 27, 2003, in Book 4007, Page 46, of the Official Records of Yavapai County, Arizona (the "First Tract Declaration") annexing the "Annexation Property" (as defined in the First Tract Declaration, the "First Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the First Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the First Tract Declaration.

D. On May 15, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated May 12, 2003, in Book 4031, Page 776, of the Official Records of Yavapai County, Arizona (the "Second Tract Declaration") annexing the "Annexation Property" (as defined in the Second Tract Declaration, the "Second Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Second Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Second Tract Declaration.

E. On July 17, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated July 15, 2003, in Book 4052, Page 365, of the Official Records of Yavapai County, Arizona (the "Third Tract Declaration") annexing the "Annexation Property" (as defined in the Third Tract Declaration, the "Third Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Third Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Third Tract Declaration.

F. On November 17, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4751, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated November 13, 2003, in Book 4094, Page 380, of the Official Records of Yavapai County, Arizona (the "Fourth Tract Declaration") annexing the "Annexation Property" (as defined in the Fourth Tract Declaration, the "Fourth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Fourth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Fourth Tract Declaration.

G. On May 27, 2004, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated May 27, 2004, in Book 4151, Page 804, of the Official Records of Yavapai County, Arizona (the "Fifth Tract Declaration") annexing the "Annexation Property" (as defined in the Fifth Tract Declaration, the "Fifth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Fifth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Fifth Tract Declaration.

H. On April 14, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated April 14, 2005, in Book 4253, Page 154, of the Official Records of Yavapai County, Arizona (the "Sixth Tract Declaration") annexing the "Annexation Property" (as defined in the Sixth Tract Declaration, the "Sixth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Sixth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Sixth Tract Declaration.

I. On August 3, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated August 3, 2005, in Book 4294, Page 172, of the Official Records of Yavapai County, Arizona (the "Corrective Fifth Tract Declaration") to correct an error in the language of the Fifth Tract Declaration.

J. On August 22, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated August 15, 2005, in Book 4301, Page 592, of the Official Records of Yavapai County, Arizona (the "Corrective Sixth Tract Declaration") to correct an error in the language of the Sixth Tract Declaration.

K. On June 15, 2006, the Declarant recorded the Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated June 7, 2006, in Book 4406, Page 671, of the Official Records of Yavapai County, Arizona (the "First Amendment").

L. On November 1, 2007, the Declarant, First American Title Insurance Agency, as trustee under Trust No. 4933, First American Title Insurance Company, as Trustee under Trust 8308, and Brown Family Communities, an Arizona Limited Partnership, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated October 31, 2007, in Book 4551, Page 545, of the Official Records of Yavapai County, Arizona (the "Seventh Tract Declaration") annexing the "Annexation Property" (as defined in the Seventh Tract Declaration, the "Seventh Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Seventh Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Seventh Tract Declaration.

M. On February 9, 2010, Declarant recorded the Designation as Declarant Affiliate and Removal of Designation as Declarant Affiliate dated February 1, 2010, in Book 4722, Page 691, of the Official Records of Yavapai County, Arizona, pursuant to which Declarant (i) designated STO Investments, LLC ("STO") as a "Declarant Affiliate" effective December 30, 2008 and Benjamin Snyder and Robin Snyder as "Declarant Affiliates" effective October 31, 2007, in each case under Section 1.20 of the Amended and Restated Declaration and (ii) revoking the previous designation of Brown Family Communities as a "Declarant Affiliate" effective as of February 5, 2008 under Section 1.20 of the Amended and Restated Declaration.

N. On January 29, 2013, Declarant recorded the Assignment of Declarant's Rights dated December 20, 2012, in Book 4934, Page 245, of the Official Records of Yavapai County, Arizona, pursuant to which Declarant assigned and transferred to Pronghorn Development, LLC ("Pronghorn Development Declarant") all non-exclusive rights of Declarant under the Amended and Restated Declaration.

O. On February 19, 2013, the Declarant and Pronghorn Development Declarant recorded the Second Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch, in Book 4938, Page 440, of the Official Records of Yavapai County, Arizona (the "Second Amendment").

P. On July 31, 2015, the Declarant and Pronghorn Development Declarant recorded the Amendment to Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, as Document 2015-0036336, of the Official Records of Yavapai County, Arizona to correct an error in the language of the Corrective Sixth Tract Declaration.

Q. On April 7, 2016, Pronghorn Ranch Homeowners Association (the "Association"), Declarant and Pronghorn Development Declarant recorded the Third Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch, as Document No. 2016-0016116, of the Official Records of Yavapai County, Arizona (the "Third Amendment"). The Amended and Restated Declaration as



amended by the First Amendment, the Second Amendment and the Third Amendment is hereinafter referred to as the "Amended Amended and Restated Declaration." Except as otherwise defined herein, the capitalized terms used herein shall have the meanings as defined in the Amended Amended and Restated Declaration.

R. On March 22, 2017, Pronghorn Development Declarant and DH Pronghorn, LLC, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, as Document 2017-0014051 RES, of the Official Records of Yavapai County, Arizona (the "Eighth Tract Declaration") annexing the "Unit XVI Annexation Property" (as defined in the Eighth Tract Declaration, the "Eighth Tract Declaration Annexation Property") as being under the purview of the Amended Amended and Restated Declaration and declaring the Eighth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Eighth Tract Declaration.

S. Pursuant to Section 17.2.1 of the Amended Amended and Restated Declaration, until the termination of the Class B Membership in the Association the Amended Amended and Restated Declaration may only be amended by Declarant and Pronghorn Development Declarant which may amend the Amended Amended and Restated Declaration without the consent or approval of any other Owner.

T. The Class B Membership in the Association has not terminated as of the date of the recording of this Fourth Amendment.

NOW THEREFORE, Declarant and Pronghorn Development Declarant hereby amend the Amended Amended and Restated Declaration as follows:

1. Section 8.3.1 of Article 8 of the Amended Amended and Restated Declaration titled "Obligation of Developer Owner" is hereby amended to add the following paragraph:

In the event the Declarant designates Pronghorn Land, LLC ("Pronghorn Land, LLC") as a Developer Owner in accordance with this Declaration, notwithstanding anything to the contrary contained in this Section 8.3.1 or in any other provision of this Declaration, Pronghorn Land, LLC:

- (i) shall remain a Developer Owner for so long as Pronghorn Land, LLC owns any Parcel or Lot for development within the Covered Property; and
- (ii) shall not be required to pay any of the Annual Assessments and Special Assessments for any Parcel owned by Pronghorn Land, LLC; and
- (iii) shall not be required to pay any of the Annual Assessments and Special Assessments for a Lot owned by Pronghorn Land, LLC until the date the Town of Prescott Valley, Arizona issues to Pronghorn Land, LLC a building permit for the construction of a Dwelling Unit thereon, and
- (iv) shall be required to pay only fifty percent (50%) of the Annual Assessments and Special Assessments for a Lot owned by Pronghorn Land, LLC from the date the Town of Prescott Valley, Arizona issues to Pronghorn Land, LLC a building permit for the construction of a Dwelling

Unit thereon until the date of the transfer of the title to such Lot to another Owner.

The provisions set forth in this paragraph of Section 8.3.1 may be not amended without the written consent of Pronghorn Land, LLC.

2. Except as specifically modified by this Fourth Amendment, the Amended Amended and Restated Declaration shall remain in full force and effect in accordance with its terms. In the event of any conflict or inconsistency between the terms of this Fourth Amendment and the Amended Amended and Restated Declaration, the terms of this Fourth Amendment shall control.

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, Declarant has caused this Fourth Amendment to be duly executed on the 9th day of January 2018.

Antelope Village, L.L.C., an Arizona limited liability company

By: Robeki Holdings, LLC, an Arizona limited liability company, Its Manager

By: [Signature]  
Name: Benjamin G. Snyder, Jr.  
Its: Manager

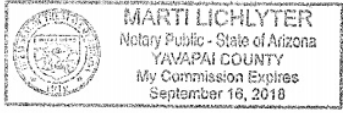
STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF YAVAPAI        )

The foregoing instrument was acknowledged before me this 9th day of January 2018 by Benjamin G. Snyder, Jr., the Manager of Robeki Holdings, LLC, an Arizona limited liability company, the Manager of Antelope Village, L.L.C., an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

[Signature]  
NOTARY PUBLIC

My Commission will expire 9-16, 2018



IN WITNESS WHEREOF, Declarant has caused this Fourth Amendment to be duly executed on the 9th day of January 2018.

Pronghorn Development LLC, an Arizona limited liability company

By: Robina LLC, an Arizona limited liability company, Its Manager

By: [Signature]  
Name: Benjamin G. Snyder, Jr.  
Its: Manager

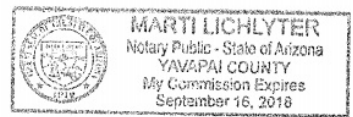
STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF YAVAPAI        )

The foregoing instrument was acknowledged before me this 9th day of January 2018 by Benjamin G. Snyder, Jr., the Manager of Robina LLC, an Arizona limited liability company, the manager of Pronghorn Development, LLC, an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

[Signature]  
NOTARY PUBLIC

My Commission will expire 9-16, 20 18



IN WITNESS WHEREOF, Declarant Affiliate has caused this Fourth Amendment to be duly executed on the 9<sup>th</sup> day of January 2018.

Pronghorn Holdings, L.L.C., an Arizona limited liability company

By: Robeki Holdings, LLC, an Arizona limited liability company, Its Manager

By: [Signature]  
Name: Benjamin G. Snyder, Jr.  
Its: Manager

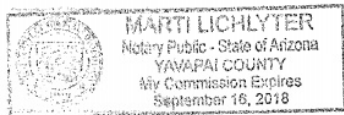
STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF YAVAPAI        )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January 2018 by Benjamin G. Snyder, Jr., the Manager of Robeki Holdings, LLC, an Arizona limited liability company, the Manager of Pronghorn Holdings, L.L.C., an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

[Signature]  
NOTARY PUBLIC

My Commission will expire 9-16, 2018



IN WITNESS WHEREOF, Declarant Affiliate has caused this Fourth Amendment to be duly executed on the 9<sup>th</sup> day of January 2018.

STO Investments, LLC, an Arizona limited liability company

By: [Signature]  
Name: Benjamin G. Snyder, Jr.  
Its: Manager

STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF YAVAPAI        )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January 2018 by Benjamin G. Snyder, Jr., the Manager of STO Investments, LLC, an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

[Signature]  
NOTARY PUBLIC

My Commission will expire 9-16, 20 18



When recorded mail to:  
Carpenter Hazlewood Delgado & Bolen, L.L.P.  
1550 Plaza West Drive  
Prescott, AZ 86303



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FIFTH AMENDMENT TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
PRONGHORN RANCH

THIS FIFTH AMENDMENT to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch (the "Fifth Amendment") is made effective as of the date of its recording in the Official Records of Yavapai County, Arizona.

RECITALS:

A. On June 13, 2002, the Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated June 10, 2002 was recorded in Book 3933, Page 987 of the Official Records of Yavapai County, Arizona, by Antelope Village, L.L.C., an Arizona limited liability company (the "Declarant").

B. On February 25, 2003, the Declarant recorded the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated February 14, 2003, in Book 4005, Page 313, of the Official Records of Yavapai County, Arizona (the "Amended and Restated Declaration").

C. On March 3, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated February 27, 2003, in Book 4007, Page 46, of the Official Records of Yavapai County, Arizona (the "First Tract Declaration") annexing the "Annexation Property" (as defined in the First Tract Declaration, the "First Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the First Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the First Tract Declaration.

D. On May 15, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated May 12, 2003, in Book 4031, Page 776, of the Official Records of Yavapai County, Arizona (the "Second Tract Declaration") annexing the "Annexation Property" (as defined in the Second Tract Declaration, the "Second Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Second Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Second Tract Declaration.

E. On July 17, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated July 15, 2003, in Book 4052, Page 365, of the Official Records of Yavapai County, Arizona (the "Third Tract Declaration") annexing the "Annexation Property" (as defined in the Third Tract Declaration, the "Third Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Third Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Third Tract Declaration.

F. On November 17, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4751, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated November 13, 2003, in Book 4094, Page 380, of the Official Records of Yavapai County, Arizona (the "Fourth Tract Declaration") annexing the "Annexation Property" (as defined in the Fourth Tract Declaration, the "Fourth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Fourth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Fourth Tract Declaration.

G. On May 27, 2004, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated May 27, 2004, in Book 4151, Page 804, of the Official Records of Yavapai County, Arizona (the "Fifth Tract Declaration") annexing the "Annexation Property" (as defined in the Fifth Tract Declaration, the "Fifth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Fifth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Fifth Tract Declaration.

H. On April 14, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated April 14, 2005, in Book 4253, Page 154, of the Official Records of Yavapai County, Arizona (the "Sixth Tract Declaration") annexing the "Annexation Property" (as defined in the Sixth Tract Declaration, the "Sixth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Sixth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Sixth Tract Declaration.

I. On August 3, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated August 3, 2005, in Book 4294, Page 172, of the Official Records of Yavapai County, Arizona (the "Corrective Fifth Tract Declaration") to correct an error in the language of the Fifth Tract Declaration.

J. On August 22, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated August 15, 2005, in Book 4301, Page 592, of the Official Records of Yavapai County, Arizona (the "Corrective Sixth Tract Declaration") to correct an error in the language of the Sixth Tract Declaration.



K. On June 15, 2006, the Declarant recorded the Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated June 7, 2006, in Book 4406, Page 671, of the Official Records of Yavapai County, Arizona (the "First Amendment").

L. On November 1, 2007, the Declarant, First American Title Insurance Agency, as trustee under Trust No. 4933, First American Title Insurance Company, as Trustee under Trust 8308, and Brown Family Communities, an Arizona Limited Partnership, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated October 31, 2007, in Book 4551, Page 545, of the Official Records of Yavapai County, Arizona (the "Seventh Tract Declaration") annexing the "Annexation Property" (as defined in the Seventh Tract Declaration, the "Seventh Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Seventh Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Seventh Tract Declaration.

M. On February 9, 2010, Declarant recorded the Designation as Declarant Affiliate and Removal of Designation as Declarant Affiliate dated February 1, 2010, in Book 4722, Page 691, of the Official Records of Yavapai County, Arizona, pursuant to which Declarant (i) designated STO Investments, LLC ("STO") as a "Declarant Affiliate" effective December 30, 2008 and Benjamin Snyder and Robin Snyder as "Declarant Affiliates" effective October 31, 2007, in each case under Section 1.20 of the Amended and Restated Declaration and (ii) revoking the previous designation of Brown Family Communities as a "Declarant Affiliate" effective as of February 5, 2008 under Section 1.20 of the Amended and Restated Declaration.

N. On January 29, 2013, Declarant recorded the Assignment of Declarant's Rights dated December 20, 2012, in Book 4934, Page 245, of the Official Records of Yavapai County, Arizona, pursuant to which Declarant assigned and transferred to Pronghorn Development, LLC ("Pronghorn Development Declarant") all non-exclusive rights of Declarant under the Amended and Restated Declaration.

O. On February 19, 2013, the Declarant and Pronghorn Development Declarant recorded the Second Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch, in Book 4938, Page 440, of the Official Records of Yavapai County, Arizona (the "Second Amendment").

P. On July 31, 2015, the Declarant and Pronghorn Development Declarant recorded the Amendment to Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, as Document 2015-0036336, of the Official Records of Yavapai County, Arizona to correct an error in the language of the Corrective Sixth Tract Declaration.

Q. On April 7, 2016, Pronghorn Ranch Homeowners Association (the "Association"), Declarant and Pronghorn Development Declarant recorded the Third Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch, as Document No. 2016-0016116, of the Official Records of Yavapai County, Arizona (the "Third Amendment"). The Amended and Restated Declaration as

amended by the First Amendment, the Second Amendment and the Third Amendment is hereinafter referred to as the "Amended Amended and Restated Declaration." Except as otherwise defined herein, the capitalized terms used herein shall have the meanings as defined in the Amended Amended and Restated Declaration.

R. On March 22, 2017, Pronghorn Development Declarant and DH Pronghorn, LLC, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, as Document 2017-0014051 RES, of the Official Records of Yavapai County, Arizona (the "Eighth Tract Declaration") annexing the "Unit XVI Annexation Property" (as defined in the Eighth Tract Declaration, the "Eighth Tract Declaration Annexation Property") as being under the purview of the Amended Amended and Restated Declaration and declaring the Eighth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Eighth Tract Declaration.

S. On January 10, 2018, Declarant and Pronghorn Development Declarant recorded the Fourth Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch, as Document No. 2018-0001599, of the Official Records of Yavapai County, Arizona (the "Fourth Amendment"). The Amended and Restated Declaration as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment is hereinafter referred to as the "Amended Amended and Restated Declaration." Except as otherwise defined herein, the capitalized terms used herein shall have the meanings as defined in the Amended Amended and Restated Declaration.

T. Pursuant to Section 17.2.1 of the Amended Amended and Restated Declaration, until the termination of the Class B Membership in the Association the Amended Amended and Restated Declaration may only be amended by Declarant and Pronghorn Development Declarant who may amend the Amended Amended and Restated Declaration without the consent or approval of any other Owner.

U. The Class B Membership in the Association has not terminated as of the date of the recording of this Fifth Amendment.

NOW THEREFORE, Declarant and Pronghorn Development Declarant hereby amend the Amended Amended and Restated Declaration as follows:

1. Section 5.2.26 of Article 5 of the Amended Amended and Restated Declaration titled "Leasing" is hereby amended in its entirety to provide as follows:

5.2.26 Leasing. The leasing of Dwelling Units, Apartment Units, Condominium Units, Lots and Parcels shall be subject to the following restrictions and limitations:

(a) As used herein, the term "Lease" is defined to include all agreements, contracts, grants, memorandums, conveyances, lets, assignments, or rents that give a non-Owner of a Dwelling Unit, Apartment Unit, Condominium Unit, Lot or Parcel access to or right to use a Dwelling Unit, Apartment Unit,

Condominium Unit, Lot or Parcel. A Lease may exist whether it is in writing, or not, and regardless of the amount or nature of consideration exchanged to enjoy the benefit of a Lease. The Board's determination of what constitutes a Lease and what constitutes the leasing or subleasing of a Dwelling Unit, Apartment Unit, Condominium Unit, Lot or Parcel shall be conclusive and binding on the Owner of the Dwelling Unit, Apartment Unit, Condominium Unit, Lot or Parcel.

(b) No Owner shall lease a Dwelling Unit, Apartment Unit, Condominium Unit, Lot or Parcel for a Lease term of less than thirty (30) days.

(c) No Owner may lease less than the Owner's entire Dwelling Unit, Apartment Unit, Condominium Unit, Lot or Parcel.

(d) An Owner may lease his Dwelling Unit, Apartment Unit, Condominium Unit, Lot or Parcel only to a Single Family.

(e) No Dwelling Unit, Apartment Unit, Condominium Unit, Lot or Parcel or any portion thereof may be subleased.

(f) The Owner of the leased Dwelling Unit, Apartment Unit, Condominium Unit, Lot or Parcel shall remain responsible for compliance by the Owner's Tenants, guests and the Tenant's and guest's family and guests with the Declaration, the Bylaws, the Association Rules and all applicable federal, state and local statutes, ordinances and regulations and shall be responsible for any violations thereof by his Tenants, guest or his Tenants' and guest's family or guests.

(g) Subject to the provisions of this Declaration, the Board shall be entitled to adopt, amend and repeal Association Rules governing the leasing of Dwelling Units, Condominium Units, Apartment Units, Lots and Parcels.

2. Section 7.4.2 of Article 7 of the Amended Amended and Restated Declaration titled "Class B" is hereby amended in its entirety to provide as follows:

7.4.2 Class B. The Class B Member(s) shall be any entity which is included in the definition of Declarant that owns any portion of the Covered Property. The Class B Member(s) shall have the number of votes as provided in Section 7.1 of this Declaration for all property owned in the Covered Property identified herein or in a Tract Declaration. The Class B Membership shall terminate and be converted to a Class A Membership upon the happening of the first of the following events:

(a) subject to the provisions of Section 7.4.1 above, the date which is 120 days after the date upon which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Member(s) (including the twenty-to-one weighted votes Declarant is entitled to cast as a result of Developer Owners paying partial Assessments as provided herein);

(b) December 31, 2028; or

(c) the date on which the Class B Member(s) relinquishes its Class B Membership by notifying the Class A Members in writing.

The Class B Membership shall revive if, once the Class B previously expired, subsequent acquisitions, annexations or other events should cause the votes of the Class B Member to exceed those of the Class A Members, allowing the same weighted voting previously allowed to the Class B Member for all Lots and Parcels owned.

Declarant shall have the right to assign its rights and privileges as the Declarant and as the Class B Member, which assignment may be in whole or in part. Such assignment may include the special voting provisions set forth herein.

3. The first sentence of Section 8.5.2 of Article 8 of the Amended Amended and Restated Declaration titled "Reserve Fee" is hereby amended in its entirety to provide as follows:

To ensure that the Association shall have adequate reserves and for any other expenses the Board deems appropriate, each purchaser of a Lot or Parcel upon which the construction of improvements is complete, as evidenced by a certificate of occupancy or similar instrument which allows the Lot or Parcel to be used as a residence or in a trade or business, shall pay to the Association immediately upon becoming the Owner of the Lot or Parcel an amount established by the Board, from time to time in its sole discretion (the "Reserve Fee"); provided however, that the Reserve Fee shall not exceed an amount equal to .0065 of the gross sales price of the Lot or Parcel.

4. The last paragraph of Section 11.1.1 of Article 11 of the Amended Amended and Restated Declaration titled "Areas of Association Responsibility" is hereby amended in its entirety to provide as follows:

The Association shall also maintain any license or easement areas near or adjacent to the Covered Property, including any facilities and Improvements therein, which may consist of entry monuments, special entry features, gated entries, shared driveways, detention basins, ponds and other drainage facilities and similar features, for which the Association shall assume the maintenance obligations under the agreements creating such licenses or easements.

5. The first sentence of Section 18.1 of Article 18 of the Amended Amended and Restated Declaration titled "Annexation by Declarant" is hereby amended in its entirety to provide as follows:

Declarant may at its sole discretion and without the approval, assent, or vote of the Association or other Owners, from time to time until December 31, 2028,

annex to the Covered Property any Annexable Property or any portion or portions thereof.

6. Except as specifically modified by this Fifth Amendment, the Amended Amended and Restated Declaration shall remain in full force and effect in accordance with its terms. In the event of any conflict or inconsistency between the terms of this Fifth Amendment and the Amended Amended and Restated Declaration, the terms of this Fifth Amendment shall control.

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, Declarant has caused this Fourth Amendment to be duly executed on the 13 day of February 2018.

Antelope Village, L.L.C., an Arizona limited liability company

By: Robeki Holdings, L.L.C. an Arizona limited liability company, Its Manager

By: [Signature]  
Name: Benjamin G. Snyder, Jr.  
Its: Manager

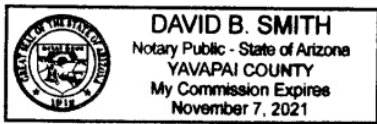
STATE OF ARIZONA )  
 ) ss:  
COUNTY OF YAVAPAI )

The foregoing instrument was acknowledged before me this 13 day of February 2018 by Benjamin G. Snyder, Jr., the Manager of Robeki Holdings, L.L.C. an Arizona limited liability company, the Manager of Antelope Village, L.L.C., an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

[Signature]  
NOTARY PUBLIC

My Commission will expire 7 NOV. 2021



IN WITNESS WHEREOF, Declarant has caused this Fourth Amendment to be duly executed on the 13 day of February 2017.

Pronghorn Development LLC, an Arizona limited liability company

By: Robina LLC, an Arizona limited liability company, Its Manager

By: [Signature]  
Name: Benjamin G. Snyder, Jr.  
Its: Manager

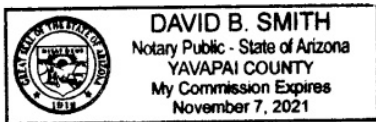
STATE OF ARIZONA )  
 ) ss:  
COUNTY OF YAVAPAI )

The foregoing instrument was acknowledged before me this 13 day of February 2018 by Benjamin G. Snyder, Jr., the Manager of Robina LLC, an Arizona limited liability company, the manager of Pronghorn Development, LLC, an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

[Signature]  
NOTARY PUBLIC


My Commission will expire 7 Nov. 2021



IN WITNESS WHEREOF, Declarant Affiliate has caused this Fourth Amendment to be duly executed on the 13 day of February 2018.

Pronghorn Holdings, L.L.C., an Arizona limited liability company

By: Robeki Holdings, L.L.C. an Arizona limited liability company, Its Manager

By:   
Name: Benjamin G. Snyder, Jr.  
Its: Manager

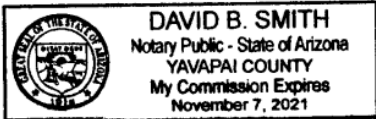
STATE OF ARIZONA                    )  
  ) ss:  
COUNTY OF YAVAPAI                )

The foregoing instrument was acknowledged before me this 13 day of February 2018 by Benjamin G. Snyder, Jr., the Manager of Robeki Holdings, L.L.C. an Arizona limited liability company, the Manager of Pronghorn Holdings, L.L.C., an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

  
NOTARY PUBLIC


My Commission will expire Nov 7, 2021





IN WITNESS WHEREOF, Declarant Affiliate has caused this Fourth Amendment to be duly executed on the 13 day of February 2018.

STO Investments, L.I.C. an Arizona limited liability company

By:   
Name: Benjamin G. Snyder, Jr.  
Its: Manager

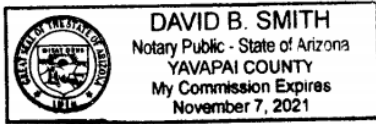
STATE OF ARIZONA                    )  
  ) ss:  
COUNTY OF YAVAPAI                )

The foregoing instrument was acknowledged before me this 13 day of February 2018 by Benjamin G. Snyder, Jr., the Manager of STO Investments, L.I.C. an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said company.

Witness my hand and official seal

  
NOTARY PUBLIC

My Commission will expire Nov 7, 20 21



Recorded at the request of:  
James D. Atkinson

When recorded mail to:  
James D. Atkinson  
Carpenter Hazlewood Delgado & Bolen, P.L.C.  
1550 Plaza West Drive  
Prescott, AZ 86303

*55352EW-ML*

**TRACT DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
PRONGHORN RANCH**

This Tract Declaration (the "Tract Declaration") is made this 24<sup>th</sup> day of January 2018, by PRONGHORN DEVELOPMENT, LLC, an Arizona limited liability company ("Pronghorn Development Declarant") and PRONGHORN LAND, LLC, an Arizona limited liability company ("Pronghorn Land").

**RECITALS**

A. On June 13, 2002, the Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated June 10, 2002 was recorded in Book 3933, Page 987 of the Official Records of Yavapai County, Arizona, by Antelope Village, L.L.C., an Arizona limited liability company (the "Declarant").

B. On February 25, 2003, the Declarant recorded the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated February 14, 2003, in Book 4005, Page 313, of the Official Records of Yavapai County, Arizona (the "Amended and Restated Declaration").

C. On March 3, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated February 27, 2003, in Book 4007, Page 46, of the Official Records of Yavapai County, Arizona (the "First Tract Declaration") annexing the "Annexation Property" (as defined in the First Tract Declaration, the "First Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the First Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the First Tract Declaration.

D. On May 15, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated May 12, 2003, in Book 4031, Page 776, of the Official Records of Yavapai County, Arizona (the "Second Tract Declaration") annexing the "Annexation Property" (as defined in the Second Tract Declaration, the "Second Tract Declaration Annexation Property") as being under the purview of the Amended and Restated

1

Pronghorn Ranch Unit XVIII Tract Declaration

Declaration and declaring the Second Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Second Tract Declaration.

E. On July 17, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated July 15, 2003, in Book 4052, Page 365, of the Official Records of Yavapai County, Arizona (the "Third Tract Declaration") annexing the "Annexation Property" (as defined in the Third Tract Declaration, the "Third Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Third Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Third Tract Declaration.

F. On November 17, 2003, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4751, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated November 13, 2003, in Book 4094, Page 380, of the Official Records of Yavapai County, Arizona (the "Fourth Tract Declaration") annexing the "Annexation Property" (as defined in the Fourth Tract Declaration, the "Fourth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Fourth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Fourth Tract Declaration.

G. On May 27, 2004, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated May 27, 2004, in Book 4151, Page 804, of the Official Records of Yavapai County, Arizona (the "Fifth Tract Declaration") annexing the "Annexation Property" (as defined in the Fifth Tract Declaration, the "Fifth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Fifth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Fifth Tract Declaration.

H. On April 14, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated April 14, 2005, in Book 4253, Page 154, of the Official Records of Yavapai County, Arizona (the "Sixth Tract Declaration") annexing the "Annexation Property" (as defined in the Sixth Tract Declaration, the "Sixth Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Sixth Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Sixth Tract Declaration.

I. On August 3, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated August 3, 2005, in Book 4294, Page 172, of the Official Records of Yavapai County, Arizona (the "Corrective Fifth Tract Declaration") to correct an error in the language of the Fifth Tract Declaration.

J. On August 22, 2005, the Declarant and First American Title Insurance Agency, as trustee under Trust No. 4933, recorded the Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated August 15, 2005, in Book 4301, Page

592, of the Official Records of Yavapai County, Arizona (the "Corrective Sixth Tract Declaration") to correct an error in the language of the Sixth Tract Declaration.

K. On June 15, 2006, the Declarant recorded the Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch dated June 7, 2006, in Book 4406, Page 671, of the Official Records of Yavapai County, Arizona (the "First Amendment").

L. On November 1, 2007, the Declarant, First American Title Insurance Agency, as trustee under Trust No. 4933, First American Title Insurance Company, as Trustee under Trust 8308, and Brown Family Communities, an Arizona Limited Partnership, recorded the Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, dated October 31, 2007, in Book 4551, Page 545, of the Official Records of Yavapai County, Arizona (the "Seventh Tract Declaration") annexing the "Annexation Property" (as defined in the Seventh Tract Declaration, the "Seventh Tract Declaration Annexation Property") as being under the purview of the Amended and Restated Declaration and declaring the Seventh Tract Declaration Annexation Property as a part of the Covered Property subject to the terms and conditions of the Seventh Tract Declaration.

M. On February 9, 2010, Declarant recorded the Designation as Declarant Affiliate and Removal of Designation as Declarant Affiliate dated February 1, 2010, in Book 4722, Page 691, of the Official Records of Yavapai County, Arizona, pursuant to which Declarant (i) designated STO Investments, LLC ("STO") as a "Declarant Affiliate" effective December 30, 2008 and Benjamin Snyder and Robin Snyder as "Declarant Affiliates" effective October 31, 2007, in each case under Section 1.20 of the Amended and Restated Declaration and (ii) revoking the previous designation of Brown Family Communities as a "Declarant Affiliate" effective as of February 5, 2008 under Section 1.20 of the Amended and Restated Declaration.

N. On January 29, 2013, Declarant recorded the Assignment of Declarant's Rights dated December 20, 2012, in Book 4934, Page 245, of the Official Records of Yavapai County, Arizona, pursuant to which Declarant assigned and transferred to Pronghorn Development Declarant all non-exclusive rights of Declarant under the Amended and Restated Declaration.

O. On February 19, 2013, the Declarant recorded the Second Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch, in Book 4938, Page 440, of the Official Records of Yavapai County, Arizona (the "Second Amendment").

P. On July 31, 2015, the Declarant and Pronghorn Development Declarant recorded the Amendment to Corrective Tract Declaration of Covenants, Conditions and Restrictions for Pronghorn Ranch, as Document 2015-0036336, of the Official Records of Yavapai County, Arizona to correct an error in the language of the Corrective Sixth Tract Declaration.

Q. On April 7, 2016, the Pronghorn Ranch Homeowners Association and Pronghorn Development Declarant recorded the Third Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch, as

Instrument/Reception No. 2016-0016116, of the Official Records of Yavapai County, Arizona (the "Third Amendment").

R. On January 10, 2018, the Declarant and the Pronghorn Development Declarant recorded the Fourth Amendment to Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Pronghorn Ranch, as Instrument/Reception No. 2018- 0001599, of the Official Records of Yavapai County, Arizona (the "Fourth Amendment"). The Amended and Restated Declaration as amended by the First Amendment, the Second Amendment, the Third Amendment and Fourth Amendment is hereinafter referred to as the "Declaration." Except as otherwise defined herein, the capitalized terms used herein shall have the meanings as defined in the Declaration.

R. Pronghorn Land is the owner of the following real property (the "Unit XVIII Annexation Property"), which is a part of the Annexable Property as defined in the Declaration:

Lots 1 through 133, inclusive and Tracts 81, 82, 83, 84, 85, 86, 300, 301, 302, 303 and 304 of PRONGHORN RANCH – UNIT XVIII, according to the Plat of Record in the Office of the County Recorder of Yavapai County, Arizona, recorded as Instrument/Reception No. 2018- 0003832 (the "Unit XVIII Plat").

S. Pronghorn Development Declarant now proposes to annex the Unit XVIII Annexation Property to the Covered Property which is subject to all terms and provisions of the Declaration and Pronghorn Land proposes to consent to the annexation of the Unit XVIII Annexation Property, all in accordance with the more specific terms and provisions thereof.

NOW, THEREFORE, it is hereby established as follows:

1. Annexation of Unit XVIII Annexation Property; Consent. Pursuant to Section 18.1 of the Declaration, Pronghorn Development Declarant hereby annexes the Unit XVIII Annexation Property under the purview of the Declaration, and the Unit XVIII Annexation Property is declared a part of the Covered Property. Pronghorn Land hereby consents to the annexation of the Unit XVIII Annexation Property by Pronghorn Development Declarant to be under the purview of the Declaration and to the inclusion of the Pronghorn Land Unit XVIII Annexation Property as a part of the Covered Property and declares the Pronghorn Land Unit XVIII Annexation Property to be a part of the Covered Property and to be under the purview of the Declaration.

2. Tract Declaration. This Tract Declaration shall be deemed a "Tract Declaration" pursuant to the terms and provisions of the Declaration, and is subsidiary and supplementary to the Declaration. If any provision of this Tract Declaration is inconsistent with any provision of the Declaration, the provision of the Declaration shall control.

3. Land Use Classification and Common Areas. The land use classification for the Unit XVIII Annexation Property is hereby declared to be Single Family Residential pursuant to Section 5.2 of the Declaration, and may be developed as is provided in and governed by the Declaration. Each Lot shown on the Unit XVIII Plat shall be deemed a "Lot" pursuant to the Declaration and to the extent Tracts 300, 301, 302, 303 and 304 are replatted, each Lot contained therein shall be

deemed to be a "Lot" pursuant to the Declaration. Pronghorn Land shall at its sole cost cause the improvements described on the Improvement Plans to be made to the portions of the Unit XVIII Annexation Property designated as Tracts 81, 82, 83, 84, 85 and 86 at such time as the Tracts are developed and improved by Pronghorn Land in the Phases described in the Unit XVIII Plat and upon the completion of the improvements in such Phase described in the Unit XVIII Plat shall convey such property to the Association to be owned, maintained and operated by, the Association as "Common Areas" in accordance with the Declaration as shown on the Unit XVIII Plat; provided that such conveyance shall be conditioned upon Pronghorn Land's completion of the improvements described on the Improvement Plans, and the Association's written acceptance of the Common Areas improvements and the "Common Area" property.

4. Approval Required. All structures, improvements, landscaping, or other improvement or alteration of the Unit XVIII Annexation Property (other than the Common Areas) shall require prior approval of the Design Review Committee pursuant to the Declaration and shall be in compliance with all design guidelines and rules of the Association. No subdivision plat of the Unit XVIII Annexation Property, nor any additional tract declaration pertaining thereto, may be amended without prior written approval of the Pronghorn Development Declarant. All provisions of the Declaration apply to the Unit XVIII Annexation Property.

5. Restrictions on Lots. Each Lot in the Unit XVIII Annexation Property is subject to all limitations, encumbrances and restrictions set forth on the Unit XVIII Plat, to the extent so noted thereon. Each Owner of a Lot in the Unit XVIII Annexation Property shall be responsible for all matters related to drainage and slope easements on such Owner's Lot set forth in the Unit XVIII Plat, including the responsibility for maintenance with respect thereto, to the extent so noted thereon.

6. Amendment of Tract Declaration. This Tract Declaration may be amended with the approval of the Pronghorn Development Declarant so long as it owns any Lot, Parcel, or portion of the Covered Property as defined in the Declaration, and during such time no other consent or approval shall be required. At such time as the Pronghorn Development Declarant no longer owns any Lot, Parcel, or portion of the Covered Property and Pronghorn Land no longer owns any Lot or Tract in the Unit XVIII Annexation Property, this Tract Declaration may be amended by the Pronghorn Development Declarant provided that any such amendment shall be consistent with and subject to the terms and provisions of the Declaration and shall require written approval of the Board of Directors of the Association.


7. Capitalized Terms. Except as specifically defined in this Tract Declaration, capitalized terms used herein shall have the meanings as defined in the Declaration.

IN WITNESS WHEREOF, the Pronghorn Development Declarant and Pronghorn Land have caused this Tract Declaration to be duly executed on the 9th day of January 2018.

[SIGNATURES ON THE FOLLOWING PAGES]

PRONGHORN DEVELOPMENT DECLARANT:

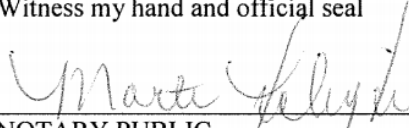
Pronghorn Development, LLC, an Arizona limited liability company  
By: Robina, LLC, an Arizona limited liability company, Its Manager

By:   
Name: Benjamin G. Snyder  
Its: Manager

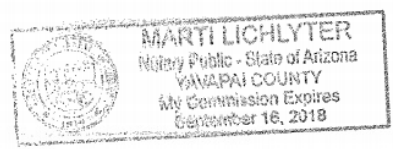
STATE OF ARIZONA     )  
  ) ss:  
COUNTY OF YAVAPAI    )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January 2018 by Benjamin G. Snyder, the manager of Robina, LLC, an Arizona limited liability company, the manager of Pronghorn Development, LLC, an Arizona limited liability company, the person to me known as the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same on behalf of said companies.

Witness my hand and official seal

  
NOTARY PUBLIC

My Commission will expire 9-14, 2018



PRONGHORN LAND:

Pronghorn Land, LLC, an Arizona limited liability company

By: Ellen J. Carpenter  
Ellen Carpenter

Its: Chief Operating Officer

STATE OF ARIZONA     )  
  ) ss:  
COUNTY OF YAVAPAI    )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of January 2018 by Ellen Carpenter, the Chief Operating Officer of Pronghorn Land, LLC, an Arizona limited liability company, the persons to me known as the persons described in and who executed the foregoing instrument and acknowledged before me that they executed the same on behalf of said companies.

Witness my hand and official seal

Marti Lichlyter  
NOTARY PUBLIC

My Commission will expire 9-16, 2018

