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FOR
SUNDANCE ACTIVE ADULT HOUSING COMMUNITY

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**DECLARATION OF ACTIVE ADULT HOMEOWNER BENEFITS AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SUNDANCE ACTIVE ADULT HOUSING COMMUNITY**

STEWART TITLE & TRUST OF PHOENIX

ARTICLE I

DEFINITIONS

Section 1.01.	“Active Adult Articles”	2
Section 1.02.	“Active Adult Bylaws”	2
Section 1.03.	“Active Adult Housing Association”	2
Section 1.04.	“Active Adult Housing Association Rules”	2
Section 1.05.	“Active Adult Project Documents”	2
Section 1.06.	“Active Adult Use”	2
Section 1.07.	“Ancillary Unit”	2
Section 1.08.	“Apartment Use”	3
Section 1.09.	“Architectural Committee”	3
Section 1.10.	“Architectural Committee Rules”	3
Section 1.11.	“Areas of Active Adult Housing Association Responsibility”	3
Section 1.12.	“Assessment”	3
Section 1.13.	“Board” and “Board of Directors”	3
Section 1.14.	“Builder”	3
Section 1.15.	“Cluster Housing Use”	3
Section 1.16.	“Commercial or Recreational Vehicles”	3
Section 1.17.	“Common Area” or “Active Adult Common Area”	4
Section 1.18.	“Community Master Assessment”	4
Section 1.19.	“Declarant”	4
Section 1.20.	“Declaration”	4
Section 1.21.	“Detached Dwelling Unit”	5
Section 1.22.	“Equivalent Units”	5
Section 1.23.	“Family Vehicles”	5
Section 1.24.	“Golf Course”	5
Section 1.25.	“Governmental Authorities”	5
Section 1.26.	“Institutional Guarantor”	5
Section 1.27.	“Land Use Classification”	5
Section 1.28.	“Living Unit”	5
Section 1.29.	“Lot”	6
Section 1.30.	“Master Association”	6
Section 1.31.	“Master Association Documents”	6
Section 1.32.	“Master Association Rules”	6
Section 1.33.	“Master Common Area” and “Master Common Areas”	6
Section 1.34.	“Master Common Assessment”	6
Section 1.35.	“Master Declaration”	6
Section 1.36.	“Member”	6
Section 1.37.	“Mortgage”	6
Section 1.38.	“Mortgagee”	6
Section 1.39.	“Mortgagor”	7
Section 1.40.	“Nonrecurring And Temporary Basis”	7
Section 1.41.	“Owner”	7
Section 1.42.	“Parcel”	7
Section 1.43.	“Parcel Declaration”	7

Section 1.44.	"Permitted Satellite Dishes and Exterior Antennas"	7
Section 1.45.	"Person"	8
Section 1.46.	"Plat"	8
Section 1.47.	"Screened From View"	8
Section 1.48.	"Side Yard Parking Area"	8
Section 1.49.	"Single Family"	8
Section 1.50.	"Single Family Detached Housing Use"	8
Section 1.51.	"Subsidiary Association"	8
Section 1.52.	"Subsidiary Declaration"	9
Section 1.53.	"Sundance Community Master Plan"	9
Section 1.54.	"Sundance Master Plan Area"	9
Section 1.55.	"Sundance Signage Plan"	9
Section 1.56.	"Town"	9
Section 1.57.	"Village"	9
Section 1.58.	"Village Active Adult Housing Association Assessment"	9
Section 1.59.	"Village Active Adult Housing Association Expenses"	9
Section 1.60.	"Village Amenities"	10
Section 1.61.	"Village Master Assessment"	10
Section 1.62.	"Village Master Expenses"	10
Section 1.63.	"Visible From Neighboring Property"	10
Section 1.64.	"Yard"	10

ARTICLE II

GENERAL GOVERNANCE AND COMMON AREA

Section 2.01.	General Governance	11
Section 2.02.	Owners and Owner's Occupants Bound	11
Section 2.03.	Subsidiary Associations Bound	11
Section 2.04.	Owners' Easements of Enjoyment	11
Section 2.05.	Overall Structure	13
Section 2.06.	Active Adult Restrictions	13
Section 2.07.	Right of Enforcement of Subsidiary Declarations	13
Section 2.08.	Conflicts Among Restrictions	14
Section 2.09.	Recordation of Subsidiary Declarations	14
Section 2.10.	Land Use Designation	14
Section 2.11.	Rights to Develop	14
Section 2.12.	Conveyance of Active Adult Common Area	14

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.01.	Membership	15
Section 3.02.	Class	15
Section 3.03.	Transfer of Control	16

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.01.	Lien and Personal Obligation for Assessments	16
Section 4.02.	Purpose of Annual Assessments	17
Section 4.03.	Increases in Assessments	19
Section 4.04.	Special and Other Assessments.....	20
Section 4.05.	Uniform Rate of Assessment.....	21
Section 4.06.	Commencement and Verification of Assessments.....	22
Section 4.07.	Effect of Nonpayment of Assessments - Remedies of the Association	23
Section 4.08.	Subordination of Active Adult Housing Association Lien	24
Section 4.09.	Notice of Lien.....	24
Section 4.10.	Initial Working Capital.....	25

ARTICLE V

COMMON AREA AND LOT USE AND MAINTENANCE

Section 5.01.	Active Adult Common Area	25
Section 5.02.	Repairs Necessitated by Owner.....	26
Section 5.03.	Maintenance of Living Unit.....	26
Section 5.04.	Access at Reasonable Hours	26
Section 5.05.	Owner's Failure to Maintain	26
Section 5.06.	Fences and Walls for Lots.....	27
Section 5.07.	Side Yard Parking Areas	28
Section 5.08.	General Standards	28

ARTICLE VI

POWERS OF THE OWNERS' ASSOCIATION

Section 6.01.	Duties and Powers.....	28
Section 6.02.	Insurance	30
Section 6.03.	Damage and Destruction - Reconstruction.....	32
Section 6.04.	Other Duties and Powers.....	32
Section 6.05.	Active Adult Housing Association Rules.....	32

ARTICLE VII

ARCHITECTURAL CONTROL

Section 7.01.	Architectural Approval.....	33
Section 7.02.	Appointment of Architectural Committee.....	33
Section 7.03.	Architectural Committee Rules.....	33
Section 7.04.	Limited Effect of Approval.....	34
Section 7.05.	Future Approvals.....	34

Section 7.06.	Variances	34
Section 7.07.	Appeals to Board	35

ARTICLE VIII

USE RESTRICTIONS

Section 8.01.	Restricted Use	35
Section 8.02.	Business and Related Uses	35
Section 8.03.	Signs	36
Section 8.04.	Restricted Activities	36
Section 8.05.	Restricted Residences	37
Section 8.06.	Roof Mounted Equipment	37
Section 8.07.	Animals	37
Section 8.08.	Drilling and Mining	37
Section 8.09.	Trash	38
Section 8.10.	Woodpiles and Storage Areas	38
Section 8.11.	Antennas	38
Section 8.12.	Windows and Window Covering	38
Section 8.13.	Leasing	38
Section 8.14.	Encroachments	39
Section 8.15.	Machinery	39
Section 8.16.	Subdivision and Time Shares	39
Section 8.17.	Increased Risk	39
Section 8.18.	Drainage Plan	39
Section 8.19.	Clothes Drying Facilities and Basketball Structures	39
Section 8.20.	Outside Installations	40
Section 8.21.	Fuel Tanks	40
Section 8.22.	Hazardous Wastes	40
Section 8.23.	Commercial and Recreational Vehicles	40
Section 8.24.	Garages and Parking of Family Vehicles	42
Section 8.25.	Vehicle Repairs	42
Section 8.26.	Mailboxes	43
Section 8.27.	Swimming Pools	43
Section 8.28.	Declarant's Exemption	43

ARTICLE IX

CREATION OF EASEMENTS

Section 9.01.	Public Utility Easements	43
Section 9.02.	Temporary Construction Easements	44
Section 9.03.	Vehicular Non-Access	44
Section 9.04.	Visibility Easement	44
Section 9.05.	Additional Specific Easements	44
Section 9.06.	Easements for Golf Course	45

ARTICLE X

AGE RESTRICTIONS, COVENANTS AND CONDITIONS

Section 10.01.	Age Restrictions	47
Section 10.02.	Declarant's and Builder's Owner Exemption	47
Section 10.03.	Subsequent Transfers	48
Section 10.04.	Sales to Persons under Age of 55	48
Section 10.05.	Non-Developer Owners' Obligations.....	48
Section 10.06.	Minors	48
Section 10.07.	Owner's Occupants	48
Section 10.08.	Compliance.....	48
Section 10.09.	Amending Age Restrictions	49

ARTICLE XI

GENERAL PROVISIONS

Section 11.01.	Enforcement	49
Section 11.02.	Approval of Litigation.....	50
Section 11.03.	Condemnation of Active Adult Common Area.....	52
Section 11.04.	Partial Condemnation of Living Unit.....	52
Section 11.05.	Severability.....	52
Section 11.06.	Term	52
Section 11.07.	Amendment	52
Section 11.08.	Government Financing.....	53
Section 11.09.	Construction	53
Section 11.10.	Notices	53
Section 11.11.	General Declarant Rights	53
Section 11.12.	Management Agreements.....	54
Section 11.13.	No Partition	54
Section 11.14.	Declarant's Right to Use Similar Name	54
Section 11.15.	Joint and Several Liability.....	54
Section 11.16.	Conflicts	54
Section 11.17.	Survival of Liability	55
Section 11.18.	Waiver and Approvals.....	55
Section 11.19.	Attorney Fees	55
Section 11.20.	Access Control	55

ARTICLE XII

DEVELOPMENT PLAN AND ANNEXATION

Section 12.01.	Proposed Development	56
Section 12.02.	Annexation Without Approval.....	56
Section 12.03.	Annexation With Approval.....	56
Section 12.04.	Incorporation into the Active Adult Housing Community.....	56

Section 12.05. Formation of Subsidiary Associations 57
 Section 12.06. Notice of Sale 57
 Section 12.07. Management and Control 57
 Section 12.08. Assessments Specifically 57
 Section 12.09. Enforcement under Subsidiary Declaration 58
 Section 12.10. Subsidiary Association Meetings 58
 Section 12.11. Remedies of Master Association 58

ARTICLE XIII

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Section 13.01. Dispute Resolution Agreement 58
 Section 13.02. Exempt Claims 59
 Section 13.03. Enforcement of Resolution 61
 Section 13.04. Alleged Defects 61
 Section 13.05. Amendments to Article XIII 62

**DECLARATION OF ACTIVE ADULT HOMEOWNER BENEFITS AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SUNDANCE ACTIVE ADULT HOUSING COMMUNITY**

This Declaration of Active Adult Homeowner Benefits and Covenants, Conditions, and Restrictions for Sundance Active Adult Housing Community is made as of the date set forth at the end of this Declaration by Hancock-MTH Communities, Inc., an Arizona corporation.

BACKGROUND

A. Declarant is the owner of, or the holder of, an option to purchase the real property known as the Sundance Master Plan Area located in the Town of Buckeye, County of Maricopa, State of Arizona.

B. As part of the Sundance Master Plan Area, Declarant desires to provide for the phased development of an Active Adult Housing Community comprised of single family detached housing, cluster active adult housing, multifamily housing, community or private common areas, and community or private facilities.

C. As the developer of the Sundance Master Plan Area, Declarant desires to develop for its own account, or sell to various Builders to develop, various portions of the Sundance Master Plan Area that are designated for active adult uses consistent with (and subject to) the covenants and restrictions established in this Declaration.

D. Declarant intends from time to time to subject various portions of the Sundance Master Plan Area to this Declaration and the Active Adult Project Documents, and these areas will be referred to as the "Active Adult Housing Community."

E. This Declaration and the related Active Adult Project Documents are the governing documents for one of the three separate and distinct communities that eventually may form part of the master plan community of Sundance.

F. Prior to the recordation of this Declaration, Declarant has previously sold various Parcels within the Sundance Master Plan Area to various Builders for development in accordance with the Active Adult Project Documents, and those Builders have consented to the recordation of this Declaration and the other Active Adult Project Documents by their respective execution of the attached Consent of Builder.

DECLARATION

Accordingly, Declarant declares that the Active Adult Housing Community, as described below, is to be held, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, and conveyed subject to the following benefits, burdens, rights, reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges, duties, obligations, and liens, as well as those applicable covenants and restrictions in the Master Association Documents (collectively referred to as "covenants and restrictions"). The covenants and restrictions are for the purpose

of protecting the value, attractiveness, and desirability of the Active Adult Housing Community, and the covenants and restrictions will benefit, burden, and run with the title to the Active Adult Housing Community and will be binding upon all parties having any right, title, or interest in or to any part of the Active Adult Housing Community and their heirs, successors, and assigns. The covenants and restrictions will inure to the benefit of each Owner. The Declarant further declares as follows:

ARTICLE I

DEFINITIONS

Section 1.01. "Active Adult Articles" means the Articles of Incorporation of the Active Adult Housing Association that have been or will be filed in the office of the Corporation Commission of the State of Arizona, as may be amended from time to time in the manner established in the Active Adult Articles.

Section 1.02. "Active Adult Bylaws" means the Bylaws of the Active Adult Housing Association, as may be amended from time to time in the manner set forth in the Active Adult Bylaws.

Section 1.03. "Active Adult Housing Association" means Sundance Adult Village Homeowners Association, Inc., that has been or will be incorporated by Declarant and/or others as a nonprofit Arizona corporation, and the Active Adult Housing Association's successors and assigns.

Section 1.04. "Active Adult Housing Association Rules" means any rules and regulations adopted by the Active Adult Housing Association, as the rules and regulations may be amended from time to time.

Section 1.05. "Active Adult Project Documents" means this Declaration, the Active Adult Articles, the Active Adult Bylaws, the Active Adult Housing Association Rules, the Architectural Committee Rules, and any Qualified Active Adult Plat, collectively, as any or all of the foregoing may be amended from time to time.

Section 1.06. "Active Adult Use" means the occupancy or use of a Parcel or the Living Units located within an Active Adult Housing Community as Housing for Older Persons in conformity with the Sundance Community Master Plan, the Master Association Documents, the Active Adult Project Documents, and the requirements imposed by the applicable zoning and development standards of the Town and by the laws of other governmental authorities.

Section 1.07. "Ancillary Unit" means any of the following types of permanent or temporary items that are not part of the Detached Dwelling Unit and related improvements originally constructed by the Declarant or any Builder: basements, cellars, guest houses, hobby houses, storage sheds (portable or permanent), stables, wood sheds, outbuildings, shacks, barns, garages, living quarters, cabanas, ramadas, gazebos, carports, covered patios, or any structures or items of any similar type. To the extent an Ancillary Unit is approved for construction under Article VII below, the Ancillary Unit will be deemed part of the Living Unit for reference purposes only.

Section 1.08. "Apartment Use" means the use of a Parcel within the Active Adult Housing Community for multi-family dwelling purposes on a "for rent" basis, the occupancy of which is governed by a rental agreement as defined in A.R.S. § 33-1310.

Section 1.09. "Architèctural Committee" means the committee established pursuant to Article VII of this Declaration and the provisions of any other Active Adult Project Documents.

Section 1.10. "Architèctural Committee Rules" means any rules, regulations, or design guidelines that may be adopted or amended by the Architèctural Committee.

Section 1.11. "Areas of Active Adult Housing Association Responsibility" means those areas of the Active Adult Housing Community or adjoining public right-of-ways that, while not part of the Active Adult Common Area owned by the Active Adult Housing Association, are required to be maintained by the Active Adult Housing Association at the common expense of all Owners within the Active Adult Housing Community or at the common expense of all Owners within a particular Village. An area may not become an area of Active Adult Housing Association Responsibility unless the Active Adult Housing Association's maintenance obligation is established either pursuant to: (i) this Declaration, any Qualified Active Adult Plat, or Parcel Declaration; (ii) any written agreement with any utility provider, the Owner or Owners of a Parcel or Village, or any Subsidiary Association; or (iii) any zoning or development stipulation or requirement of the Town (the maintenance responsibility for which has been allocated specifically to the Active Adult Housing Association and not the Master Association).

Section 1.12. "Assessment" (whether capitalized or not) means all of the various assessments described and defined in the Active Adult Project Documents.

Section 1.13. "Board" and "Board of Directors" means the Board of Directors of the Active Adult Housing Association.

Section 1.14. "Builder" means any person, other than Declarant, that: (i) owns a Parcel or more than one Lot within the Active Adult Housing Community; (ii) is engaged in the business of developing, constructing, leasing, and selling Living Units within the Active Adult Housing Community; and (iii) is designated as a "Builder" by a written and recorded instrument executed only by Declarant and the Builder. One or more Builders may be designated for each Parcel. Subsequent Owners other than the originally designated Builder or Builders for a Parcel may be designated as a Builder by the Declarant upon written request made by the new Owner so long as the new Owner otherwise satisfies the criteria for being a Builder, as established above.

Section 1.15. "Cluster Housing Use" means the use of a Parcel within the Active Adult Housing Community for townhomes, patio homes, condominiums, horizontal property regimes, zero lot line housing, or similar housing product of a higher density and limited open yard area that is developed for fee title ownership as opposed to rental.

Section 1.16. "Commercial or Recreational Vehicles" means any of the following types of vehicles that are owned, leased, or used by an Owner or any of Owner's Occupants: (i) commercial truck, government vehicle, tow truck, tractor, bulldozer, crane, bus, ambulance, tour jeep, trolley, commercial delivery van, commercial pickup truck with a manufacturer's

capacity rating of more than one ton, semi, semitrailer, or similar commercial vehicle; and (ii) snowmobile, wagon, freight trailer, flatbed, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, jet ski, dune buggy, go cart, golf cart (whether licensed for street use or not), all-terrain vehicle, pickup truck with camper shell (whether or not equipped with sleeping quarters), pontoon, canoe, raft, house boat, or similar recreational vehicles or equipment.

Section 1.17. "Common Area" or "Active Adult Common Area" means all of the common area tracts owned by the Active Adult Housing Association as designated under a Qualified Active Adult Plat. The Active Adult Common Area will be maintained either by the Master Association as an Area of Master Association Responsibility or by the Active Adult Housing Association. The term "**Common Area**" or "**Active Adult Common Area**" does not include individual Living Units, Master Common Area, public streets, other publicly dedicated areas, or areas that are owned and maintained by a Subsidiary Association. The term "**Common Area**" or "**Active Adult Common Area**" also includes all structures, facilities, private roadways, recreation trails, tot lots, playgrounds, ramadas, barbeque equipment, furniture, fixtures, improvements, and landscaping, if any, located on the common area tracts, and all rights, easements, and appurtenances relating to the common area tracts owned by the Association.

Section 1.18. "Community Master Assessment" means an annual or special assessment imposed by the Master Association against the Active Adult Housing Community (or the Owners within the Active Adult Housing Community) for special services rendered by the Master Association to the Active Adult Housing Association or the Owners or Owner's Occupants within the Active Adult Housing Community, such as maintaining any Common Area that has been designated as an Area of Master Association Responsibility (as defined and described in the Master Declaration). Community Master Assessments are distinguished from Master Common Area Assessments in that Community Master Assessments under this Declaration apply only to the Active Adult Housing Community (or the Owner's within the Active Adult Housing Community) while Master Common Area Assessments apply to all owners within the Sundance Master Plan Area.

Section 1.19. "Declarant" means Hancock-MTH Communities, Inc., an Arizona corporation. The term "Hancock-MTH Communities, Inc." includes all successors and assigns of Hancock-MTH Communities, Inc., if the successors or assigns: (i) acquire more than one undeveloped or partially developed (i.e., no completed structure) Living Unit from the Declarant for the purpose of resale; and (ii) record a supplemental declaration executed by the then-Declarant declaring the successor or assignee as a succeeding Declarant under this Declaration. The term "**Declarant**" does not include any Mortgagee.

Section 1.20. "Declaration" means this Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for the Sundance Active Adult Housing Community and the covenants and restrictions established in this entire document (in entirety or by reference), as may be amended from time to time in the manner established below.

Section 1.21. "Detached Dwelling Unit" means all buildings located on a Lot and used or intended to be used for Single Family Detached Housing Use, including any garages, carports, open or closed patios, and basements, as originally constructed by the Declarant or any Builder.

Section 1.22. "Equivalent Units" means the number of hypothetical units assigned to each Living Unit or Village within the Active Adult Housing Community for the purposes of determining voting rights and assessment ratios, all as described on Exhibit "B" attached to this Declaration.

Section 1.23. "Family Vehicles" means any domestic or foreign cars, station wagons, sport wagons, pickup trucks, vans, mini-vans, jeeps, sport utility vehicles, alternative fuel vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are owned, leased, or used by the Owner or the Owner's Occupants for family, personal, and domestic purposes only and not for any commercial purpose.

Section 1.24. "Golf Course" means that portion of the Sundance Master Plan Area designated by the Declarant for use as a public fee, private, or semi-private 18-hole golf course and related amenities including the clubhouse, driving range, and practice facilities.

Section 1.25. "Governmental Authorities" mean means any applicable county, state, or federal agency, council, commission, department, board, or similar authority having jurisdiction over the Sundance Master Plan Area, but specifically excluding the Town.

Section 1.26. "Institutional Guarantor" means, if applicable to the Active Adult Housing Community, a governmental insurer, guarantor, or secondary market mortgage purchaser such as the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Federal National Mortgage Association (FNMA) that insures, guarantees, or purchases any note or similar debt instrument secured by a First Mortgage.

Section 1.27. "Land Use Classification" means a classification by the Declarant of a portion of the Active Adult Housing Community for a particular use, such as Apartment Use, Cluster Housing Use, or Single Family Detached Housing Use, as more fully described in the Active Adult Project Documents.

Section 1.28. "Living Unit" means (as applicable to the context of the sentence) with respect to the Active Adult Project Documents: (i) in the case of a Parcel that is designated for Apartment Use, any apartment unit designated for separate occupancy (which does not include any rental office, clubhouse, or recreation room, but does include units designated for occupancy by a property manager or staff); (ii) in the case of a Parcel that is designated for Cluster Housing Use, each independent lot or living unit designated for separate ownership (e.g., a townhouse, patio home, condominium unit, etc.); and (iii) in the case of a Parcel that is designated for Single Family Detached Housing Use, each Lot upon which a Detached Dwelling Unit is or is planned to be constructed. Whenever the context requires and to the extent not otherwise designated, a Living Unit will be deemed to exist when the Parcel in question has been platted (including a condominium plat) regardless of whether or not any improvement is actually constructed that

would constitute the apartment, living unit, townhouse, patio home, condominium, or detached single family dwelling.

Section 1.29. "Lot" means a portion of a Parcel within the Active Adult Housing Community that has been designated either for Single Family Detached Housing Use or Cluster Housing Use and that has been platted and legally subdivided into lots for separate fee ownership. A Lot does not include a condominium unit or apartment unit.

Section 1.30. "Master Association" means Sundance Master Community Association, Inc., that has been or will be incorporated by Declarant and/or others as a nonprofit Arizona corporation, and the Master Association's successors and assigns.

Section 1.31. "Master Association Documents" means the Master Declaration, all organizational documents of the Master Association, the Master Association Rules, and the Sundance Community Master Plan, as any or all may be amended from time to time.

Section 1.32. "Master Association Rules" means any rules and regulations adopted by the Master Association, as the rules and regulations may be amended from time to time.

Section 1.33. "Master Common Area" and "Master Common Areas" means all real property (and the improvements or amenities located on the applicable real property) that is designated on a Qualified Active Adult Plat for ownership by the Master Association for the common use or benefit of the Owners and Owner's Occupants of the Sundance Master Plan Area and/or the public, as more fully described in the Master Declaration.

Section 1.34. "Master Common Assessment" means an assessment imposed by the Master Association on all owners within the Sundance Master Plan Area (either directly or through a community association such as the Active Adult Housing Association) for the Master Common Areas and Areas of Master Association Responsibility that are required to be maintained at the common expense of all owners.

Section 1.35. "Master Declaration" means the Declaration of Common Benefits and Covenants Conditions, and Restrictions for Sundance Master Planned Community, as amended from time to time.

Section 1.36. "Member" means each and every Owner within the Active Adult Housing Community.

Section 1.37. "Mortgage" (whether capitalized or not) means the consensual conveyance or assignment of any Living Unit, or the creation of a consensual lien on any Living Unit, to secure the performance of an obligation. The term "**Mortgage**" includes a deed of trust, mortgage, assignment, or any other agreement for the purpose of creating a lien to secure an obligation, and also includes the instrument evidencing the obligation. The term "**First Mortgage**" means a Mortgage held by an institutional lender that is the first and most senior of all Mortgages on the applicable Living Unit.

Section 1.38. "Mortgagee" (whether capitalized or not) means a person or entity to which a Mortgage is made and will include a holder of a promissory note, a beneficiary under a

deed of trust, or a seller under an agreement for sale. The term **"First Mortgagee"** means a Mortgagee that is the first and most senior of all Mortgagees upon the applicable Living Unit.

Section 1.39. "Mortgagor" means a person or entity who is a maker under a promissory note, a mortgagor under a mortgage, a trustor under a deed of trust, or a buyer under an agreement for sale, as applicable.

Section 1.40. "Nonrecurring And Temporary Basis" means the parking of vehicles of any type either: (i) for the temporary purpose of loading and unloading items for permitted uses on the Living Unit; (ii) for temporary parking by an Owner or the Owner's Permittees that do not involve overnight parking; or (iii) for temporary parking of the vehicles of an Owner or the Owner's Permittees for cleaning of the vehicles or special events (i.e., parties) that do not involve overnight parking and that do not occur on a frequent or repetitive basis.

Section 1.41. "Owner" means the record owner, whether one or more persons or entities, of a Living Unit. The term **"Owner"** does not include those persons having an interest in a Living Unit merely as security for the performance of an obligation or duty (i.e., a Mortgagee). In the case of Living Units in which the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, §§ 33-801, *et seq.*, the **"Owner"** of the Living Unit will be deemed to be the trustor. In the case of a Living Unit covered by an Agreement for Sale of Real Property as described in A.R.S., §§ 33-741, *et seq.*, the buyer of the Living Unit will be deemed to be the **"Owner."** The term **"Non-Developer Owner"** means, in the context of the resale or other permitted transfer of a Living Unit after the initial sale by the Declarant or a Builder, all Owners other than the Declarant or any Builder. The term **"Owner's Occupants"** means all persons that reside on a full or part-time basis in the Living Unit of the Owner (which, by way of example, could include the Owner's family members, tenants, or other permitted occupants). The term **"Owner's Permittees"** includes the Owner's Occupants and all guests, tenants, licensees, invitees, occupants, and agents that use the Living Unit of the Owner or other portions of the Active Adult Housing Community (including Active Adult Common Area) with the implied or express consent of an Owner.

Section 1.42. "Parcel" means those areas within the Active Adult Housing Community that are identified by Declarant and that from time to time are separately described, defined, and limited to a specific Land Use Classification. A Parcel or any portion of a Parcel may be further divided into Lots or other Living Units upon the recordation of a subdivision plat or a condominium declaration, but even if further divided, these various Lots and other Living Units may still generally be referred to as a Parcel. Parcels within the Sundance Master Plan Area may be given names or other designations.

Section 1.43. "Parcel Declaration" means an instrument (including a deed) applicable to one or more Parcels but less than all of the Active Adult Housing Community that designates Villages, designates Land Use Classifications with respect to one or more Parcels, and/or creates additional easements or imposes additional restrictions and obligations on the Parcels described in the instrument.

Section 1.44. "Permitted Satellite Dishes and Exterior Antennas" means: (i) any antenna that is designed to receive direct broadcast service (DBS), including direct-to-home

satellite services, of one meter or less in diameter; (ii) any antenna that is designed to receive video programming services via multi-point distribution services (MMDS) of one meter or less in diameter; (iii) an antenna that is designed to receive television broadcast signals; or (iv) any similar antenna or satellite dish, the residential use of which is protected under the Telecommunications Act of 1996 and any applicable rules, as either may be amended.

Section 1.45. "Person" (whether capitalized or not) means a natural person, a corporation, a partnership, limited liability company, a trust, or other legal entity.

Section 1.46. "Plat" means the subdivision plat that is recorded in the Official Records of Maricopa County, Arizona, that affects all or any portion of a Parcel within the Active Adult Housing Community, and subdivides the Parcel into one or more Lots or other Living Units for separate ownership and use. A Plat will become a "**Qualified Active Adult Plat**" if, prior to its recordation, the Active Adult Housing Association has accepted in writing the maintenance obligations assigned to it under the Plat.

Section 1.47. "Screened From View" means that the object in question is appropriately screened when viewed from abutting portions of the Sundance Master Plan Area (including public and private streets) by a gate, wall, shrubs, or other approved landscaping or screening devices. So long as the screening complies with any minimum requirements imposed by the Town or contained in the Sundance Community Master Plan, the Architectural Committee will be the sole judge as to what constitutes an object being Screened From View and appropriately screened, subject only to the right to appeal the Architectural Committee's decision to the Board under Section 7.07 below. An object may be Screened From View, in the opinion of the Architectural Committee, even though the object is Visible From Neighboring Property and may be seen through the approved screening.

Section 1.48. "Side Yard Parking Area" means that portion of the Enclosed Side Yard of a Lot that has been designated by the Architectural Committee as a place for the parking of Commercial or Recreational Vehicles or Family Vehicles, all as more completely described in Section 5.07 below.

Section 1.49. "Single Family" means a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than four adult persons not all so related who maintain a common household in a Living Unit (or any Detached Dwelling Unit constructed on the Living Unit).

Section 1.50. "Single Family Detached Housing Use" means the occupancy or use of a Living Unit (and any Detached Dwelling Unit constructed on the Living Unit) by a Single Family as lower density detached housing in conformity with the Sundance Community Master Plan, Master Association Documents, the Active Adult Project Documents, and the requirements imposed by the applicable zoning and development standards of the Town or by the laws of other governmental authorities.

Section 1.51. "Subsidiary Association" means an association created by the Declarant, any Builder, or the Owners within a Village, for the purpose of administering and enforcing the provisions of any recorded Subsidiary Declaration, whether the association is a nonprofit

corporation or any other legal entity. The term "**Subsidiary Association**" includes all successors and assigns of any Subsidiary Association.

Section 1.52. "Subsidiary Declaration" means any additional or separate declaration of covenants, conditions, and restrictions or similar instrument (other than this Declaration or the Master Declaration) that may be recorded by Declarant, any Builder, or the Owners within a Village with respect to all or any part of any Parcel. Any Subsidiary Declaration will be subordinate at all times to this Declaration and the Master Declaration and will be interpreted in a manner consistent with the Active Adult Project Documents and the Master Association Documents.

Section 1.53. "Sundance Community Master Plan" means the land plan for the development of Sundance contained in the Sundance Community Master Plan dated September 15, 2000, prepared by RBF Consulting and submitted by Declarant, as applicant, to the Town, as amended from time to time. The Sundance Community Master Plan includes the Sundance Community Master Trail System Plan, the Sundance Community Master Site Amenities Plan, and the Sundance Community Master Fencing Plan.

Section 1.54. "Sundance Master Plan Area" means the property covered by the Sundance Community Master Plan and described in the Master Declaration.

Section 1.55. "Sundance Signage Plan" means the Comprehensive Signage Plan and Wall Plan for the Sundance Master Planned Area approved by the Town Development Board on September 11, 2001.

Section 1.56. "Town" means the Town of Buckeye, a municipal corporation, and all applicable councils, boards, commissions, departments, authorities, and agencies of the municipality.

Section 1.57. "Village" means a subdivision of or group of Living Units within a Parcel located in an Active Adult Housing Community that is designated by Declarant as a separate Village for purposes of voting, sharing Village Amenities, or receiving other benefits or services from the Master Association or the Active Adult Housing Association that are not provided to other Villages within the Active Adult Housing Community. A Village may consist of more than one housing type and may include noncontiguous Parcels. Village boundaries may be established and modified as provided in this Declaration.

Section 1.58. "Village Active Adult Housing Association Assessment" means an assessment made by the Active Adult Housing Association against any Subsidiary Association applicable to a Village or the Owners of a particular Village to cover Village Active Adult Association Expenses or other special services rendered by the Association that benefit any Subsidiary Association or the Owners within one or more Villages only.

Section 1.59. "Village Active Adult Housing Association Expenses" means the actual or estimated expenses, as the case may be, that the Active Adult Housing Association actually incurs or expects to incur in the maintenance and repair of any Village Amenities owned by the Active Adult Housing Association or for which the Active Adult Housing Association has agreed to be responsible to maintain and repair (i.e., Areas of Active Adult Housing Association

Responsibility), including, to the extent applicable, a reasonable reserve for capital repairs and replacements and administrative charges, as authorized under the Active Adult Housing Project Documents.

Section 1.60. "Village Amenities" means those portions of a particular Village (including any improvements and facilities located in those areas) that are reserved for the private use by all Owners and Owner's Occupants within one or more (but less than all) Villages in the Active Adult Housing Community. Village Amenities may be owned by a Subsidiary Association or the Active Adult Housing Association or by all of the Owners within the applicable Village as to an undivided interest as tenants in common. Village Amenities may be maintained as: (i) Areas of Master Association Responsibility, if the Master Association, in its sole discretion, agrees to be responsible for the repair and maintenance of the Village Amenities; (ii) Areas of Active Adult Housing Association Responsibility, if the Active Adult Housing Association, in its sole discretion, agrees to be responsible for the repair and maintenance of the Village Amenities (but does not own the Village Amenities); or (iii) other common areas, if the Owners within the Village through a Subsidiary Association or as tenants in common are responsible for the repair and maintenance. Village Amenities differ from Active Adult Common Area in that Active Adult Common Areas are reserved for all Owners within the Active Adult Housing Community, but Village Amenities are reserved for less than all of the Owners within the Active Adult Housing Community.

Section 1.61. "Village Master Assessment" means an assessment made by the Master Association against the Active Adult Housing Association, any Subsidiary Association applicable to a Village, or the Owners of the applicable Villages to cover Village Master Expenses or other special services rendered by the Master Association that benefit the Active Adult Housing Association, any Subsidiary Association, or the Owners within one or more Villages only.

Section 1.62. "Village Master Expenses" means the actual or estimated expenses, as the case may be, that the Master Association actually incurs or expects to incur in the maintenance and repair of any Village Amenities for which the Master Association has agreed to be responsible to maintain and repair (i.e., Areas of Master Association Responsibility), including, to the extent applicable, a reasonable reserve for capital repairs and replacements and administrative charges, as authorized under the Master Association Documents.

Section 1.63. "Visible From Neighboring Property" means that an object is or would be clearly visible without artificial sight aids to a person six feet tall that is standing on any part of the Sundance Master Plan Area at proper grade adjoining the area upon which the object is located.

Section 1.64. "Yard" (whether capitalized or not) means, with respect to a parcel designated as Single Family Detached Housing Use, all portions of the Lot other than the portions of the Lot upon which the Detached Dwelling Unit or an Ancillary Unit is constructed. The term "**Private Yard**" means the portion of the yard that generally is not Visible From Neighboring Property and is shielded or enclosed by walls, fences, and similar structurally enclosed items (typically, a back or enclosed side yard of the Lot). The term "**Public Yard**" means that portion of the Yard that is Visible From Neighboring Property, whether located in

front of, beside, or behind a Detached Dwelling Unit (typically, a front yard or open side yard of a Lot). The term "Enclosed Side Yard" means the enclosed side yard portion of a Lot that is located behind, when viewed from the street in front of the Detached Dwelling Unit, the front wall of a Lot. The Architectural Committee will be the sole judge as to what constitutes a side yard and an Enclosed Side Yard in accordance with this Declaration.

ARTICLE II

GENERAL GOVERNANCE AND COMMON AREA

Section 2.01. General Governance. Declarant intends to develop the Active Adult Housing Community (or sell portions of the Active Adult Housing Community for development by Builders) solely for Active Adult Use, subject to the Master Association Documents and the Active Adult Project Documents. As Parcels within the Active Adult Housing Community are sold or developed for Active Adult Use, Declarant intends to create and designate Land Use Classifications applicable to the Parcels and to subject these Parcels to the covenants and restrictions of the Master Association Documents and these Active Adult Project Documents, all in furtherance of a specific plan for development reflected in the Sundance Community Master Plan and all for the purpose of protecting the value, desirability, and attractiveness of the Sundance Master Plan Area and the Active Adult Housing Community. Once subjected to the Active Adult Project Documents, all Parcels and Owners of the Parcels or Living Units within the Parcels also will be bound by the Master Association Documents. Nothing in the Master Association Documents, the Active Adult Project Documents, or any Subsidiary Declaration will be construed to prevent Declarant from: (i) modifying, with approval of the Town, any part of the Sundance Community Master Plan that has not been sold to a Builder or other Owner (other than Declarant); (ii) when requested by the Town, dedicating portions of the Active Adult Housing Community for public, municipal, or utility use; or (iii) conveying portions of the Active Adult Housing Community for uses different than those initially or subsequently contemplated, so long as the change in use is approved by the Town and consistent with the Sundance Community Master Plan.

Section 2.02. Owners and Owner's Occupants Bound. All present and future Owners and Owner's Occupants of Parcels or Living Units within the Active Adult Housing Community are subject to the Active Adult Project Documents and the Master Association Documents, both of which will be binding on all Owners and Owner's Occupants whether or not specifically stated in any document or deed transferring an interest in the Parcel or Living Unit, as applicable.

Section 2.03. Subsidiary Associations Bound. Upon the incorporation of any Subsidiary Association, the Master Association Documents and the Active Adult Project Documents will be binding on and will benefit the Subsidiary Associations. In the case of any conflict between the Active Adult Project Documents, on the one hand, and the Subsidiary Declaration or the organizational documents for the Subsidiary Associations, on the other hand, the Active Adult Project Documents will govern and control.

Section 2.04. Owners' Easements of Enjoyment. Every Owner will have a non-exclusive right and easement of use and enjoyment in and to the Active Adult Common Area, in common with all other Owners within the Active Adult Housing Community entitled to use the

Active Adult Common Area under the terms and conditions of the Active Adult Project Documents. Every Owner within an applicable Village will have a non-exclusive right and easement of use and enjoyment in and to any specifically designated Village Amenities for that Village, in common with all other Owners within the Village entitled to use the Village Amenities under the terms and conditions of the Active Adult Project Documents and if applicable, any subsidiary Declaration. Neither the Active Adult Common Area nor the Village Amenities, however, are intended to be used as a place of public accommodation. An Owner's right and easement to use and enjoy the Active Adult Common Area, and as applicable, any Village Amenities, will be appurtenant to and pass with the title to every Living Unit and will be subject to the limitations and restrictions contained in the Active Adult Project Documents, including the following rights in favor of the Active Adult Housing Association:

(a) *Charges and Regulations.* The right of the Active Adult Housing Association to charge reasonable admission and other fees for the use of the Active Adult Common Area; the right of the Active Adult Housing Association to publish and enforce rules and regulations regarding the use of the Active Adult Common Area or any Village Amenities; the right of the Active Adult Housing Association to limit the number of the Owner's Permittees who use the Active Adult Common Area or any Village Amenities; the right of the Active Adult Housing Association to limit the number and type of pets that use the Active Adult Common Area or any Village Amenities; and the right of the Active Adult Housing Association to hold the Owners accountable for the conduct of the Owner's Permittees and pets;

(b) *Suspension of Voting and Usage Rights.* The right of the Active Adult Housing Association to suspend the voting rights of any Owner and to suspend the right of any Owner or the Owner's Permittees to the use of the Active Adult Common Area or Village Amenities if any assessment against that Owner or Owner's Living Unit is not paid within 15 days after its due date or if there exists any uncured non-monetary infraction of the Active Adult Project Documents, subject to compliance with any applicable notice and hearing requirements contained in the Active Adult Bylaws;

(c) *Dedication/Grant.* The right of the Active Adult Housing Association to dedicate or grant an easement (covering all or any part of the Active Adult Common Area or Village Amenities owned by the Active Adult Housing Association) to the Town or any provider utility company for the purposes, and subject to the conditions, that may be established by on the one hand, the Town or the provider utility company, and, on the other hand, the Declarant during the period of Declarant Control (as defined in Section 3.02) and, after the period of Declarant Control, by the Board. Except for those easements reserved in, created by, or described in this Declaration or any Plat (including any Qualified Active Adult Plat), no dedications or easements may be created over all or any part of: (i) the Active Adult Common Area unless the dedication or easement is approved at a duly called regular or special meeting by an affirmative vote in person or by proxy of two-thirds (2/3) or more of the total number of eligible votes in each class of Members and unless the instrument evidencing the dedication or grant is executed by an authorized officer of the Active Adult Housing Association and recorded in the proper records in Maricopa County; or (ii) the Village Amenities unless the dedication or easement is approved by the applicable Village (in the manner established in the Active

Adult Bylaws for approval of Village matters) and unless the instrument evidencing the dedication of grant is executed by an authorized officer of the Active Adult Housing Association (with a statement that all Village approvals have been obtained) and recorded in the proper records of Maricopa County, Arizona; and

(d) *Declarant Use.* The right of the Declarant and its agents and representatives (including, when applicable, the Builders), in addition to their rights established elsewhere in this Declaration and the other Active Adult Project Documents, to the nonexclusive use, without extra charge, of the Active Adult Common Area and the Village Amenities in the marketed Village for sales, display, and exhibition purposes both during and after the period of Declarant Control, subject to those rules and regulations established by the Declarant.

Section 2.05. Overall Structure. The Active Adult Housing Community is intended to be a separate and distinct community with specifically designed covenants and restrictions applicable to the uses permitted within the Active Adult Housing Community. The Master Association described in the Master Association Documents has been formed to facilitate the development, operation, and maintenance of the improvements that will be used in common by the owners and occupants of the Sundance Master Plan Area. When requested by the Active Adult Association and approved by the Master Association, the Master Association also may undertake operational and maintenance duties with respect to portions of the Active Adult Housing Community (i.e., Areas of Master Association Responsibility) that are not for the common use of all owners and occupants within the Sundance Master Plan Area, but rather are limited to the use by only those Owners and Owner's Occupants within the Active Adult Housing Community or any one or more Villages within the Active Adult Housing Community.

Section 2.06. Active Adult Restrictions. The administration and enforcement of the Active Adult Project Documents will rest with the Active Adult Housing Association (except to the limited extent provided below). The Active Adult Project Documents are intended to apply to all Parcels (whether or not subdivided into separate Lots or other Living Units) that may become a part of the Active Adult Housing Community. Some of the Villages within the Active Adult Housing Community may be subject to additional covenants and restrictions imposed through a Subsidiary Declaration and administered by a Subsidiary Association. Nothing in the Active Adult Project Documents precludes the Subsidiary Declarations from containing covenants and restrictions that are more restrictive than the Active Adult Project Documents. Additionally, with respect to the regulation of the use of any Village Amenities, any regulation of the Village Amenities under Section 2.04(a) above will be coordinated with the rules and regulations established by the Villages, either through a Subsidiary Association or otherwise.

Section 2.07. Right of Enforcement of Subsidiary Declarations. While it will not be the duty, obligation, or requirement of the Active Adult Housing Association to monitor or enforce any Subsidiary Declaration, the Active Adult Housing Association reserves the right to enforce, on behalf of the applicable Subsidiary Association, the Subsidiary Declaration when the applicable Subsidiary Association fails or refuses to enforce the Subsidiary Declaration. The Active Adult Housing Association may exercise this right of enforcement after written notice to the Subsidiary Association, as applicable, identifying a reasonable time period (not to exceed 30

days) within which enforcement measures must be commenced and diligently pursued to resolution.

Section 2.08. Conflicts Among Restrictions. If any conflicts arise in the interpretation of the Active Adult Project Documents, the Active Adult Project Documents will control over any Subsidiary Declaration and related Subsidiary Association documents.

Section 2.09. Recordation of Subsidiary Declarations. To ensure conformance and compliance with the Sundance Community Master Plan, the Master Association must approve in writing the form and content of the Subsidiary Declarations and all amendments to the Subsidiary Declarations prior to their recordation in the official records of Maricopa County, Arizona. Any attempted recordation of any Subsidiary Declaration or amendment without the prior written approval of the Master Association will be void and no force or effect.

Section 2.10. Land Use Designation. As Parcels within the Sundance Master Plan Area are readied for development and/or sale, Declarant, through a Parcel Declaration, will: (i) designate the Builder (if any) for the Parcel (and, without a specific designation of the Builder, there will be no Builder for the purposes of the Project Documents); (ii) designate the Parcel or any Village that may comprise the Parcel by a specific number, letter, or number; (iii) identify the Land Use Classification for the Parcel; and (iv) create the boundaries of any particular Village. At Declarant's option, any Parcel Declaration recorded against a Parcel within the Active Adult Housing Community also may describe the Qualified Active Adult Plat applicable to the Parcel, any Areas of Master Association Responsibility, any Areas of Active Adult Housing Association Responsibility, additional easements, or additional restrictions and obligations applicable to the parcel.

Section 2.11. Rights to Develop. The Declarant and the Master Association will have an unrestricted right of access over the entire Active Adult Housing Community to install, construct, maintain, and repair the Master Common Area and the Areas of Master Association Responsibility. The Declarant and the Active Adult Housing Association also will have an unrestricted right of access over the entire Active Adult Housing Community to install, construct, maintain, and repair the Active Adult Common Area and the Areas of Active Adult Housing Association Responsibility. Each Owner and Owner's Occupant (excluding the Declarant) specifically: (i) acknowledges that the Active Adult Housing Community is included in a master planned community, the development of which is likely to extend over many years; and (ii) except to the extent permitted through any public hearing process held by the Town for zoning or development, agrees not to protest, challenge, or otherwise object to any changes in use or density of property outside of the respective Village, in which the Owner works, resides, or holds an interest, or any changes to the Sundance Community Master Plan as it relates to property outside of the respective Village.

Section 2.12. Conveyance of Active Adult Common Area. By a date no later than the earlier to occur of the date of the conveyance of the first Living Unit within the Village to a Class A Member or the date that an Institutional Guarantor first insures, guarantees, or purchases a loan with respect to a Living Unit within the Village, any Master Common Area, Active Adult Common Area, or Village Amenities within that Village will be conveyed by Declarant or Builder, as applicable, to either the Master Association, the Active Adult Housing Association, a

Subsidiary Association or the Owners within the Village, as applicable, by the delivery of a special warranty deed, free and clear of all monetary liens, but subject to the covenants and restrictions of the Active Adult Project Documents and the Master Association Documents.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.01. Membership. Every Owner of a Parcel or Living Unit within the Active Adult Housing Community is a Member of the Active Adult Housing Association, is bound by the provisions of the Active Adult Project Documents, is deemed to have personally covenanted and agreed to be bound by all covenants and restrictions contained in the Active Adult Project Documents, and is deemed to have entered into a contract with the Active Adult Housing Association and each other Owner for the performance of the respective covenants and restrictions. The personal covenant of each Owner described in the preceding sentence will be deemed to be in addition to the real covenants and equitable servitudes created by the Declaration, and this personal covenant of each Owner will not limit or restrict the intent that this Declaration benefit and burden, as the case may be, and run with title to, all of the Active Adult Housing Community covered by this Declaration. Membership in the Active Adult Housing Association will be appurtenant to and may not be separated from ownership of any Living Unit that is subject to assessment. Upon the permitted transfer of an ownership interest in a Living Unit, the new Owner will automatically become a Member of the Active Adult Housing Association. With the exception of Declarant, membership in the Active Adult Housing Association will be restricted solely to Owners.

Section 3.02. Class. The Active Adult Housing Association will have three classes of voting membership:

(a) **Class A.** Class A members will be all Owners within Parcels that have been subjected to the Active Adult Project Documents, with the exception of the Declarant and the Builders. Class A members will be entitled to one vote for each Equivalent Unit applicable to a Parcel or Living Unit that has been subjected to the Active Adult Project Documents. When more than one person holds an interest in any Living Unit, all joint owners will be Members; however, for all voting purposes and quorum purposes, they will together be considered to be one Member. The vote for any jointly owned Living Unit will be exercised as the joint owners determine, but in no event will more than one vote be cast with respect to any Living Unit. Any attempt to cast multiple votes for a given Living Unit will result in the invalidity of all votes cast for that Living Unit.

(b) **Class B.** The Class B member will be the Declarant. The Declarant will be allocated votes equal to the greater of: (i) 2500; or (ii) five times the actual number of Equivalent Units applicable to all Parcels owned by the Declarant in the Active Adult Housing Community for which a Parcel Declaration has been recorded. By way of illustration, if there are 500 Equivalent Units in the Active Adult Housing Community, 100 of which are attributable to Declarant owned Parcels, the total Class B votes will be 2500 (since that amount is greater than five times the 100 Declarant owned Equivalent

Units). The Class B membership will cease and be converted to Class A membership upon the happening of any of the following events, whichever occurs earlier:

- (i) The date when the total of all Class A and Class C votes exceeds the votes attributable to Class B membership;
- (ii) December 31, 2020; or
- (iii) When the Declarant earlier notifies the Active Adult Housing Association in writing that it relinquishes its Class B membership in the Active Adult Housing Association.

Upon the conversion of Declarant's Class B membership to Class A membership, the Declarant will be entitled to only one vote for each Equivalent Unit owned by the Declarant. The period of time during which Class B membership is in existence will be referred to in this Declaration as the period of "**Declarant Control.**"

(c) *Class C.* The Class C members will be the Builders, who will be entitled to cast votes equal to three times the number of Equivalent Units applicable to the Parcel owned by the Builder (or applicable to each Living Unit owned by the Builder in the applicable Village). Class C membership with respect to any particular Village will be converted into Class A membership when the total votes outstanding in the Class A membership with respect to a Village first equals or exceeds the total votes outstanding in the Class C membership with respect to a Village. Upon conversion of Builder's Class C membership to Class A membership for a particular Village, the Builder will be entitled to only one vote for each Equivalent Unit owned by the Builder in the Village.

Section 3.03. Transfer of Control. When the period of Declarant Control ends, the Class A Members will accept control of the Active Adult Housing Association from the Declarant and full responsibility for the operation of the Active Adult Housing Association and administration of the Active Adult Housing Community as provided in the Active Adult Project Documents.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.01. Lien and Personal Obligation for Assessments.

(a) *Creation of Lien.* By accepting a deed for a Parcel or Living Unit, as the case may be, (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, each Owner is deemed personally to covenant and agree to be bound by all covenants and restrictions of the Active Adult Project Documents and to pay to the Active Adult Housing Association or to the Master Association as applicable: (i) the Annual Assessments described in Section 4.02 below; (ii) the Special Assessments described in Section 4.04 below; (iii) any Community Master Association Assessments; (iv) any Village Master Assessment to the extent applicable to Owners within a Village; (v) any Village Active Adult Housing Association Assessments to the extent applicable

to Owners within a Village; (vi) an amount sufficient to, on demand, indemnify and hold harmless the Active Adult Housing Association for, from, and against all obligations undertaken or incurred by the Active Adult Housing Association on account of the special services or benefits requested by any Owner, group of Owners, or Subsidiary Association and to repay the Active Adult Housing Association for all expenditures on account of the special services or benefits requested by an Owner any group of Owners, or Subsidiary Association; (vii) an amount sufficient to reimburse the Active Adult Housing Association for the cost of performing any obligation of an Owner or Subsidiary Association under the Active Adult Project Documents that the Owner or Subsidiary Association has failed to timely pay or perform; (viii) an amount sufficient to, on demand, indemnify and hold harmless the Active Adult Housing Association for, from, and against all monetary damages or penalties imposed on the Active Adult Housing Association arising out of the failure of the Active Adult Housing Association to disclose, or to accurately disclose, the information required under A.R.S. § 33-1806 where the Owner knew or should have known of the inaccuracy of the information or where the Owner was under a contractual or other duty to disclose the information not provided (or not accurately provided) by the Active Adult Housing Association; and (ix) all other assessments or other similar charges that may be fixed, established, and collected from time to time as provided in this Declaration or the other Active Adult Project Documents. The amounts described above, together with all accrued interest, court costs, attorney fees, late fees, penalties, fines, and all other expenses incurred in connection with the collection of the amounts described above, whether or not a lawsuit or other legal action is initiated, are referred to collectively in the Active Adult Project Documents as an "Assessment" (whether the term is capitalized or not). The Active Adult Housing Association, by the recordation of this Declaration, is granted a perfected, consensual, and continuing lien upon the Living Unit against which the assessment is made or has been incurred for the payment of all assessments, and the further recordation of any claim of lien or notice of lien is not required for perfection or enforcement of the Active Adult Housing Association's lien for the assessments.

(b) *Personal Obligation.* Each assessment also will be the personal, joint, and several obligation of each person who was the Owner at the time when the assessment became due, was incurred, or arose, as applicable. The personal obligation for delinquent assessments will not pass to the particular Owner's successors in title unless expressly assumed in writing by the Owner's successors; however, the personal obligation of the prior Owner for the delinquent assessments will not be deemed released or discharged by reason of any assignment, conveyance, or transfer of title of a Living Unit. The Active Adult Housing Association may enforce the personal obligation of an Owner to pay delinquent assessments in any manner permitted under Arizona law or the Active Adult Project Documents. Notwithstanding the previous sentences in this subsection, if there is an assignment, conveyance, or transfer of title to any Living Unit, all assessments applicable to the transferred Living Unit will continue as a lien against the Living Unit in the hands of the subsequent Owner, except in those circumstances described in Section 4.08 below.

Section 4.02. Purpose of Annual Assessments.

(a) *Community Level Assessments.* The term "Annual Assessments" (whether capitalized or not) means those assessments levied by the Active Adult Housing Association for the purpose of: (i) promoting the recreation, health, safety, welfare, and desirability of the Active Adult Housing Community for its Owners; (ii) operating the Active Adult Common Area or the Areas of Active Adult Housing Association Responsibility (including payment of any taxes, utilities, and rubbish collection fees if not individually billed to the Owners); (iii) insuring, maintaining, repairing, painting, and replacing improvements in the Active Adult Common Area or the Areas of Active Adult Housing Association Responsibility; and (iv) enhancing and protecting the value, desirability, and attractiveness of the Active Adult Housing Community generally. The annual assessments may include a reserve fund for taxes, insurance, insurance deductibles, maintenance, repairs, painting, and replacements of the Active Adult Common Area and other areas that the Active Adult Housing Association is responsible for maintaining including the Areas of Active Adult Housing Association Responsibility.

(b) *Master Level Assessments.* To the extent the Master Association does not directly assess all owners for the Master Common Area Assessments but rather chooses, as permitted under the Master Declaration, to assess the Active Adult Housing Association, the Active Adult Housing Association may include as part of the "Annual Assessments" charged to the Owners the amount of the Master Common Area Assessments assessed against the Active Adult Housing Association. Further, to the extent the Master Association assesses the Active Adult Housing Association for costs attributable to a Village Master Assessment (as opposed to making the assessment directly on the Owners in the Village), the Active Adult Housing Association may include as part of the "Annual Assessments" charged against the Owners within an applicable Village the amount of the Village Master Assessment. All of these amounts will be allocated to the Owners based on the Equivalent Units attributable to each Owner, as provided below.

(c) *General Allocation.* All Annual Assessments of the type described in Sections 4.02(a) and (b) above will be levied against and charged to the various Owners within the Active Adult Housing Community based on the ratio that the Equivalent Units allocated to the Owner bear to the Equivalent Units in the Active Adult Housing Community. For purposes of determining this ratio, the total number of Equivalent Units in the Active Adult Housing Community (irrespective of the actual number of Parcels made subject to the Active Adult Project Documents) will be deemed to be the greater of: (i) 800; or (ii) the actual number of Equivalent Units assigned to the Active Adult Housing Community based on Parcels that have been subjected to the Active Adult Project Documents. Within each Village, the Annual Assessments will be allocated to the Owners based on the number of Equivalent Units assigned to each Living Unit.

(d) *Assessments Against Villages.* To the extent the Village Amenities are not maintained by a Subsidiary Association or through some other cost sharing arrangement among the Owners in the affected Village, the cost for the maintenance and repair of the Village Amenities will be assessed either as a Village Master Assessment or a Village Active Adult Housing Association Assessment, and the cost will be assessed to all Owners within the affected Villages based on Equivalent Units. All assessments made

to a Village by the Master Association or the Active Adult Housing Association may be made as Annual Assessments, as that term is used under the Master Association Documents and the Active Adult Project Documents, respectively. Even though the payment of the assessments is a personal obligation of each Owner, all Annual Assessments attributable to the cost of maintenance or repair of Village Amenities in a particular Village (i.e., those attributable to a Village Master Assessment or a Village Active Adult Housing Association Assessment) will be collected only from the Owners of the Living Units located within that Village. No Parcel or Living Unit will be subject to a "blanket" assessment lien securing payment of assessments or other amounts by the Owner of any other Parcel or Living Unit within the same Village, and no Owner of a Parcel or Living Unit will be subject to any foreclosure or other enforcement of the assessment lien against that Parcel or Living Unit by reason of the failure or refusal of any other Owner to pay any assessments made by the Master Association or the Active Adult Housing Association.

(e) *Declarant's Portion.* Until such time as the actual number of Equivalent Units in the Active Adult Housing Community exceeds 800, the Declarant, for the purposes only of determining assessment ratios under Sections 4.02(a) and (b) above, will be deemed to own all Equivalent Units in the Active Adult Housing Community other than those allocated to non-Declarant Owners of Parcels or Living Units. When the actual number of Equivalent Units in the Active Adult Housing Community exceeds 800, the Declarant will be deemed to own those Equivalent Units attributable to Parcels or Living Units that are owned by the Declarant and that have been subjected to the Active Adult Project Documents. In the illustration given in Section 3.02(b) above, for example, Declarant would be deemed to own 400 Equivalent Units for assessment purposes only (i.e., 800 less 400 non-Declarant owned Equivalent Units) and be responsible for 50% of the assessments attributable to assessments made against the entire Active Adult Housing Community for community or master level expenses. To elaborate, the Declarant will not be responsible for the 50% share, from the example above, of Village Master Assessments or Village Active Adult Housing Association Assessments described in Section 4.02(d) above, the cost for which will be borne solely by the applicable Village.

Section 4.03. Increases in Assessments.

(a) *Base Year Assessments.* Prior to the conveyance of the first Living Unit by Declarant or any Builder to a third party purchaser, the Active Adult Housing Association will establish an Annual Assessment that will remain in effect through the "base year" ending December 31, 2003. After the base year, the Annual Assessment will be as determined by the Board of Directors, subject to the limitations below.

(b) *Permitted Percentage Increase.* Except as established in Sections 4.03(c) and (d) below, the annual assessment charged by the Active Adult Housing Association may not be increased over the annual assessment in the previous year by more than the Permitted Percentage Increase (as defined below), unless the additional increase is approved at a duly called regular or special meeting by an affirmative vote (in person or by proxy) of two-thirds (2/3) or more of the total number of eligible votes cast at that meeting in each class of Members. From and after the base year, the Board, without a

vote of the Members, may increase the maximum Annual Assessments during each fiscal year of the Active Adult Housing Association by an amount ("**Permitted Percentage Increase**") equal to the greater of: (i) 10%; or (ii) a percentage calculated by dividing the Consumer Price Index in the most recent October (identified by an A in the formula below) by the Consumer Price Index for the October one year prior (identified by a B in the formula below), minus one (i.e., $CPI\ percentage = (A/B) - 1$). By way of example only, the percentage increase in the assessment for the assessment year 2004 cannot be increased by more than the greater of: (I) 10%; or (II) the increase in the Consumer Price Index for October, 2003, divided by the Consumer Price Index in October, 2002), minus one. The term "**Consumer Price Index**" will refer to the United States Bureau of Labor Statistics, Consumer Price Index, United States and selected areas, all items issued by the U.S. Bureau of Labor Statistics, or its equivalent, revised, or successor index. Notwithstanding the previous portions of this Section 4.03(b), if the Permitted Percentage Increase exceeds 20% or if, regardless of the Permitted Percentage Increase, the annual assessment is otherwise sought to be increased by more than 20% over the annual assessment in the previous year, the increase in the annual assessment must be approved by greater than 50% of the total number of eligible votes of the Members, regardless of class, and these approvals may be obtained at a regular or annual meeting of the Members or by written ballot of the Members.

(c) *Increases on Master.* Notwithstanding the limitations above in Section 4.03(b) on the increases to the Annual Assessments charged by the Active Adult Housing Association, any portion of the Annual Assessment charged by the Active Adult Housing Association that is attributable to Master Common Area Assessments will be increased without regard to the provisions above in the amount specified by the Master Association in accordance with the Master Association Documents. Furthermore, the limitations outlined in Section 4.03(b) do not apply to assessments made by the Master Association directly against the Owners for Master Common Area Assessments.

(d) *Increases on Village.* If any portion of an Annual Assessment is attributable to Village Master Assessments or Village Active Adult Housing Association Assessments, that portion of the Annual Assessment may not be increased without compliance with the provisions in Section 4.03(b) above, except that the Member vote will be limited to only those Members (and classes of membership) in the Village, which might not include the Class B member.

Section 4.04. Special and Other Assessments.

(a) *Special Assessments.* The Active Adult Housing Association or the Master Association, at any time and from time to time in any assessment year and in addition to the Annual Assessments authorized above or any other assessments authorized elsewhere in this Declaration, may levy a special assessment against, as applicable, all of the Members of the Active Adult Housing Community or the Members in one or more Villages for the purpose of defraying, in whole or in part: (i) the cost of any construction, repair, or replacement of the Active Adult Common Area or the Areas of Active Adult Housing Association Responsibility (including Village Amenities for which the Active Adult Housing Association has assumed responsibility to maintain),

regardless of the cause for the construction, repair, or replacement; or (ii) the cost of any other unexpected or extraordinary expenses incurred in connection with the maintenance of the Active Adult Common Area or the Areas of Active Adult Housing Association Responsibility (including Village Amenities for which the Active Adult Housing Association has assumed responsibility to maintain), or any other Active Adult Housing Association matters. The foregoing assessments will be referred to as "Special Assessments" (whether the term is capitalized or not). All special assessments, however, must be approved at a duly called regular or special meeting of the Members by an affirmative vote (in person or by proxy) of two thirds (2/3) or more of the total number of eligible votes cast at that meeting for each class of Members; however, to the extent the Special Assessment affects only one or more Villages, the membership vote will be limited to only those Members (and classes of membership) in the applicable Villages, which might not include the Class B Member.

(b) *Other Assessments.* In addition to the annual and special assessments described above, the Board, without a vote of the Members, may levy other assessments (collectively called the "Other Assessments," whether the term is capitalized or not) against individual Owners arising out of: (i) the Owner's failure to comply with the Active Adult Project Documents; (ii) any negligent, grossly negligent, or intentional act or omission of the Owner or the Owner's Permittees resulting in injury to any other Owner or any other person within the Active Adult Housing Community or damage to any other Living Unit, Active Adult Common Area, or other areas of Active Adult Housing Association Responsibility including the Areas of Active Adult Housing Association Responsibility; (iii) any payments actually made by the Active Adult Housing Association for the provision of refuse collection or fire protection coverage to the Living Units and Detached Dwelling Units (whether for charges made directly to the Active Adult Housing Association or for charges due from an Owner but not paid by the Owner); or (iv) those indemnification, reimbursement or payment obligations described in Sections 4.01(a)(vi), 4.01(a)(vii), 4.01(a)(viii), 4.01(a)(ix), 4.07(c), 5.02, or 5.05 of the Declaration. Assessments made for any of the matters described in the previous sentence will not be considered a monetary penalty against the Owner and will not be subject to the limitations contained in Sections 4.03 or 4.04(a) above.

Section 4.05. Uniform Rate of Assessment. Except to the extent applicable to any Village Master Assessments or Village Active Adult Housing Association Assessments, both the annual assessments outlined in Section 4.02 and the special assessments outlined in Section 4.04(a) above must be fixed at a uniform rate for all assessable Living Units. Annual assessments may be collected in installments throughout the year as the Board of Directors may determine, but no more frequently than monthly. The provisions of this Section 4.05 do not preclude the Board from making other assessments of the type described in: (i) Section 4.04(b) above against an Owner or multiple Owners on a non-uniform basis based on the services or benefits provided, the reimbursements required, or the repairs or maintenance performed for which the other assessments are imposed; and (ii) Section 4.02(d) above against only those Owners in a particular Village (and not all Owners within the Active Adult Housing Community), so long as those assessments are uniform among the owners in that Village).

Section 4.06. Commencement and Verification of Assessments.

(a) *Commencement and Collection.* With respect to those Parcels that are subject to the Active Adult Project Documents through the recordation of a Parcel Declaration, the annual assessments established in this Declaration will commence within any Parcel: (i) as to any Master Common Area Assessments, whether assessed directly against the Owners of the Active Adult Housing Association, on the date those assessments commence under the Master Association Documents; or (ii) as to any Annual Assessments made under Section 4.02(a) for, among other things, the Active Adult Common Area or Areas of Active Adult Housing Association Responsibility, on the earlier to occur of the date the first tract of Active Adult Common Area is conveyed to the Active Adult Housing Association or the date the Active Adult Housing Association first accepts responsibility for an Area of Active Adult Housing Association Responsibility. As additional Parcels are made subject to the Active Adult Project Documents through a Parcel Declaration that is recorded after the dates identified in the previous sentence, the Annual Assessments will commence with respect to that Parcel on the date of recordation of the Parcel Declaration. The first annual assessment will be adjusted according to the number of months remaining in the calendar year. After determination of the annual assessment during the base year, the Board will endeavor to fix the amount of each subsequent annual assessment against the Living Unit at least 30 days in advance of each annual assessment period; however, the annual assessment will be binding notwithstanding any delay and all amounts due for annual assessments in any calendar year may be collected retroactively for that calendar year upon their determination or approval under the Active Adult Project Documents. Written notice of the annual assessment and any special assessments must be sent to every Owner subject to the assessment. The due dates for assessments will be established by the Board. Assessments will be payable in the full amount specified by the assessment notice, and no offsets against this amount will be permitted for any reason whatsoever including, without limitation, abandonment of the Owner's Living Unit, a claim that the Active Adult Housing Association is not properly exercising its duties in maintenance or enforcement, a claim against the Declarant or its affiliates, or the non-use or claim of non-use by Owner of all or any portion of the Active Adult Common Area. Assessments may be collected in advance or in arrears as the Board will determine in their sole discretion.

(b) *Verification of Assessments.* The Active Adult Housing Association, acting through the Board, upon written demand and for a reasonable charge determined by the Board, will furnish to any lienholder, Owner, or authorized representative or designee of an Owner a certificate signed by an officer of the Active Adult Housing Association setting forth the amount of any unpaid assessments on a specified Living Unit, all within the time periods (if any) required under A.R.S. § 33-1807.I. A properly executed certificate of the Active Adult Housing Association as to the status of assessments on a Living Unit will be binding on the Active Adult Housing Association as of the date of issuance of the certificate and for the time period specified in the certificate. The Board is authorized to prescribe specific rules regarding these requests for certificates including rules regulating the frequency of the requests and the charge for furnishing the recordable certificates. When the authority is delegated to a property

management company by the Board, the property management company will have the authority to issue these certificates.

Section 4.07. Effect of Nonpayment of Assessments - Remedies of the Association.

(a) *Late Charge.* Any installment of any annual, special, or other assessment that is not paid within 15 days after the due date will be subject to a late charge equal to the greater of \$15 or 10% of the unpaid assessment and, additionally, will bear interest from the due date at the minimum rate of 12% per annum, compounded monthly, or any other legal interest rate approved by the Board of Directors and permitted under the requirements of any applicable Institutional Guarantor.

(b) *Monetary Penalties.* The Board, after satisfaction of the notice and hearing requirements contained in the Active Adult Bylaws, may impose monetary penalties or fines in a reasonable amount against an Owner for any non-monetary violations of the Active Adult Project Documents.

(c) *Protective Advances.* If an Owner fails to make payments under any Mortgage affecting a Living Unit or fails to pay taxes, governmental assessments, or any other payments due with respect to the Owner's Living Unit, the Active Adult Housing Association may make, but is not obligated to make, payments of the amounts due under any Mortgage or may make the required payments for taxes, governmental assessments, or other payments on the Living Unit, and all advances made by the Active Adult Housing Association to cover the required payments will be due and payable immediately from the Owner as an assessment of the Active Adult Housing Association secured by the Active Adult Housing Association's lien for assessments.

(d) *Collection and Lien Actions.* Each Owner of a Living Unit, by accepting a deed for that Living Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, specifically vests in the Active Adult Housing Association and its agents the right and power to bring all actions against the Owner personally for the collection of all assessments due under the Active Adult Project Documents as a debt to the Active Adult Housing Association and to enforce the lien securing the assessment by all methods available for the enforcement or foreclosure of liens under the Active Adult Project Documents or Arizona law. The Active Adult Housing Association may bid in any foreclosure, sheriff's sale, or similar sale (whether or not the foreclosure was initiated by the Active Adult Housing Association or some other person) and may acquire, hold, lease, mortgage, and convey the Living Unit purchased. The Active Adult Housing Association may institute suit to recover a money judgment for unpaid assessments of the Owner without being required to foreclose its lien on the Living Unit and without waiving the lien that secures the unpaid assessments. Any foreclosure action of the Active Adult Housing Association may be instituted without regard to the value of the Living Unit, the solvency of the Owner, or the relative size of the Owner's default. The Active Adult Housing Association's assessment lien and its rights of enforcement under this Declaration are in addition to, and not in substitution of, all other rights and remedies that the Active Adult Housing Association

may be entitled to exercise under the other Active Adult Project Documents or Arizona law.

(e) *Application of Payments.* Any amounts received by the Association from a delinquent Owner will be applied to the delinquent amounts in the manner required under A.R.S. § 33-1803.A.

Section 4.08. Subordination of Active Adult Housing Association Lien. Except as established under A.R.S. § 33-1807.C. and regardless of whether or not a Notice and Claim of Lien has been recorded by the Active Adult Housing Association, the Active Adult Housing Association's lien for the assessments established in this Declaration is superior to all liens, charges, homestead exemptions, and encumbrances that are imposed on or recorded against any Living Unit after the date of recordation of this Declaration. The Active Adult Housing Association's lien for the assessments established in this Declaration, however, will be automatically subordinate to: (i) the lien of any First Mortgagee holding a First Mortgage, except for assessments that accrue from and after the date upon which the First Mortgagee acquires title to or comes in possession of any Living Unit and except for amounts due to the Active Adult Housing Association as described in Section 5.05 below; (ii) any liens for real estate taxes or other governmental assessments or charges that by law are prior and superior to the Active Adult Housing Association's lien for the assessments; and (iii) the lien of the Master Association under the Master Association Documents. The assignment, conveyance, or transfer of title to any Living Unit will not limit or extinguish the Active Adult Housing Association's lien for assessments or the personal obligation of the Owner to pay all assessments arising during the Owner's ownership of the Living Unit; however, the assignment, conveyance, or transfer of title to any Living Unit pursuant to a judicial foreclosure or trustee's sale of a First Mortgage will extinguish the assessments on the Living Unit that became due prior to the judicial foreclosure or trustee's sale by the First Mortgagee. The assignment, conveyance, or transfer pursuant to a judicial foreclosure or trustee's sale by any First Mortgagee, however, will not relieve any foreclosed Owner from personal liability for the payment of assessments arising during the Owner's ownership of the Living Unit and will not release or extinguish the lien for any assessments that may become due or arise after the judicial foreclosure or trustee's sale or the lien for any other assessment created under Section 5.05 below.

Section 4.09. Notice of Lien. Without affecting the priority and perfection of any assessment that has been perfected as of the date of recordation of this Declaration, the Active Adult Housing Association may give (but is not obligated to give) notice to any Owner whose assessment is due and unpaid by mailing to the Owner a copy of a "Notice and Claim of Lien" stating, among other things, the following: (i) the last known name of the delinquent Owner; (ii) the legal description or street address of the Living Unit against which the claim of lien is made; (iii) the amount claimed to be due and owing from the Owner and assessed against the Living Unit; and (iv) a statement that the claim is made by the Active Adult Housing Association pursuant to the terms of the Declaration and the other Active Adult Project Documents. Each default in the payment of any assessment will constitute a separate basis for a claim of lien, but any number of defaults may be included within a single Notice and Claim of Lien. The Association may record a Notice and Claim of Lien against the delinquent Owner's Living Unit. The Notice and Claim of Lien may be executed by any officer of the Active Adult Housing Association, the managing agent for the Active Adult Housing Association, or legal counsel for

the Active Adult Housing Association, but in all events the lien will remain that of the Active Adult Housing Association.

Section 4.10. Initial Working Capital. To provide the Active Adult Housing Association with funds for capital reserves and extraordinary or unexpected expenses, each initial and subsequent purchaser of a Living Unit will pay to the Active Adult Housing Association, immediately upon becoming the Owner of a Living Unit, an amount equal to one-sixth (1/6) of the Active Adult Housing Association's annual assessment then made against the Owner within the particular Village for the then current fiscal year of the Active Adult Housing Association. All working capital payments to the Active Adult Housing Association will be deposited in the Active Adult Housing Association's reserve account or separately accounted for in the Active Adult Housing Association's operating account as a reserve fund, and all working capital reserve funds will be used only as directed by the Board of Directors, as they may see fit in their sole discretion. During the period of Declarant Control, neither the Active Adult Housing Association nor the Declarant will use any of the working capital funds to defray the Declarant's expenses or construction costs or to pay for ordinary expenses of the Active Adult Housing Association. Declarant, in its sole discretion, may advance certain amounts to the Active Adult Housing Association as working capital; however, Declarant will not be obligated to advance any amounts for working capital. If Declarant elects to advance any amounts for working capital, Declarant will be entitled to a reimbursement from the Active Adult Housing Association, upon Declarant's demand, for all working capital funds previously advanced by Declarant. Except for those amounts paid by Declarant, all amounts paid as working capital will be non-refundable and will not act as a credit against any assessment payable by an Owner pursuant to this Declaration.

ARTICLE V

COMMON AREA AND LOT USE AND MAINTENANCE

Section 5.01. Active Adult Common Area. Except as provided in Section 5.02 below, the Active Adult Housing Association will be responsible for the maintenance, repair, and replacement of the Active Adult Common Area and the Areas of Active Adult Housing Association Responsibility, and, without any approval of the Owners, the Active Adult Housing Association may: (i) reconstruct, repair, replace, and refinish any landscaping or improvement located on or used in connection with the Active Adult Common Area or any Areas of Active Adult Association Housing Responsibility; and (ii) do any other acts deemed necessary to preserve, beautify, and protect the Active Adult Common Area or any Areas of Active Adult Housing Association Responsibility in accordance with the general purposes specified in the Active Adult Project Documents. So long as the level of maintenance exceeds those minimum standards, if any, imposed by the Town, the Board will be the sole and absolute judge as to the appropriate maintenance of the Active Adult Common Area and the Areas of Active Adult Housing Association Responsibility. The Active Adult Housing Association will have no obligation to perform any maintenance or repair work that is performed by the Town or any provider utility company that is responsible for the maintenance of any utilities or municipal improvements located within the Active Adult Housing Community. No Owner will alter, remove, injure, or interfere in any way with any landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like, if any, placed on the Active Adult Common Area or any

Areas of Active Adult Housing Association Responsibility without the express written consent of the Declarant, during the period of Declarant Control, or the Architectural Committee, after the period of Declarant Control.

Section 5.02. Repairs Necessitated by Owner. If the need for maintenance or repair to any Active Adult Common Area or any Areas of Active Adult Housing Association Responsibility is caused through the acts or omissions (including negligent acts or omissions) of an Owner, the Owner's Permittees, or any pet of the Owner, the Active Adult Housing Association, in its discretion, may add the cost of the maintenance or repairs, including the deductible portion of any applicable insurance policy, to the assessment against the Living Unit owned by that Owner, without regard to the availability of any insurance proceeds payable to the Active Adult Housing Association for the cost of the maintenance or repairs. In addition to the foregoing, if the Owner of a given Living Unit is held liable to the Active Adult Housing Association by a court of competent jurisdiction for maintenance or repair work performed by the Active Adult Housing Association to any other Living Unit (i.e., a Living Unit not owned by that Owner), the amount of that judgment will be added to and become a part of the assessment against the Living Unit owned by that Owner.

Section 5.03. Maintenance of Living Unit. All Living Units must be maintained by the Owner of the applicable Living Unit in a clean, safe, neat, and attractive condition and repair and must be adequately painted and finished. By way of example, unless otherwise specified in a Subsidiary Declaration (such as in a condominium community), the Owner of each Living Unit will be responsible for: (i) all conduits, ducts, plumbing, wiring, and other facilities and utility services that are contained on the Living Unit; (ii) all service equipment, such as refrigerators, air conditioners, heaters, dishwashers, washers, dryers, ovens, and stoves; and (iii) all floor coverings, roofs, windows, doors, paint (internal and external), finishes, siding, and electrical and plumbing fixtures.

Section 5.04. Access at Reasonable Hours. For the purpose of performing the maintenance, repairs, or replacements permitted under this Article V, the Active Adult Housing Association and the Active Adult Housing Association's agents or employees will have the right, after reasonable notice to an Owner (except in the case of emergency, in which case no notice need be given), to enter onto any portion of a Village including the Living Units at any reasonable time. For the purposes of performing the maintenance authorized by Section 5.01 above upon any portion of the Active Adult Common Area, the Active Adult Housing Association and the Active Adult Housing Association's agents or employees may enter onto the Active Adult Common Area without notice to any Owner at reasonable hours.

Section 5.05. Owner's Failure to Maintain. If an Owner fails to perform any maintenance and repair required under the terms of this Article V, then, upon the vote of a majority of the Board of Directors and after not less than 30 days prior written notice to that Owner, the Active Adult Housing Association will have the right (but not the obligation) to enter upon or into that Living Unit and to provide the required maintenance or make the required repairs. Any entry by the Active Adult Housing Association or its agents will not be considered a trespass. The cost of these maintenance items and repairs will be an assessment against the applicable Living Unit and the Owner, will be paid promptly to the Active Adult Housing Association by that Owner, and will constitute a lien upon that Owner's Living Unit. The self-

help rights of the Active Adult Housing Association described above are in addition to any other remedies available to the Active Adult Housing Association under the Active Adult Project Documents or Arizona law. Without limiting the rights of the Active Adult Housing Association described above, if, concurrent with delivery of the 30 day written default notice to Owner for failure of the Owner to perform its obligations under this Article V, the Active Adult Housing Association delivers a similar written notice to the holders of all Mortgages on the defaulting Owner's Living Unit, the lien in favor of the Active Adult Housing Association will constitute a lien for other assessments of the Active Adult Housing Association under A.R.S. § 33-1807.C. Upon recordation of a Notice and Claim of Lien specifically referring to this Section 5.05, the assessment made for the cost of the maintenance and repairs performed by the Active Adult Housing Association will be deemed to have been delinquent as of the date of recordation of this Declaration, and the lien for this other assessment will have priority based on the recordation date of this Declaration.

Section 5.06. Fences and Walls for Lots.

(a) *Construction.* Except as may be installed by the Declarant or any Builder, no boundary or enclosure fence or wall may be constructed on any Lot within a Parcel designated for Single Family Detached Housing Use or Cluster Housing Use without the prior approval of the Architectural Committee. For purposes of this Section 5.06, the fences or walls described above will be called "**Fence**" or "**Fences**." Notwithstanding the foregoing, any prevailing governmental regulations will take precedent over these restrictions if the governmental regulations are more restrictive.

(b) *Encroachments.* Declarant or any applicable Builder will endeavor to construct all Fences upon the dividing line between the Lots. By virtue of accepting a deed for a Lot (whether or not it is expressed in the deed or conveying instrument) or otherwise becoming an Owner, all Owners acknowledge and accept that the Fences installed by Declarant or any Builder may not be exactly upon the dividing line, but rather may be near or adjacent to the dividing line because of minor encroachments or minor engineering errors or because existing easements or utility lines prevent a Fence from being located on the dividing line. With respect to any Fence not located exactly on a dividing line between Lots but located near or adjacent to the dividing line, an Owner of a Lot will have and is granted a permanent and exclusive easement over any property immediately adjoining the Owner's Lot up to the center line of the Fence for the sole use and enjoyment of that Owner.

(c) *Maintenance and Repair of Fences.* All Fences constructed upon or near the dividing line between the Lots will be maintained in good condition and repaired in accordance with the Architectural Committee Rules.

(d) *Easement for Repair.* For the purpose of repairing and maintaining any Fence located upon the dividing line between Lots (or located near or adjacent to the dividing line), a permanent and non-exclusive easement not to exceed five feet in width is created and reserved over the portion of every Lot or Active Adult Common Area immediately adjacent to any Fence.

(e) *Fence Design and Color.* The exterior appearance, color, or finish of the side of any Fence that is visible from any street located within or adjacent to the Active Adult Housing Community may not be modified from the condition originally constructed by the Declarant or any Builder unless approved by the Architectural Committee. The design, material, construction, or appearance (including interior and exterior appearance, color, and finish) of any Fence may not be altered or changed without the approval of the adjoining Owners, if any, and the Architectural Committee. Without limiting the preceding portions of this Section 5.06, the interior or exterior side of any Fence may not be painted or stuccoed a color or texture other than what was previously and properly in existence, without the prior approval of the Architectural Committee.

(f) *Additional Applicability and Non-Applicability.* These restrictions with respect to fences are not applicable to party walls or the walls of any Living Units located in those portions of the Active Adult Housing Community that are designated for Apartment Use or as a condominium, but will apply to those Living Units with a Parcel designated as Cluster Housing Use where separate Lots have been created for the construction of the Living Units.

Section 5.07. Side Yard Parking Areas. Not all Lots are suitable for Side Yard Parking Areas, and some Lots may not be suitable for Side Yard Parking Areas even though they are similar in size to other Lots with Side Yard Parking Areas because of zoning restrictions or Lot location, Lot configuration, view orientation, streetscape, and similar aesthetic reasons, in the sole discretion of the Architectural Committee. Generally, Side Yard Parking Areas are not appropriate (and will not be approved for) portions of the Active Adult Housing Community designated as Cluster Housing Use. Prior to installation of any Side Yard Parking Area on a Lot, the Owner must submit to the Architectural Committee for approval complete plans and specifications for the width, depth, design, location, composition, and appearance of the Side Yard Parking Area. The approval by the Architectural Committee of a Side Yard Parking Area should not be construed as the approval to park or store Commercial or Recreational Vehicles in the Side Yard Parking Area, and the types of Commercial or Recreational Vehicles that may be parked or stored in the Side Yard Parking Area are governed by other provisions of the Active Adult Project Documents.

Section 5.08. General Standards. Except as may be otherwise provided in this Declaration or the other Active Adult Project Documents, the Active Adult Housing Association and each respective Owner of a Living Unit, as applicable, will maintain the areas they are respectively responsible for at a level of general maintenance at least equal to the Community Wide Standard (as that term is used and defined in the Master Declaration).

ARTICLE VI

POWERS OF THE OWNERS' ASSOCIATION

Section 6.01. Duties and Powers. In addition to the powers enumerated in the other Active Adult Project Documents or elsewhere in the Declaration, the Active Adult Housing

Association, through the sole discretion of the Board of Directors, is vested with the power and authority to:

(a) *Active Adult Common Area.* Maintain, repair, replace, and otherwise manage the Active Adult Common Area and all other real and personal property that may be acquired by, or come within the control of, the Active Adult Housing Association (including the Areas of Active Adult Housing Association Responsibility), including the right to enter into contracts for the design, installation, or construction of capital or other improvements on the Active Adult Common Area;

(b) *Fire Protection, Legal, and Accounting Services.* Obtain fire protection (to the extent not already provided to the Owners by reason of their inclusion in the Town), legal, accounting, and other services deemed by the Board, in its discretion, to be necessary or desirable in the operation of the Active Adult Housing Association and, in connection with the exercise of these powers, the Board is authorized to execute an agreement with the Town or any other provider approved by the Board in its sole discretion for the provision of fire protection services either on a bulk basis or individual subscriber basis;

(c) *Easements.* Subject to the limitations, if any, imposed by the Active Adult Project Documents, grant easements where necessary for utilities, sewer facilities, and CATV under and through the Active Adult Common Area to serve the Active Adult Common Area or any Living Unit;

(d) *Employment of Managers.* Employ affiliated or third-party managers or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Active Adult Housing Association;

(e) *Purchase Insurance.* Purchase insurance for the Active Adult Common Area for risks, with companies, and in amounts as the Board determines to be necessary, desirable, or beneficial, subject to the provisions of Section 6.02 below;

(f) *Other.* Perform all other acts that are expressly or impliedly authorized under this Declaration, the other Active Adult Project Documents, or Arizona law including, without limitation, the right to construct improvements on the Active Adult Common Area and Areas of Active Adult Housing Association Responsibility, and the power to prepare those statements and certificates required under A.R.S. § 33-1806 and § 33-1807.I; and

(g) *Enforcement.* Enforce the provisions of this Declaration and the other Active Adult Project Documents by all available and proper means, including, without limitation, the expenditure of funds of the Active Adult Housing Association, the employment of legal counsel, the commencement of actions, and the establishment of a system of fines or penalties for the enforcement of this Declaration and the other Active Adult Project Documents.

Section 6.02. Insurance.

(a) *Liability Insurance.* Comprehensive general liability insurance covering the use and operation of the Active Adult Common Area (including all private streets) and the Areas of Active Adult Housing Association Responsibility will be purchased and obtained by the Board for the Active Adult Housing Association, or acquired by assignment from Declarant. This insurance policy will be maintained in force by the Active Adult Housing Association at all times during the term of this Declaration. The premiums will be paid out of the Active Adult Housing Association's funds. The insurance will be carried with reputable companies authorized and qualified to do business in Arizona. To the extent available on a commercially reasonable basis, the minimum amounts of coverage will be \$1,000,000 for bodily injury and property damage on a combined single limit basis. The policy will be purchased on an occurrence basis and will name as insureds the Owners, the Active Adult Housing Association (its directors, officers, employees, members, and agents acting in the scope of their employment), and the Declarant (its directors, officers, partners, employees, and agents in the scope of their employment) for so long as Declarant owns any Living Unit. This policy will include, but need not be limited to, insurance against injury or damage occurring in or on the Active Adult Common Area.

(b) *Hazard and Multi-Peril Insurance - Master Policy for Active Adult Common Area.* A master or blanket hazard and multi-peril insurance policy will be purchased or obtained by the Board or acquired by assignment from Declarant promptly following the construction of any building or other similar permanent structure on the Active Adult Common Area. Once purchased, obtained, or acquired, the hazard insurance policy will be maintained in force at all times. The premiums will be paid out of the Active Adult Housing Association's funds. The hazard insurance policy will be carried with reputable companies authorized and qualified to do business in the State of Arizona and will insure against loss from fire and other hazards covered by the standard extended coverage endorsement and all risk endorsement to the hazard insurance policy for the full replacement cost of all of the permanent improvements upon the Active Adult Common Area and the Areas of Active Adult Housing Association Responsibility. The hazard insurance policy will be in an amount determined from time to time by the Board in its sole discretion. The hazard insurance policy will name the Declarant (for so long as Declarant owns a Living Unit), Active Adult Housing Association, and any First Mortgagee of the insured permanent improvements on the Active Adult Common Area as insureds, as their respective interests may appear.

(c) *Hazard Insurance - Living Units.* The Active Adult Housing Association will not be obligated to obtain property insurance, liability insurance, flood insurance, or any other type of hazard insurance covering the Living Units. The procurement and maintenance of these types of insurance on the Living Units will be the sole obligation of the Owners of the respective Living Unit.

(d) *Other Insurance.* The Active Adult Housing Association may purchase (but is not obligated to purchase) additional insurance that the Board determines to be advisable or necessary including, but not limited to, workmen's compensation insurance,

boiler explosion insurance, demolition insurance, flood insurance, fidelity bonds, director and officer liability insurance, errors and omissions insurance, and insurance on personal property owned by the Active Adult Housing Association. All premiums for these types of insurance and bonds will be paid out of the Active Adult Housing Association's funds. The Active Adult Housing Association may assess the Owners in advance for the estimated cost of these types of insurance.

(e) *Owner Insurance.* By virtue of owning a Living Unit subject to this Declaration, each Owner covenants to all other Owners and the Active Adult Housing Association that the Owner will carry all-risk casualty insurance on its Living Unit. Without limiting any other provision of the Declaration, it will be each Owner's sole responsibility to provide and maintain: (i) personal liability insurance on the use of the Living Unit; (ii) theft, fire, multi-peril, and other hazard insurance covering loss or damage to the Owner's personal property and Living Unit; and (iii) any other insurance not carried by the Active Adult Housing Association that the Owner desires.

(f) *General Provisions on Insurance.* The Board of Directors of the Active Adult Housing Association is granted the authority to negotiate loss settlements with the appropriate insurance carriers covering insurance purchased and obtained by the Active Adult Housing Association pursuant to this Section 6.02. Any two Directors of the Active Adult Housing Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and their signatures will be binding on the Active Adult Housing Association and the Members. Any policy of insurance obtained by the Active Adult Housing Association may contain a reasonable deductible no higher than that permitted by any Institutional Guarantor. The deductible will be paid by the party who would be responsible for the repair in the absence of insurance and, if multiple parties are responsible, the deductible will be allocated in relation to the amount each party's responsibility bears to the total loss, as determined by the Board. The allocation of responsibility by the Board will not limit the right of a Member to enforce any indemnity rights of the Member against any one or more responsible Members or to enforce any right of joint and several liability in a court of law or alternative dispute resolution forum. Where possible, each insurance policy maintained by the Active Adult Housing Association must require the insurer to notify the Active Adult Housing Association in writing at least 10 days before the cancellation or any substantial change to the Active Adult Housing Association's insurance.

(g) *Non-liability of Active Adult Housing Association.* Notwithstanding the requirement of the Active Adult Housing Association to obtain insurance coverage as stated in this Declaration, neither the Declarant nor any officer, director, partner, or employee of Declarant) nor the Active Adult Housing Association nor any director, officer, or agent of the Active Adult Housing Association nor any Builder nor any officer, director, partner or employee of any Builder will be liable to any Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Active Adult Housing Association or if the amount of insurance is not adequate, and it will be the responsibility of each Owner to ascertain the coverage and protection afforded by the Active Adult Housing Association's insurance and to procure and pay for any additional insurance coverage and protection that the Owner may desire.

(h) **Governmental Requirements.** Notwithstanding anything to the contrary contained in this Section 6.02, the Active Adult Housing Association will maintain any other forms or types of insurance as may be required from time to time by any applicable guidelines issued by any Institutional Guarantor. Additionally, all insurance maintained by the Active Adult Housing Association must meet the rating requirements of any Institutional Guarantor.

(i) **Condominiums.** Without limiting the foregoing provisions on insurance, the Active Adult Housing Association will not insure through any type of insurance any common elements or limited common elements within a condominium, the responsibility for which will be solely with a Subsidiary Association.

Section 6.03. Damage and Destruction - Reconstruction. If the Active Adult Common Area or the Areas of Active Adult Housing Association Responsibility are damaged or destroyed, the Board will obtain bids and contract for repair or reconstruction of these improvements. If the proceeds of any insurance policies payable as a result of the damage or destruction together with the amounts paid by a responsible Owner under Section 5.02 of this Declaration are insufficient to complete the repair or reconstruction, the deficiency will be the subject of a special assessment against, in the case of Active Adult Common Area or Areas of Active Adult Housing Association Responsibility designated for use by all Owners within the Active Adult Housing Community, all Living Units in the Active Adult Housing Community or, in the case of Areas of Active Adult Housing Responsibility designated solely for use by Owners within a particular Village, all Living Units in the applicable Village.

Section 6.04. Other Duties and Powers. The Active Adult Housing Association, acting through the Board and if required by this Declaration or by law or if deemed necessary or beneficial by the Board for the operation of the Active Adult Housing Association or enforcement of this Declaration, will obtain, provide, and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or insurance, or pay any taxes or assessments. If, however, any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are specifically provided or apply to particular Living Units, the cost will be specially assessed to the Owners of these Living Units. The Active Adult Housing Association may likewise pay any amount necessary to discharge any lien or encumbrance levied against any or all the Living Units that, in the sole discretion of the Board, may constitute a lien against the Active Adult Common Area. If, however, one or more Owners are responsible for the existence of a lien against the Active Adult Common Area, they will be jointly and severally liable for the cost of discharging the lien, and any costs incurred by the Active Adult Housing Association by reason of the lien or liens will be specially assessed to the responsible Owners. Without imposing any duty on the Active Adult Housing Association (unless the Active Adult Project Documents specifically provide otherwise), the Active Adult Housing Association may exercise any other right or privilege given to it by the Active Adult Project Documents and every other right or privilege implied from the existence of the Active Adult Project Documents.

Section 6.05. Active Adult Housing Association Rules. By a majority vote of the Board, the Active Adult Housing Association, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal rules and regulations for the Active Adult

Housing Community. The Active Adult Housing Association Rules may restrict and govern the use of any area by any Owner or the Owner's Permittees or the Owner's pets and additionally may establish a system of fines and charges for violations of the Active Adult Project Documents; however, the Active Adult Housing Association Rules may not discriminate among Owners. A copy of the Active Adult Housing Association Rules will be available for inspection by the Members at reasonable times. The Active Adult Housing Association Rules will be interpreted in a manner consistent with this Declaration or the Active Adult Articles or Active Adult Bylaws, and, upon adoption, the Active Adult Housing Association Rules will have the same force and effect as if they were established in full within and were a part of this Declaration. The Active Adult Housing Association, the Board, and the officers of the Active Adult Housing Association will have no liability to any Owner or any other person for the failure to enforce (or any delay in the enforcement of) the Active Adult Housing Association Rules.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 7.01. Architectural Approval. No landscaping, lawns, plants, shrubs, trees, and above-ground decorative features (such as fountains, water features, flag poles, planters, bird baths, sculptures, and walkways, and the like (collectively called, in this Declaration, the "landscaping") may be installed anywhere on Owner's Lot (whether in the Public Yard or Private Yard) unless it is approved by the Architectural Committee in writing prior to installation. No Ancillary Unit may be constructed or maintained on a Lot, and no exterior addition, change, or alteration may be made to any Living Unit or approved Ancillary Unit, until a complete set of all plans and specifications are submitted to and approved in writing by the Architectural Committee. All plans and specifications submitted to the Architectural Committee must specifically identify in writing the item for which approval is sought and must show the nature, type, size, style, color, shape, height, location, materials, floor plan, approximate cost, and other material attributes of the proposed item. All plans and specifications will be reviewed by the Architectural Committee for harmony and compatibility of external design and location in relation to surrounding structures, landscaping, topography, and views from neighboring Living Units. Without limiting the generality of the preceding sentence, the prior approval of the Architectural Committee also will be necessary for those types of landscaping installed on a Parcel or Lot, all roof mounted equipment of the type described in Section 8.06 below, all window coverings of the type described in Section 8.12 below, all Side Yard Parking Areas, and all mailboxes of the type described in Section 8.26 below. Unless a different time period is specified in this Declaration, if the Architectural Committee fails to approve or disapprove the plans and specifications within 45 days after complete and legible copies of the plans and specifications have been submitted to the Active Adult Housing Association, the application will be deemed approved.

Section 7.02. Appointment of Architectural Committee. The appointment and removal of persons that comprise the Architectural Committee will be governed by the Active Adult Bylaws.

Section 7.03. Architectural Committee Rules. The Architectural Committee, by unanimous vote or unanimous written consent, may adopt, amend, and repeal rules and

regulations or design guidelines regarding the procedures for the Architectural Committee approval and the architectural style, nature, kind, shape, height, materials, exterior colors, surface texture, and location of any improvement on a Living Unit. These rules and regulations or design guidelines will be called the "Architectural Committee Rules". The Architectural Committee Rules will be interpreted in a manner that is consistent with the other Active Adult Project Documents and, upon adoption, the Architectural Committee Rules will have the same force and effect as if they were established in full within and were part of this Declaration.

Section 7.04. Limited Effect of Approval. All approvals of the Architectural Committee are intended to be in addition to, and not in lieu of, any required municipal or county approvals or permits, and Owner is solely responsible to ensure conformity with municipal and county building codes and building permits, if applicable. The standards and procedures established in the Active Adult Project Documents for Architectural Committee approval are intended as a mechanism for enhancing the overall aesthetics of the Active Adult Housing Community and not for the purpose of creating or imposing any duty on the Architectural Committee or any person serving on the Architectural Committee. The approval by the Architectural Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring prior written approval of the Architectural Committee by virtue of this Declaration or any other Active Adult Project Documents, will not be deemed to constitute an approval of any other matter or a waiver of any requirement or restriction imposed by the Town or any law or any requirement or restriction imposed by this Declaration and will not be deemed an approval of the financial condition or integrity of the contractor or the workmanship or quality of the work or the structural integrity, soundness, or sufficiency of the plans, drawings, specifications, or construction. Similarly, the approval of the Architectural Committee of any plans, drawings, or specifications will not be deemed an assurance that the plans, etc., as approved, comply with any applicable drainage requirements for the Living Unit or Active Adult Housing Community or that the plans, etc. will not result in an adverse impact on drainage for the Living Unit, other Living Units, or the Active Adult Housing Community. The approval by the Architectural Committee of any plans, drawings, or specifications will only be considered an approval of the specific item in question. For example, the approval by the Architectural Committee of plans for an Ancillary Unit will not be considered as an approval of landscaping that may be shown on the plans for illustration purposes. An Owner's request for approval of an item must be specific in identifying the item that is to be approved.

Section 7.05. Future Approvals. Each Owner acknowledges that the Architectural Committee will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Committee Rules, may vary. In addition, each Owner acknowledges that it may not always be possible to determine unacceptable or objectionable features until the work is completed. In these cases, it may be unfeasible or unreasonable for the Architectural Committee to require changes to the objectionable feature or to cause its removal, but the Architectural Committee may refuse to approve similar proposals in the future. Approval of plans and specifications or other applications by the Architectural Committee will not constitute a waiver of the right of the Architectural Committee to withhold approval to subsequent or additional plans, specifications, and applications of a similar nature.

Section 7.06. Variances. The Architectural Committee may authorize variances from compliance with any of the Architectural Committee Rules or procedures when circumstances

such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require variances. No variance will be granted (or will be deemed to be granted) unless the request for variance is made in writing to the Architectural Committee and is approved in writing by the Architectural Committee. No variance may be issued that is contrary to this Declaration, and the issuance of a variance will not prevent the Architectural Committee from denying a variance in other circumstances. The inability to obtain the approval of any governmental agency or to obtain the issuance of a permit on the terms and conditions of any financing will not be considered a hardship warranting a variance.

Section 7.07. Appeals to Board. Decisions of the Architectural Committee may be appealed to the Board (to the extent that the composition of the Board and Architectural Committee is different in any respect) by filing, with the Board, a written notice of appeal within 20 days of the denial of any request made to the Architectural Committee. To the extent that Board has not otherwise established procedures for the handling of appeals from decisions of the Architectural Committee, the Board will treat the appeal as a written request for a hearing under the procedures established in the Active Adult Bylaws for handling non-monetary violations of the Active Adult Project Documents. The decision of the Board will be final and not further appealable as to all matters involving architectural control, and no matter of architectural control will be subject to the alternative dispute resolution procedures outlined below.

ARTICLE VIII

USE RESTRICTIONS

In addition to all other covenants and restrictions contained in the Master Declaration and this Declaration and the other Active Adult Project Documents, the use of the Active Adult Common Area, Living Units, Areas of Active Adult Housing Association Responsibility, and Ancillary Units by the Owners and the Owner's Permittees is subject to the following use restrictions:

Section 8.01. Restricted Use. Except as otherwise permitted under this Declaration, a Living Unit will be used only by a Single Family and only for an Active Adult Use. No permanent or temporary prefabricated housing, modular housing, or manufactured housing may be placed on a Lot as a Living Unit or an Ancillary Unit. No Commercial or Recreational Vehicle or Family Vehicle may be used within the Active Adult Housing Community as living or sleeping quarters on a permanent or temporary basis, and, except for Ancillary Units specifically designed for sleeping or living, as approved by the Architectural Committee, no garage or Ancillary Unit may be used as living or sleeping quarters on a permanent or temporary basis.

Section 8.02. Business and Related Uses. No Living Unit will ever be used, allowed, or authorized to be used in any way, directly or indirectly: (i) as a bed and breakfast, or transient lodging facility; (ii) for business, trade, commercial, manufacturing, industrial, mercantile, commercial storage, vending, or other similar uses or purposes; (iii) as a daycare, nursery school, child care group home, or similar child care facility; or (iv) as any type of adult group home or shelter. The previous sentence will not limit the right of the Declarant, Builder, and their respective affiliates and agents to use the Active Adult Housing Community or Living Units for

any of the foregoing uses as may be required, convenient, or incidental to the construction and sale of Living Units, including, without limitation, a business office, management office, storage area, construction yard, signage, model sites, and display and sales office during the construction and sales period. The foregoing restriction also will not prevent an Owner from conducting his or her personal affairs in the Living Unit and will not be deemed to prevent an Owner and the Owner's Occupants only from the incidental and secondary use of the Living Unit for business or trade purposes that: (i) utilize portions of the Living Unit in such a manner so that the existence or operation of the business activity is not detectable by sight, sound, or smell from outside the Living Unit; (ii) in the Board's judgment, do not generate a level of vehicular or pedestrian traffic or number of vehicles being parked within the Active Adult Housing Community that is noticeably greater than that which is typical of Living Units in which no business activity is being conducted; (iii) in the Board's judgment, is consistent with the residential character of the Active Adult Housing Community and does not constitute a nuisance, or offensive use, or a threat to the security or safety of the residents at the Active Adult Housing Community; (iv) do not involve door-to-door solicitation of residents within the Active Adult Housing Community and do not use the street address of the Living Unit in any off-site signs, advertising, or similar marketing materials; and (v) do not otherwise violate local zoning and use laws applicable to the Active Adult Housing Community.

Section 8.03. Signs. No emblem, logo, sign, or billboard of any kind will be displayed on any of the Living Units or Active Adult Common Area so as to be Visible From Neighboring Property, except for: (i) signs used by Declarant or any Builder to advertise the Living Units for sale or lease; (ii) signs on the Active Adult Common Area as may be placed and approved by the Declarant, during the period of Declarant Control, or by the Architectural Committee, after the period of Declarant Control; (iii) one sign having a total face area of five square feet or less advertising a Living Unit for sale or rent placed in the front yard of a Living Unit, at least 10 feet in back of street curb, or in some other location designated by the Architectural Committee; (iv) any security, alarm, or block watch sign located near the front door of the Living Units; (v) any signs as may be required by legal proceedings; and (vi) signs as may be approved in advance by the Architectural Committee in terms of number, type, and style. Political signs are prohibited. The foregoing will not be deemed to prevent an Owner from displaying religious and holiday signs, symbols, and decorations of the type customarily and typically displayed inside or outside single family residences, subject to the authority of the Board or the Architectural Committee to adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners (including disturbance from pedestrian and vehicular traffic coming on the Active Adult Housing Community to view the signs, symbols, and decorations). The foregoing also will not be deemed to prevent an Owner from the appropriate display of the American flag in accordance with A.R.S. § 33-1808, or any successor statute, or any Active Adult Housing Association Rules.

Section 8.04. Restricted Activities. No illegal, noxious, or offensive activity will be engaged in (or permitted to be engaged in) on any Living Unit. No act or use may be performed on any Living Unit that is or may become an annoyance or nuisance to the village generally or other Owners specifically, or that interferes with the use and quiet enjoyment of any of the Owners and of the Owner's Living Unit. Music and other sounds from outdoor speakers will be played at a level so as to not be a nuisance to neighboring Living Unit Owners. No Owner will

permit any thing or condition to exist upon any Living Unit that induces, breeds, or harbors infectious plant diseases or infectious or noxious insects.

Section 8.05. Restricted Residences. Except as originally constructed by the Declarant as part of the original construction of the Living Unit and related improvements, no Ancillary Units will be constructed or maintained on any Lot at any time, unless the type, size, shape, height, location, style, and use of the Ancillary Unit, including all plans and specifications and materials for the Ancillary Unit, are approved by the Architectural Committee pursuant to Article VII above prior to the commencement of construction. All Ancillary Units approved by the Architectural Committee for construction must be constructed solely from new materials and must be constructed in compliance with all local and municipal codes, ordinances, and stipulations applicable to the Active Adult Housing Community and all restrictions contained in the Active Adult Project Documents. Any Ancillary Unit that has been constructed without the prior approval of the Architectural Committee or in violation of any provision of the Active Adult Project Documents or any local or municipal codes, ordinances, and stipulations is subject to removal upon notice from the Active Adult Housing Association at the sole loss, cost, and expense of the constructing Owner.

Section 8.06. Roof Mounted Equipment. Solar energy panels, solar energy devises, swamp coolers, air conditioning units, or other cooling, heating, or ventilating systems may not be installed on the roof of any Living Unit in a manner so as to be Visible From Neighboring Property, except where originally installed by the Declarant or any Builder, unless otherwise approved by the Town and the Architectural Committee.

Section 8.07. Animals. No animals, livestock, horses, birds, or poultry of any kind will be raised, bred, or kept on or within any Living Unit; however, an Owner may keep a reasonable number of dogs, cats, or other common household pets in the Detached Dwelling Unit or in an enclosed Private Yard if permitted under local zoning ordinances. The Board will be the sole judge as to what constitutes a reasonable number of pets and what constitutes a common household pet. Each Owner covenants that it will seek the Board's prior approval before bringing pets on the Owner's Living Unit that may not be considered common household pets. The foregoing restriction will not apply to fish contained in indoor aquariums. These permitted types and numbers of pets will be permitted for only so long as they are not kept, bred, or maintained for any commercial purpose and for only so long as they do not result in an annoyance or nuisance to other Owners. No pets will be permitted to move about unrestrained except in the Living Unit or the Private Yard of a Lot. Each Owner will be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the Owner's Living Unit or any other Living Unit, Active Adult Common Area, Areas of Active Adult Housing Association Responsibility, or public or private streets. Owners will be liable for all damage caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing, and the Board will be the sole judge for determining whether any pet is an annoyance or nuisance.

Section 8.08. Drilling and Mining. No oil or mineral drilling, refining, quarrying, or similar mining operations of any kind will be permitted upon or in any Living Unit. No wells, tanks, tunnels, mineral excavations, or shafts will be permitted on or under the surface of any

Living Unit. No derrick or other structure designed for use in boring for water, oil, or natural gas will be erected, maintained, or permitted upon any Living Unit.

Section 8.09. Trash. All rubbish, trash, and garbage will be regularly removed from their respective Living Units, and an Owner will not allow rubbish, trash, or garbage to accumulate on any Living Unit. If an Owner allows trash to accumulate on the Owner's Living Unit, the Board, on behalf of the Active Adult Housing Association, may arrange and contract for the removal and cleanup of the trash, and the costs will become a direct assessment to that Owner under Section 4.04(b) above. No incinerators will be kept or maintained on any Living Unit.

Section 8.10. Woodpiles and Storage Areas. Woodpiles, storage areas, and pool filters may be maintained only in the Private Yard of a Living Unit and only in a manner that is not Visible From Neighboring Property. Covered or uncovered patios may not be used for storage purposes, whether or not the patio or any objects on the patio are Visible From Neighboring Property. Yard tools, lawn mowers, and similar tools and equipment must be stored (when not in use) in any garage related to the Living Unit or in an enclosed storage shed approved as an Ancillary Unit.

Section 8.11. Antennas. Except for the Permitted Satellite Dishes and Exterior Antennas, no external radio antenna, television antenna, or satellite dish may be installed or constructed on any Living Unit, on the roof of any Living Unit, or on any permitted Ancillary Unit in any manner that will make any portion of the external radio antenna, television antenna, or satellite dish Visible From Neighboring Property. Notwithstanding the preceding sentence, an Owner may install Permitted Satellite Dishes and Exterior Antennas in any location on a Living Unit, or Ancillary Unit so long as the Owner notifies the Architectural Committee of the location. When permitted by law with respect to Permitted Satellite Dishes and Exterior Antennas, the Architectural Committee may require specific locations, size limitations, or screening devices so long as the restrictions do not impair the installation, maintenance, or use of the Permitted Satellite Dishes and Exterior Antennas, as the term impair is defined under the Telecommunications Act of 1996 and any rules promulgated under the Telecommunications Act of 1996, as either may be amended.

Section 8.12. Windows and Window Covering. Sheets, newspapers, and similar items may not be used as temporary window coverings. No aluminum foil, reflective screens, reflective glass, mirrors, or similar reflective materials of any type will be placed or installed inside or outside of any windows of a Living Unit or Ancillary Unit without the prior written approval of the Architectural Committee. No awnings, storm shutters, canopies, air conditioners, swamp coolers, or similar items may be placed in, on, or above any window of a Living Unit or Ancillary Unit so as to be Visible From Neighboring Property, unless approved by the Architectural Committee. Owners must cover windows with appropriate window coverings within six months of becoming an Owner.

Section 8.13. Leasing. Nothing in the Declaration will be deemed to prevent the leasing of a Living Unit on a non-transient basis to a Single Family from time to time by the Owner of the Living Unit, subject to all of the provisions of the Active Adult Project Documents, and the

leasing of a Living Unit in accordance with this Declaration will not be considered the operation of a business or trade. Any lease must be for a term of at least three months.

Section 8.14. Encroachments. No tree, shrub, or planting of any kind on any part of the Active Adult Housing Community will be allowed to overhang, rest on, or otherwise encroach upon any neighboring Living Unit, sidewalk, street, pedestrian way, or Active Adult Common Area in the area below a level of 10 feet. The restriction described in the previous sentence will not apply to the visibility easement areas described in Section 9.04 below and will not apply in the event a more restrictive height limitation is contained on the Plat.

Section 8.15. Machinery. No machinery of any kind will be placed, operated, repaired, or maintained upon or adjacent to any Living Unit or Active Adult Common Area other than machinery associated with permissible types of vehicle repairs as described in Section 8.25 below, machinery that is usual and customary in connection with the use, maintenance, or construction of a Living Unit, and machinery that the Declarant or Active Adult Housing Association may require for the operation of and maintenance of the Active Adult Housing Community.

Section 8.16. Subdivision and Time Shares. Except in those instances where the Declarant or Builder is permitted to further subdivide a Living Unit in the exercise of its general declarant rights, no Living Unit will be further subdivided or separated into smaller lots or parcels by any Owner, and no portion of a Living Unit will be conveyed or transferred by any Owner without the prior written approval of the Board. No Owner will transfer, sell, assign, or convey any time-share in any Living Unit, and any time-share transaction will be void.

Section 8.17. Increased Risk. Nothing will be done or kept by any Owner in or on any Living Unit, Ancillary Unit, or any other area of the Active Adult Housing Community that will increase the Active Adult Housing Association's rate of insurance without the prior written consent of the Board. No Owner will permit anything to be done or kept on or in the Owner's Living Unit, Ancillary Unit, or any other area of the Active Adult Housing Community that will result in the cancellation or reduction of insurance on any Living Unit or any insurance of the Active Adult Housing Association or that would be a violation of any law.

Section 8.18. Drainage Plan. No Ancillary Unit, pool, concrete area, or landscaping will be constructed, installed, placed, or maintained by an Owner on any Living Unit or any other areas of the Active Adult Housing Community in any manner that would obstruct, interfere, or change the direction or flow of water as established in the drainage plans for the Active Adult Housing Community or any Living Unit that are on file with the Town. Except where approved by the Architectural Committee, no dry wells, catch basins, or drainage ponds may be installed on any Living Unit, and no weep holes or drainage holes may be placed in any boundary fence or wall. No private irrigation wells may be installed anywhere on a Living Unit.

Section 8.19. Clothes Drying Facilities and Basketball Structures. Outside clotheslines or other outside facilities for drying or airing clothes will not be erected, placed, or maintained on any Living Unit unless they are erected, placed, or maintained in a Private Yard in a manner so as to not be Visible From Neighboring Property. Basketball hoops, backboards, and other elevated sport structures (e.g., volleyball, badminton, and soft nets, batting cages, etc.) of a

permanent or temporary nature will not be erected, placed, used, and maintained on any Living Unit or in any Public Yard or Private Yard of any Living Unit (including the front driveway).

Section 8.20. Outside Installations. The outdoor burning of trash, debris, wood, or other materials within the Active Adult Housing Community is prohibited. The foregoing, however, will not be deemed to prohibit the use of normal residential barbecues, private outdoor fireplaces, or other similar outside cooking grills. Except as originally installed by the Declarant or as otherwise approved by the Architectural Committee, no spotlights, flood lights, or other high intensity lighting will be placed or utilized upon any Living Unit so that the light is directed or reflected on any Active Adult Common Area or any other Living Unit. Seasonal decorative lights may be displayed between November 15 and January 31, subject to any restrictions adopted by the Board or the Architectural Committee under Section 8.03 above. No outdoor speakers may be installed on a Living Unit except as originally installed by the Declarant or as otherwise approved by the Architectural Committee. Except as approved by the Architectural Committee as part of the approved landscape plans for a Living Unit, no artificial vegetation may be installed anywhere on a Living Unit.

Section 8.21. Fuel Tanks. No fuel tanks of any kind will be erected, placed, or maintained on or under the Active Adult Housing Community except for propane or similar fuel tanks for pools, gas grills, and similar equipment so long as the fuel tanks are permitted under the ordinances of the Town.

Section 8.22. Hazardous Wastes. Except as may be necessary for normal household, landscaping, or automotive uses, no Owner will permit any hazardous wastes (as defined under all applicable federal and state laws), asbestos, asbestos containing material, or any petroleum products or by-products to be kept, dumped, maintained, stored, or used in, on, under, or over any Living Unit. No gasoline, kerosene, cleaning solvents, or other flammable liquids may be stored in the Active Adult Common Area.

Section 8.23. Commercial and Recreational Vehicles.

(a) *Limited Parking or Storage.* Except as provided in this section below, Commercial or Recreational Vehicles may not be parked or stored upon a Living Unit or anywhere within the Active Adult Housing Community.

(b) *Permitted Commercial or Recreational Vehicles.* Certain types of Commercial or Recreational Vehicles may be treated as Family Vehicles and used and parked within the Active Adult Housing Community as Family Vehicles if their appearance is similar to that of a Family Vehicle, as determined by the Architectural Committee. For example, the following types of Commercial or Recreational Vehicles will be treated as Family Vehicles: (i) commercial pickup trucks with a manufacturer's capacity rating of one ton or less that depict or advertise the name of a business on the vehicle so long as nothing is attached to or located in the bed of the truck other than tool chests or other equipment stored or located below eye level of the pickup bed walls; (ii) commercial pickup trucks with a manufacturer's capacity rating of one ton or less equipped with a camper or camper shell so long as the height of the truck with the camper shell is no more than eight feet in height (when measured from ground level of

the vehicle); and (iii) vehicles that are similar to Family Vehicles but that may have the name of a business or government organization on the vehicle (such as realtor cars or state vehicles). Without limiting the foregoing, the Architectural Committee, upon the written request of an Owner to the Architectural Committee, also may make a determination that certain other types of Commercial or Recreational Vehicles may be suitable for storage or parking within the Active Adult Housing Community if the Commercial or Recreational Vehicles are of a size or type that could be stored or parked on the Owner's Living Unit in a manner that would not detract from the residential nature of the Active Adult Housing Community and the immediately surrounding area.

(c) *Permitted Parking.* Commercial or Recreational Vehicles that are permitted for parking or storage within the Active Adult Housing Community may be parked within the Active Adult Housing Community only so long as they are operable and parked only: (i) with respect to a Parcel designated for Apartment Use or Cluster Housing Use, in those areas of the Parcel designated by the Owner of the Parcel as parking areas for Commercial or Recreational Vehicles; and (ii) with respect to a Parcel designated for Single Family Detached Housing Use, either (A) in a fully enclosed garage located on the Owner's Living Unit; (B) in a Side Yard Parking Area when approved by the Architectural Committee as established below; (C) in the driveway of the Living Unit (so long as it is used frequently so as to not prohibit the use of the garage for its intended purpose). By way of illustration, a boat stored on a trailer may not be parked in the driveway.

(d) *Parameters for Certain Parking.* When the Architectural Committee has approved the parking and storage of certain types of Commercial or Recreational Vehicles within the Active Adult Housing Community, the Architectural Committee also may approve of (but is not required to approve of) the parking or storage of those permitted types of Commercial or Recreational Vehicles in an approved Side Yard Parking Area. The approval by the Architectural Committee of the parking of permitted Commercial or Recreational Vehicles in the Side Yard Parking Area of one Living Unit should not be construed as the approval of the parking of a similar permitted Commercial or Recreational Vehicle in a similar location or another Living Unit. Generally, the Architectural Committee will work within the following parameters in making a decision as to whether or not to approve of the parking or storage of permitted Commercial or Recreational Vehicles in the Side Yard Parking Area of a Living Unit: (i) permitted Commercial or Recreational Vehicles that can be parked or stored in a Side Yard Parking Area so as to not be Visible From Neighboring Property may be parked or stored in the Side Yard Parking Area; and (ii) permitted Commercial or Recreational Vehicles that are Visible From Neighboring Property when parked in a Side Yard Parking Area may be parked or stored in a Side Yard Parking Area only when Screened From View.

(e) *Decisions of Architectural Committee.* Subject to the right to appeal the Architectural Committee's decision to the Board under Section 7.07 above, the Architectural Committee will be the sole judge as to the types of Commercial or Recreational Vehicles that are permitted to be parked or stored within the Active Adult Housing Community and the area of the Living Unit within which permitted Commercial or Recreational Vehicles can be parked.

(f) **Violations.** Any Commercial or Recreational Vehicles parked in violation of these restrictions may be towed by the Active Adult Housing Association at the sole expense of the owner of the vehicle if the vehicle remains in violation of these restrictions for a period of 24 hours from the time a notice of violation is placed on the vehicle, and neither the Active Adult Housing Association nor any of its officers, directors, employees, or agents will be liable for trespass, negligence, conversion, or any criminal act by reason of towing the vehicle.

Section 8.24. Garages and Parking of Family Vehicles. Any enclosed garage associated with a Living Unit will be used by the Owner only for the parking of Family Vehicles or approved Commercial or Recreational Vehicles, storage purposes, household purposes, and certain types of vehicle repairs and maintenance as described in Section 8.25 below. Garages may not be used as sleeping quarters or guest accommodations, but, unless otherwise prohibited under a Subsidiary Declaration, garages may be used for hobbies such as art, woodworking, golf club repair, and similar hobbies that do not involve the permanent conversion of the garage for these activities, so long as, within 30 days of Owner moving into the Living Unit, at least one Family Vehicle can be parked in the garage at all times. The garage door will be maintained by the Owner in good and functioning order and will remain closed except as provided in Section 8.25 below and except while the garage is in use for cleaning, storing, unloading, entry, and exit. Additional Family Vehicles that cannot be parked in the garage associated with a Living Unit may be parked in the driveway or in any Side Yard Parking Area so long as the Family Vehicles are operable and are, in fact, operated from time to time. Notwithstanding any less restrictive local or municipal codes, ordinances, or stipulations, Family Vehicles may be parked in any public or private street within the Active Adult Housing Community only on a Nonrecurring And Temporary Basis, and no other on-street parking is permitted within the Active Adult Housing Community.

Section 8.25. Vehicle Repairs. Routine maintenance and repairs of Family Vehicles or approved Commercial or Recreational Vehicles may be performed within the Owner's garage but not on any driveway, Side Yard Parking Area (or any other portion of the Owner's Lot), the Active Adult Common Area, the Master Common Area, or any public or private streets within the Active Adult Housing Community. Additionally, Family Vehicles and approved Commercial or Recreational Vehicles may be rebuilt, reconstructed, and repaired (including non-routine repairs) within the Owner's garage so long as the Owner's activities are performed at reasonable times and in a reasonable manner and so long as these activities are otherwise not in violation of any local zoning and use laws. During any types of permitted repairs and maintenance as described above (including rebuilding, reconstructing, etc.), the garage door will be kept closed except for entry and exit or ventilation, and then the garage only will remain open to the minimum extent necessary. Except for the purposes of performing the permitted repairs and maintenance of vehicles in the garage as outlined above in this Section 8.25, no Family Vehicle or approved Commercial or Recreational Vehicle will be permitted to be or remain anywhere in the Active Adult Housing Community in a state of disrepair or in an inoperable condition. No vehicle frames, bodies, engines, or other vehicle parts or accessories may be stored anywhere on a Parcel except in a garage in connection with permitted repairs and maintenance and then only on a temporary basis for anticipated use on any permitted repair or maintenance that is in process. No portion of a Living Unit (including the garage) may be used to store fuel or lubricants other than for personal use in amounts that are customarily stored by

other Owners within the Active Adult Housing Community. No portion of a Living Unit (including a garage) may be used for steam cleaning of engines or as a body shop. Owner may perform any of the permitted types of repairs and maintenance, as described above, only on Family Vehicles and approved Commercial or Recreational Vehicles, and not on any similar type of vehicles that are not owned, used, or leased by Owner or Owner's Occupants.

Section 8.26. Mailboxes. Except when originally installed by the Declarant, no mailboxes, mail posts, or similar items for the receipt of mail will be installed, constructed, or placed on a Living Unit unless the location, design, height, color, type, and shape are approved by the Architectural Committee. If the Active Adult Housing Community is developed with NBU's, cluster boxes, or gang mailboxes, the Active Adult Housing Association will maintain the community mailboxes to the extent allowed or required by the U.S. Postal Service, and no Owner will be permitted to install or use individual mailboxes on the Owner's Living Unit.

Section 8.27. Swimming Pools. Except as originally installed by the Declarant, swimming pools, spas, and Jacuzzis may be installed within the Private Yard of a Living Unit only after the plans and specifications for the pool, pool fencing, and permanent pool equipment are approved by the Architectural Committee. No aboveground pools may be erected, constructed, or installed on a Living Unit except for toddler pools and wading pools. Each Owner acknowledges that it is solely responsible for the installation of any pool fencing for the Living Unit. Pools may not be back washed into other Living Units, the Master Common Area, the Active Adult Common Area, or any portions of the Active Adult Housing Community other than the Owner's Living Unit and streets. To the extent fencing is removed to install a permitted pool, the fencing will be replaced immediately after installation of the pool and in a manner substantially similar to the fence condition prior to its removal to install the pool. The Architectural Committee may condition any request to install a pool on the posting of a bond (cash or surety) to ensure reinstallation of any fence removed during pool construction.

Section 8.28. Declarant's Exemption. Nothing contained in this Declaration will be construed to prevent the Declarant or its agents or any Builder from constructing, erecting, and maintaining model homes, sales structures, temporary improvements, parking lots, construction trailers, or signs necessary or convenient to the sale or lease of Living Units within the Active Adult Housing Community during the entire period of the sales and marketing efforts of Declarant or any Builders. Also, the use restrictions created in Article VIII of this Declaration will not apply to any construction activities of Declarant or any Builder.

ARTICLE IX

CREATION OF EASEMENTS

Section 9.01. Public Utility Easements. Declarant grants and creates a perpetual and non-exclusive easement upon, across, over, and under those portions of a Qualified Active Adult Plat that may be designated as a public utility easement or p.u.e. for the installation and maintenance of utilities, including electricity, telephone, water, gas, cable television, drainage facilities, sanitary sewer, or other utility lines servicing the Active Adult Housing Community or any other real property. The areas designated for those easements may include the Active Adult Common Area or those areas of a Village depicted on a Qualified Active Adult Plat. All public

utility easements may be used by the provider utility company and the Town without the necessity of any additional recorded easement instrument. The public utility easement described above will not affect the validity of any other recorded easements affecting the Active Adult Housing Community. All utilities and utility lines will be placed underground. No provision of this Declaration, however, will act to prohibit the use of aboveground and temporary power or telephone structures incident to the construction of buildings or structures as needed by the Declarant or any Builder. Public or private sidewalks may be located in the public utility easements. The public utility easements described above will be perpetual unless and until abandoned by resolution of the Town.

Section 9.02. Temporary Construction Easements. During the period of Declarant's or any Builder's construction activities within the Active Adult Housing Community, Declarant reserves a non-exclusive easement for the benefit of itself, all Builders, and their respective agents, employees, and independent contractors on, over, and under those portions of the Sundance Master Plan Area that are reasonably necessary to construct improvements. The burden associated with this temporary construction easement will terminate automatically as to any particular Parcel on the completion of all initial construction activities on adjoining portions of the Sundance Master Plan Area. Similarly, the benefit associated with this temporary construction easement will terminate automatically on the completion of all initial construction activities on the Parcel. This temporary construction easement will not affect any portion of the Active Adult Housing Community upon which a Living Unit, permitted Ancillary Unit, or pool is located. In utilizing this temporary construction easement, neither Declarant nor any Builder will be liable or responsible for any damage to any landscaping or improvements located within the temporary construction easement; however, Declarant and all Builders will use (and cause its agents, employees, and independent contractors to use) reasonable care to avoid damage to any landscaping or improvements.

Section 9.03. Vehicular Non-Access. Where depicted and described by a Plat, if at all, Declarant grants to the Town a non-exclusive vehicular non-access easement across those portions of the Active Adult Housing Community described on the Plat. No vehicles may be driven or moved across or over these easement areas to access any adjoining streets or real property. This easement will be perpetual unless and until abandoned by resolution of the Town.

Section 9.04. Visibility Easement. Declarant grants to the Town a non-exclusive restricted visibility easement on and over those specific areas of those Living Units indicated on a Plat. All structures and landscaping that are located within this restricted visibility easement will have at all times a height no greater than three feet higher than the base height of the object in question. This easement will be perpetual unless and until abandoned by resolution of the Town.

Section 9.05. Additional Specific Easements. Declarant reserves for itself the non-exclusive right and power to grant and record specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property in accordance with the Sundance Community Master Plan by Declarant or any Builders. The Owner of any property to be burdened by these easements will be given written notice in advance of the grant. The location of these easements will be subject to the written approval of the Owner of the burdened property, whose approval will not unreasonably be withheld, delayed,

or conditioned. All work associated with the exercise of these easements will be performed in a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the person exercising the easement will restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements will not extend to permitting entry into the structures, nor will it unreasonably interfere with the use of any Parcel or Living Unit and, except in an emergency, entry will be made only after reasonable notice to the Owner or Occupant.

Section 9.06. Easements for Golf Course.

(a) *Errant Golf Balls.* Every portion of the Active Adult Housing Community that is adjacent to the Golf Course is burdened with an easement for errant golf balls unintentionally stuck from the Golf Course to come upon these areas. The existence of this easement will not relieve golfers of liability for damage caused by errant golf balls intentionally struck into these areas. Under no circumstances will any of the following persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: Declarant, the Active Adult Housing Association, any Builder, any Subsidiary Association, any Golf Course owner, any builder or contractor (in their respective capacities), any property manager, the Golf Course architect or designer, or any officer, director, member, partner, employee or agent of any of the foregoing.

(b) *Golf Course Maintenance.* The owner of any Golf Course within or adjacent to any portion of the Active Adult Housing Community, will at all times have a right and non-exclusive easement of access and use over those portions of the Active Adult Common Areas reasonably necessary to the operation, maintenance, repair, and replacement of the Golf Course. If and when the Golf Course is constructed, the ownership, operation, or configuration of, or rights to use, the Golf Course may change at any time and from time to time. No consent of the Master Association, any Community Association, any Subsidiary Association, or any Owner will be required to effectuate any change described in the preceding sentence. No Owner or Owner's Occupant will have any ownership interest in, or right to use the Golf Course, solely by virtue of ownership, use, or occupancy of any Parcel or Living Unit within the Sundance Master Plan Area.

(c) *Special Features and Functions.* No Owner or Owner's Permittees will at any time enter upon any Golf Course within or adjacent to any portion of the Active Adult Community for any purpose (other than to engage in golf play or as a spectator or guest of the Golf Course, in each and every case subject to all rules and regulations of the Golf Course including, without limitation, all requirements relating to membership, fees, reservation of tee times, and the like). Each Owner and Owner's Permittees will keep his, her, or its pets and other animals off the Golf Course. No Owner will (or permit Owner's Permittees to) interfere in any way with play on the Golf Course (whether in the form of physical interference, noise, harassment of players or spectators, or otherwise). Each Owner (for the Owner and Owner's Permittees) recognizes, agrees and accepts that: (i) operation of a golf course and related facilities will often involve parties and other gatherings (whether or not related to golf, and including without limitation weddings and other social functions) at or on the golf course and related facilities, tournaments, loud

music, use of public address systems and the like, occasional supplemental lighting, and other similar or dissimilar activities throughout the day, from early in the morning until late at night; (ii) by their very nature, golf courses present certain potentially hazardous conditions, which may include, without limitation, lakes or other bodies of water and man-made or naturally-occurring topological features such as washes, gullies, canyons, uneven surfaces and the like; (iii) irrigation of landscaping on a golf course or related facilities may result in water spraying, drifting, or blowing onto adjacent or nearby Lots or Parcels; and (iv) neither Owner nor Owner's Permittees will make any claim against the Declarant, the Active Adult Housing Association, any Builder, any Subsidiary Association, any Golf Course owner, any builder or contractor (in their respective capacities), any property manager, the Golf Course architect or designer, or any officer, director, member, partner, employee, or agent of any of the foregoing in connection with the matters described or referenced in (i), (ii) and (iii) above, whether in the nature of a claim for damages relating to personal injury or property damage, or otherwise.

(d) *Access to Golf Course.* The owners, users, employees, agents, contractors, and designers of any Golf Course will at all times have a right and nonexclusive easement of access and use over all public and private streets within the Sundance Master Plan Area reasonably necessary to travel to and from the Golf Course. Without limiting the generality of the preceding sentence, these people will have the right to park their vehicles on the public and private streets within the Active Adult Housing Community at reasonable times before, during, and after golf tournaments and other functions held at the Golf Course.

(e) *Cart Paths.* There may be golf cart path easements designated on one or more Plats, or in one or more Parcel Declarations or other recorded instruments, which may be used for golf cart paths, pedestrian walkways, maintenance and vehicle access, and unhindered access between the paths and the Golf Course. Nothing will be placed or maintained in any golf cart path easement that interferes with utilization of the golf cart path easement as a playable part of the Golf Course, and all landscaping and other improvements within a golf cart path easement (except those installed or constructed by the Declarant) will require the approval of the owner of the Golf Course.

(f) *Golf Course Usage.* Each Owner understands and agrees that golf course-related activities, including, without limitation, regular course play and tournaments, may be held within or adjacent to the Active Adult Community. Each Owner acknowledges that the location of Owner's Living Unit or Parcel within the Active Adult Housing Community may result in nuisances or hazards to people and property on the Owner's Living Unit or Parcel as a result of normal golf course operations or other golf course-related activities. Each Owner acknowledges that the operation and maintenance of any Golf Course within, near, or adjacent to the Active Adult Housing Community may require that maintenance personnel and other workers will perform work relating to the operation and maintenance of the Golf Course as early as 4:00 a.m. and as late as 9:00 p.m. on a daily basis, and, in certain circumstances (including, without limitation, during tournaments), at any time of the day or night.

(g) *Additional Easements for Golf.* Declarant reserves for itself the nonexclusive right and power to grant and record specific easements, as may be necessary in the sole discretion of Declarant, to subject all or any portion of the Active Adult Housing Community to nuisances incidental to the maintenance, operation or use of the Golf Course, and to the carrying out of golf course-related activities, including, without limitation, tournament play.

ARTICLE X

AGE RESTRICTIONS, COVENANTS AND CONDITIONS

Section 10.01. Age Restrictions. Declarant intends that the Active Adult Housing Community qualify as "housing for older persons" under the terms of 42 U.S.C. § 3607(b)(2) (i.e. the federal Fair Housing Act); A.R.S. § 41-1491.04, and any successor code section or statute (collectively, the "Act"), so as to exempt the Active Adult Housing Community from certain provision of the Act (the "Exemption"). Accordingly, except as provided below, all Living Units located in the Active Adult Housing Community will be occupied by at least one person per household who is 55 years of age or older.

Section 10.02. Declarant's and Builder's Owner Exemption.

(a) Notwithstanding the provisions of Section 10.01 of this Declaration, the Declarant reserves to: (i) the Declarant the exclusive right to sell and convey fewer than 20% of the Living Units for occupancy by at least one person who will be at least 45 years of age or older (but not necessarily 55 years of age or older), so long as the Active Adult Housing Community will continue to qualify for the Exemption as established in the Act (and as explained in the rules and regulations promulgated under the Act); and (ii) the Builder of a Parcel the exclusive right to sell and convey fewer than 20% of the Living Units contained in the Parcel owned by the Builder for occupancy at least one person will be at least 45 years of age or older (but not necessarily 55 years of age or older), so long as the Parcel owned by the Builder will continue to qualify for the exemption as established in the Act (and as explained in the rules and regulations promulgated under the Act).

(b) With regard to the Declarant, prior to the time that 25% of the Living Units in the Active Adult Housing Community have been sold and first occupied, the ratio of Living Units occupied by persons younger than 55 years of age or 55 years of age or older will not be considered relevant. With regard to a Parcel owned by a Builder, prior to the time that 25% of the Living Units in the Parcel have been sold and first occupied, the ratio of Living Units occupied by persons younger than 55 years of age or 55 years of age or older will not be considered relevant.

(c) However, at such time as: (i) with regard to the Declarant, at least 25% of the Living Units in the Active Adult Housing Community have been sold and first occupied, at least 80% of the Living Units then occupied will be occupied by at least one person 55 years of age or older, and, as future sales by the Declarant occur, at least 80% of all Living Units will continue to be occupied by at least one person per Living Unit

that is at least 55 years of age; or (ii) with regard to a Parcel owned by a Builder, at least 25% of the Living Units in the Parcel have been sold and first occupied, at least 80% of the Living Units then occupied will be occupied by at least one person 55 years of age or older, and, as future sales by the Builder occur, at least 80% of all Living Units will continue to be occupied by at least one person per Living Unit that is at least 55 years of age.

Section 10.03. Subsequent Transfers. Subsequent to the initial sale of Living Units by the Declarant or by a Builder to a Non-Developer Owner, all resales of the Living Units by Non-Developer Owners will be subject to the 55 years of age requirements, and it will be a violation of the terms and conditions of this Declaration if any Living Unit subsequently is sold or resold and, then, not occupied by at least one person 55 years of age or older per Living Unit. Notwithstanding the foregoing, if a Non-Developer Owner that is 55 years of age or older dies and leaves the Living Unit to a surviving spouse or other companion previously residing with the deceased Non-Developer Owner, then, so long as the surviving spouse or other co-habitant is at least 45 years of age and so long as at least 80% of the Living Units in the Active Adult Housing Community will continue to be occupied by at least one person 55 years of age or older, the Active Adult Housing Association may elect to allow the surviving spouse or co-habitant to remain in the occupancy of the Living Unit without violation of this Declaration.

Section 10.04. Sales to Persons under Age of 55. If the Declarant or a Builder exercises its right, as set forth above, to sell and convey fewer than 20% of the Living Units for occupancy by at least one person per household 45 years of age or older (but not necessarily 55 years of age or older), the grantee of the deed for the particular Living Unit affirms, by acceptance of the deed, that the lifestyle of the occupants of the intended or existing Living Units is believed to be compatible with the mature lifestyle intended throughout the Active Adult Housing Community as a whole.

Section 10.05. Non-Developer Owners' Obligations. It will be the duty and obligation of each Non-Developer Owner of a Living Unit, prior to reselling, reconveying, or leasing the Living Unit, to: (i) ascertain that, after the purchase or lease, at least one occupant will be 55 years of age or older; and (ii) confirm this fact to the Active Adult Housing Association. This Section 10.05, however, will not apply to Declarant's or Builder's reserved rights above with regard to the sale of Living Units.

Section 10.06. Minors. Nothing in this Declaration will be construed as to permit occupancy of any Living Unit by any person less than 18 years of age (a "Minor"). No Minor will reside in any Living Unit for more than three months during any 12-month period.

Section 10.07. Owner's Occupants. The occupancy restrictions of this Declaration dealing with both minimum age restrictions and the prohibition of Minors applies to all occupants, whether Owners or Owner's Occupants, and to all leases as well as sales.

Section 10.08. Compliance. The Active Adult Housing Association will publish and enforce rules and regulations which, among other things, establish reliable age verification procedures for routinely determining the occupancy of each Living Unit. In accordance with the rules and regulations, Owner and Owner's Occupants will provide verification to the Active

Adult Housing Association that a Living Unit is occupied by at least one person over the age of 55, except for those Living Units sold by Declarant or a Builder pursuant to the reserved rights described in Section 10.02 above. The ultimate responsibility for compliance with the provisions of this Article X rests with the Owner and not the Active Adult Housing Association, the Declarant, or any Builder. The Active Adult Housing Association, Declarant, the Builders, and their respective officers, directors, agents, and employees will have no liability whatsoever for compliance with the foregoing provisions, it being the duty of each Owner to comply with the foregoing provisions and ensure that all Owner's Occupants comply with the foregoing provisions and make appropriate notification to the Active Adult Housing Association. Each Owner acknowledges that: (j) the leasing of Living Units and the pattern of resales of Living Units can be difficult to control or predict; and (ii) compliance with the Act and with the Exemption depends upon the cooperation of all Owners and Owner's Occupants.

Section 10.09. Amending Age Restrictions. Notwithstanding anything contained in this Declaration to the contrary, the provisions of this Article X may only be amended with the written consent of the Declarant and the Builders; however, after all of the property included in the Active Adult Housing Community has been sold by the Declarant and the Builders, this Article X may be amended by an affirmative vote of 90% of the Members then entitled to vote.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01. Enforcement.

(a) *Rights to Enforce.* The Active Adult Housing Association, in the first instance, or any Owner, if the Active Adult Housing Association fails to act within a reasonable time, will have the right to enforce by any available legal means all covenants and restrictions now or in the future imposed by the provisions of this Declaration or the other Active Adult Project Documents. Subject to the limitations established in Article XIII below with respect to the negotiation, mediation, or arbitration of any disputes, the right to enforce all covenants and restrictions includes the right to bring an action at law, in equity, or both.

(b) *Failure to Enforce.* Failure of the Active Adult Housing Association or any Owner to enforce any covenant and restriction in this Declaration or any of the matters detailed in the other Active Adult Project Documents will not be deemed a waiver of the right of the Active Adult Housing Association or any Owner to enforce the covenants and restrictions in the future for the same or similar violation. Failure of the Active Adult Housing Association or any Owner to enforce any covenant or restriction in this Declaration or any of the matters detailed in the other Active Adult Project Documents will not subject the Active Adult Housing Association or any Owner to liability for its actions or inactions. A failure by the Active Adult Housing Association to disclose or to accurately disclose to any purchaser of a Living Unit any of the matters required under A.R.S. § 33-1806.A.4., A.5, or A.6 (i.e., violations of the Active Adult Project Documents, violations of health and building codes, and pending litigation) will not act as a defense to the enforcement of the Active Adult Project Documents by any

Owner for those matters. No act or omission by the Declarant nor any Builder, whether in its capacity as a Member of the Active Adult Housing Association or as a seller or builder of any Living Unit, will act as a waiver, offset, or defense to the enforcement of this Declaration by the Active Adult Housing Association or any Owner.

(c) *Binding Covenants.* Deeds of conveyance of all or any part of the Active Adult Housing Community may incorporate the covenants and restrictions by reference to this Declaration; however, each and every covenant and restriction will be valid and binding upon the respective grantees whether or not any specific or general reference is made to this Declaration in the deed or conveying instrument.

(d) *Remedies for Violation.* Without limiting the preceding portions of this Section, violators of any one or more of the covenants and restrictions may be restrained by any court of competent jurisdiction and damages may be awarded against the violators. The remedies established in this Declaration may be exercised jointly, severally, cumulatively, successively, and in any order. A suit to recover a money judgment for unpaid assessments, obtain specific performance, or obtain injunctive relief may be maintained without extinguishing, waiving, releasing, or satisfying the Active Adult Housing Association's liens under this Declaration.

(e) *Limitation on Recovery Against the Active Adult Housing Association.* Each Owner of a Living Unit, by accepting a deed for that Living Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, specifically acknowledges that any award of monetary damages made in favor of the Owner against the Active Adult Housing Association for the Active Adult Housing Association's failure to comply with, or accurately comply with, the provisions of A.R.S. § 33-1806 will be satisfied from and limited solely to: (i) the proceeds available under any policy of insurance maintained by the Active Adult Housing Association for errors or omissions of this type; or (ii) the amount available in any liability reserve account that may be established by the Active Adult Housing Association and funded through specific liability reserves collected as part of the annual assessments.

Section 11.02. Approval of Litigation.

(a) *Limits on Initiation of Litigation.* The Active Adult Housing Association will not incur any expenses (including, without limitation, attorney fees and costs) to initiate legal proceedings or to join as a plaintiff in legal proceedings without the prior approval of the Members, except for any legal proceedings initiated or joined by the Active Adult Housing Association either to: (i) enforce the use restrictions contained in this Declaration through injunctive relief or otherwise; (ii) enforce the Active Adult Housing Association Rules or the Architectural Committee Rules through injunctive relief or otherwise; (iii) collect any unpaid Assessments, enforce or foreclose any lien in favor of the Active Adult Housing Association, or determine the priority of any lien for Assessments; (iv) make a claim against a vendor of the Active Adult Housing Association or supplier of goods and services to the Active Adult Housing Association; (v) defend claims filed against the Active Adult Housing Association (and to assert counterclaims or cross-claims in connection with a defense); or (vi) make a claim for a

breach of fiduciary duty by any one or more of the Board of Directors or officers of the Active Adult Housing Association.

(b) *Member Approval of Active Adult Housing Association Litigation.* The Members' approval to initiate legal proceedings or join as a plaintiff in legal proceedings must be given at any duly called regular or special meeting of the Members by an affirmative vote (in person or by proxy) of more than 75% of the total number of eligible votes of the Members, excluding the vote or votes of any Owner who would be a defendant in the proceedings.

(c) *Prior Approval Disclosures.* Prior to any vote of the Members, the Active Adult Housing Association will provide full disclosure of: (i) the nature and description of the claim; (ii) the name and professional background of the attorney proposed to be retained by the Active Adult Housing Association to pursue the matter; (iii) a description of the relationship (if any) between the attorney and the Board of Directors (or any member of the Board of Directors) or the property management company; (iv) a description of the fee arrangement with the attorney; (v) an estimate of the fees and costs (including those for attorneys and experts) necessary to pursue the claim; (vi) the estimated time necessary to complete the proceedings; and (vii) an affirmative statement from the Board that the action is in the best interests of the Active Adult Housing Association and its Members.

(d) *Litigation Fund.* The costs of any legal proceedings initiated or joined by the Active Adult Housing Association that are not included in the above exceptions (i.e., Sections 11.02(a)(i) through (vi) above) must be financed by the Active Adult Housing Association with monies that are specifically collected for that purpose, and the Active Adult Housing Association will not borrow money, use reserve funds, use general funds, or use monies collected for other Active Adult Housing Association obligations (such as working capital payments) to initiate or join any legal proceeding.

(e) *Notification to Prospective Purchasers.* Each Owner must notify all prospective purchasers of the Owner's Living Unit of all legal proceedings initiated or joined by the Active Adult Housing Association for which a special litigation fund has been established and must provide all prospective purchasers with a copy of any written notice received by the Owner from the Active Adult Housing Association regarding the litigation.

(f) *Exceptions for Certain Board Actions.* These limitations on the commencement of litigation do not preclude the Board from incurring expenses for legal advice in the normal course of operating the Active Adult Housing Association to, among other things: (i) enforce the Active Adult Project Documents including the imposition of fines; (ii) comply with the Active Adult Project Documents or any statutes or regulations related to the operation of the Active Adult Housing Association, Active Adult Common Area, or the Areas of Active Adult Housing Association Responsibility; (iii) amend the Active Adult Project Documents in the manner and for the purposes described in this Declaration; (iv) grant easements or convey Active Adult Common Area in the manner

and for the purposes described in this Declaration; or (v) perform the obligations of the Active Adult Housing Association as provided in this Declaration.

(g) **Legal Proceedings.** As used in this Section 11.02, the term "legal proceedings" includes administration, arbitration, and judicial actions including any matters covered by the alternative dispute resolution procedures described in Article XIII below.

(h) **No Change to Limitations.** The limitations imposed by this Section 11.02 may not be amended unless the amendment is approved at any duly called regular or special meeting of the Members by an affirmative vote (in person or by proxy) of more than 75% of the total number of votes in each class of Members.

Section 11.03. Condemnation of Active Adult Common Area. If a portion of the Active Adult Common Area is taken by eminent domain, the award will be paid to the Active Adult Housing Association, and the Active Adult Housing Association will cause the award to be utilized for the purpose of repairing and restoring the Active Adult Common Area, including, if the Board deems it necessary or desirable, the replacement of any improvements. Any portion of the award not used for any restoration or repair of the Active Adult Common Area will be added to the reserve funds of the Active Adult Housing Association.

Section 11.04. Partial Condemnation of Living Unit. If only a portion of a Living Unit is taken by eminent domain and the remnant is capable of practical use for the purposes permitted by this Declaration, the award will compensate the Owner for the reduction in value and its interest in the Active Adult Common Area. Upon a partial taking, the Living Unit's interest in the Active Adult Common Area, votes, and membership in the Active Adult Housing Association, and all common expense liabilities, will remain the same as that which existed before the taking, and the condemning party will have no interest in the Active Adult Common Area, votes, or membership in the Active Adult Housing Association, or liability for the common expenses.

Section 11.05. Severability. Invalidation of any one or any portion of these covenants and restrictions by judgment or court order will not affect the validity of any other provisions of the Active Adult Project Documents, and these other provisions of the Active Adult Project Documents will remain in full force and effect.

Section 11.06. Term. The covenants and restrictions of this Declaration will run with and bind the land for a term of 50 years from the date this Declaration is recorded, after which time they will be automatically extended for successive periods of 10 years for so long as the Living Units continue to be used for Single Family Detached Housing Uses or unless terminated at the end of the initial or any extended term by an affirmative vote (in person or by proxy) of the Owners of 90% of the total eligible votes in the Active Adult Housing Association.

Section 11.07. Amendment. This Declaration and the Plat may be amended as provided in this Declaration. During the first 50-year term of this Declaration and except as otherwise provided in Sections 10.09 above, and 11.11, 13.04, and 13.05 below, amendments will be made only by a recorded instrument executed on behalf of the Active Adult Housing Association by an

officer of the Active Adult Housing Association designated for that purpose or, in the absence of designation, by the President of the Active Adult Housing Association. All amendments will be deemed adopted only if approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of 75% or more of the total number of eligible votes in the Active Adult Housing Association. After the initial 50-year period, amendments will be made by a recorded instrument approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of two-thirds (2/3) or more of the total number of eligible votes in the Active Adult Housing Association, and the amendment will be executed on behalf of the Active Adult Housing Association by an officer of the Active Adult Housing Association designated for the purpose or, in the absence of designation, by the President of the Active Adult Housing Association.

Section 11.08. Government Financing. If the financing of any Institutional Guarantor is applicable to the Active Adult Housing Community, any amendment to the Declaration made by the Declarant pursuant to Section 11.07 and any Annexation Amendment made by the Declarant will contain either: (i) the approval of the Institutional Guarantor; or (ii) an affidavit or certification that the Institutional Guarantor's approval has been requested in writing but that the Institutional Guarantor has not either approved or disapproved the amendment or annexation within 30 days of Declarant's request.

Section 11.09. Construction. This Declaration will be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a residential subdivision consisting of Living Units for Active Adult Use and Active Adult Common Area with maintenance as provided in this Declaration and the other Active Adult Project Documents. The provisions of this Declaration will be construed in a manner that will effectuate the inclusion of additional lots pursuant to Article XII. Section and Article headings have been inserted for convenience only and will not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration (including any defined terms), regardless of the number and gender in which they are used, will be deemed and construed to include any other number and any other gender as the context or sense of this Declaration may require, with the same effect as if the number and words had been fully and properly written in the required number and gender. Whenever the words and symbol "and/or" are used in this Declaration, it is intended, if consistent with the context, that this Declaration be interpreted and the sentence, phrase, or other part be construed in both its conjunctive and disjunctive sense, and as having been written twice, once with the word and inserted, and once with the word or inserted, in the place of words and symbol "and/or." Any reference to this Declaration will automatically be deemed to include all amendments to this Declaration.

Section 11.10. Notices. Unless an alternative method for notification or the delivery of notices is otherwise expressly provided under law, any notice that is permitted or required under the Active Adult Project Documents must be delivered in the manner established in the Active Adult Housing Association's Active Adult Bylaws.

Section 11.11. General Declarant Rights. Declarant, for and on behalf of itself and any Builder, specifically reserves the right to construct improvements within the Active Adult Housing Community that are consistent with the Sundance Community Master Plan and to change the unit mix of Living Units without the vote of any Members. During any period of

Declarant Control, Declarant reserves the right to: (i) amend any of the Active Adult Project Documents without the vote of any Members, to comply with applicable law or statute or correct any error or inconsistency, so long as the amendment does not materially and adversely affect the rights of any Owner; (ii) amend the Declaration to conform with any rules or guidelines of any Institutional Guarantor; or (iii) without the vote of any Members (but with the consent of the Institutional Guarantor, if applicable), withdraw the Active Adult Housing Community or portions of the Active Adult Housing Community from this Declaration and subdivide Lots, convert Living Units into Active Adult Common Area, and convert Active Adult Common Area into Living Units.

Section 11.12. Management Agreements. Any management agreement entered into by the Active Adult Housing Association or Declarant may be made with an affiliate of Declarant or a third-party manager and, in any event, will be terminable by the Active Adult Housing Association with or without cause and without penalty upon 30 days written notice. The term of any management agreement entered into by the Active Adult Housing Association or Declarant may not exceed one year and may be renewable only by affirmative agreement of the parties for successive periods of one year or less. Any property manager for the Active Adult Housing Community or the Active Adult Housing Association will be deemed to have accepted these limitations, and no contrary provision of any management agreement will be enforceable. The property manager will be delegated those powers and duties of the Board of the Active Adult Housing Association that the Board determines as necessary or appropriate.

Section 11.13. No Partition. There will be no partition of any Living Unit, nor will Declarant or any Owner or other person acquiring any interest in any Living Unit, or any part of the Living Unit, seek any partition.

Section 11.14. Declarant's Right to Use Similar Name. The Active Adult Housing Association irrevocably consents to the use by any other profit or nonprofit corporation that may be formed or incorporated by Declarant of a corporate name that is the same or deceptively similar to the name of the Active Adult Housing Association, so long as one or more words are added to the name of the other corporation to make the name of the Active Adult Housing Association distinguishable from the name of the other corporation. Within five days after being requested to do so by the Declarant, the Active Adult Housing Association will sign all letters, documents, or other writings as may be required by the Arizona Corporation Commission (or any other governmental entity) in order for any other corporation formed or incorporated by the Declarant to use a corporate name that is the same or deceptively similar to the name of the Active Adult Housing Association.

Section 11.15. Joint and Several Liability. In the case of joint ownership of a Living Unit, the liabilities and obligations of each of the joint Owners established in or imposed by the Declaration and the other Active Adult Project Documents will be joint and several.

Section 11.16. Conflicts. If there are any discrepancies, inconsistencies, or conflicts between the provisions of this Declaration and the other Active Adult Project Documents, the provisions of this Declaration will prevail in all instances.

Section 11.17. Survival of Liability. The termination of membership in the Active Adult Housing Association will not relieve or release any former Member from any liability or obligation incurred under or in any way connected with the Active Adult Housing Association during the period of membership or impair any rights or remedies that the Active Adult Housing Association may have against the former Member arising out of or in any way connected with the membership and the covenants and obligations incident to the membership.

Section 11.18. Waiver and Approvals. The waiver of or failure to enforce any breach or violation of the Active Adult Project Documents will not be deemed a waiver or abandonment of any provision of the Active Adult Project Documents or a waiver of the right to enforce any subsequent breach or violation of the Active Adult Project Documents. The foregoing will apply regardless of whether any person affected by the Active Adult Project Documents (or having the right to enforce the Active Adult Project Documents) has or had knowledge of the breach or violation. Whenever the approval or consent of the Declarant, Active Adult Housing Association, Board, or Architectural Committee is required under the Active Adult Project Documents, the approval or consent may be given or withheld in the sole discretion of the approving party, unless the Active Adult Project Documents otherwise specify a different standard for approval.

Section 11.19. Attorney Fees. Without limiting the power and authority of the Active Adult Housing Association to incur (and assess against an Owner as a special assessment) attorney fees as part of the creation or enforcement of any assessment, if an action is instituted to enforce any of the provisions contained in the Active Adult Project Documents, the party prevailing in any action will be entitled to recover from the other party all reasonable attorneys' fees and court costs. If the Active Adult Housing Association is the prevailing party in the action, the amount of attorney fees and court costs may be included as part of a special assessment against the Living Unit and Owner involved in the action.

Section 11.20. Access Control. EACH OWNER UNDERSTANDS AND AGREES THAT NEITHER THE ACTIVE ADULT HOUSING ASSOCIATION, DECLARANT, NOR BUILDER (NOR THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, MEMBERS, PARTNERS, DIRECTORS, EMPLOYEES, AND AGENTS) ARE RESPONSIBLE FOR THE ACTS OR OMISSIONS OF ANY THIRD PARTIES OR OF ANY OTHER OWNER OR THE OWNER'S PERMITTEES RESULTING IN PROPERTY DAMAGE, BODILY INJURY, PERSONAL INJURY, OR MARKETABILITY. ANY ACCESS CONTROL SYSTEMS OR SECURITY MEASURES OR DEVICES (INCLUDING GATED ENTRIES, SECURITY GUARDS, GATES, PRIVATE SECURITY ALARMS, BLOCK WATCH, OR COURTESY PATROL) THAT MAY BE USED AT THE PROJECT WILL COMMENCE AND BE MAINTAINED BY THE ACTIVE ADULT HOUSING ASSOCIATION SOLELY THROUGH A MAJORITY VOTE OF THE BOARD, AND EACH OWNER UNDERSTANDS THAT ANY OF THE SYSTEMS, MEASURES, OR DEVICES THAT ARE IN EFFECT AT THE TIME HE OR SHE ACCEPTS A DEED FOR A LOT (OR OTHERWISE BECOMES AN OWNER) MAY BE ABANDONED, TERMINATED, OR MODIFIED BY A MAJORITY VOTE OF THE BOARD. THE COMMENCEMENT OF ANY ACCESS CONTROL SYSTEMS OR SECURITY MEASURES OR DEVICES OR CONTROLS WILL NOT BE DEEMED TO BE AN ASSUMPTION OF ANY DUTY ON THE PART OF THE ACTIVE ADULT HOUSING

ASSOCIATION OR DECLARANT, OR BUILDER, WITH RESPECT TO THE PROJECT, THE OWNERS, OR ANY OF THE OWNER'S PERMITTEES.

ARTICLE XII

DEVELOPMENT PLAN AND ANNEXATION

Section 12.01. Proposed Development. Declarant currently contemplates the development of a master planned community that, if completed, may encompass more real property than that currently described as the Active Adult Housing Community. The foregoing, however, is not a representation, warranty, or assurance by the Declarant that the contemplated development will be completed. Each Owner acknowledges that it has not relied upon any representation, warranty, or expression, written or oral, made by Declarant or any Builder or any of their respective agents, regarding whether: (i) the contemplated development will be completed or carried out; (ii) any land now or in the future owned by Declarant will be subject to this Declaration or developed for a particular use; (iii) any land now or in the future owned by Declarant was once or is used for a particular use or whether any prior or present use will continue in effect; or (iv) any common amenities (such as parks, playgrounds, community pools, etc.) contemplated for future phases actually will be constructed.

Section 12.02. Annexation Without Approval. During any Period of Declarant Control, additional real property may be annexed into the Active Adult Housing Community and made subject to this Declaration by Declarant without the consent of any Member or First Mortgagee. Declarant's annexation will be evidenced by recording an amendment ("Annexation Amendment") to the Declaration signed by the Declarant that describes the new real property to be included, refers to this Declaration, and states that all new real property is being added or annexed into the Declaration. A Parcel Declaration may constitute an Annexation Amendment if specifically established in the Parcel Declaration by reference to this Section 12.02.

Section 12.03. Annexation With Approval. Upon the written consent or affirmative vote of at least two-thirds (2/3) of the Members of the Active Adult Housing Association, the Active Adult Housing Association may annex real property that is not part of the Sundance Master Plan Area to the provisions of this Declaration by recording in the Official Records of Maricopa County, Arizona, an Annexation Amendment describing the real property being annexed. Any Annexation Amendment will be signed by the President and Secretary of the Active Adult Housing Association and the owner or owners of the properties being annexed, and any annexation under this Section 12.03 will be effective upon its recordation.

Section 12.04. Incorporation into the Active Adult Housing Community. As portions of the Sundance Master Plan Area are readied for development or sold to Builders, Declarant, through the conveyancing deed or other form of Parcel Declaration, may designate with respect to each Parcel: (i) a Land Use Classification; (ii) portions of the Parcel that may become Master Common Area or Areas of Master Association Responsibility; (iii) any additional covenants and restrictions that apply to the Parcel; (iv) the location and configuration of various Villages; and (v) a Parcel designation for reference purposes. Any Parcel Declaration establishing those matters listed above may be amended only by, on the one hand, the Declarant,

during the Period of Declarant Control, and afterwards the Master Association and, on the other hand, the Owners of the Parcel.

Section 12.05. Formation of Subsidiary Associations. Each Builder may establish a Subsidiary Association for the purposes of collecting all assessments due under this Declaration or establishing additional covenants, restrictions, or easements and for enforcing the rights and remedies of any Subsidiary Declaration. The documents that govern or establish any Subsidiary Association must be submitted to and approved by the Active Adult Housing Association prior to formation of the Subsidiary Association. Without limitation, the Subsidiary Association's governing documents must provide for:

(a) the establishment of an annual budget that includes the payment of an amount sufficient to cover the pro rata portion of the assessments due under this Declaration;

(b) the right (but not the obligation) of the Active Adult Housing Association to take temporary control of the Subsidiary Association if the Subsidiary Association fails to collect assessments in an amount sufficient to pay and satisfy the assessments due to the Active Adult Housing Association;

(c) the right (but not the obligation) of the Active Adult Housing Association, as a third-party beneficiary, to enforce the Subsidiary Association's rights and remedies under any Subsidiary Declaration, if the Subsidiary Association refuses or neglects to enforce the rights and remedies after 30 days written notice from the Active Adult Housing Association; and

(d) the ability of the Subsidiary Association to determine how to exercise its voting rights under this Declaration.

Section 12.06. Notice of Sale. The Builder must provide the Active Adult Housing Association with full and complete copies of all governing documents applicable to the Subsidiary Association, including the Subsidiary Declaration and all amendments that may be enacted from time to time. The Builder also must provide the Active Adult Housing Association with notice of the date of the first conveyance of a Lot to a third-party purchaser. All information must be promptly provided by the Builder to the Active Adult Housing Association and, in all cases, no later than 30 days after written request from the Active Adult Housing Association.

Section 12.07. Management and Control. Except to the extent the Active Adult Housing Association elects to take temporary control over the Subsidiary Association or elects to enforce any Subsidiary Declaration under Section 2.07 above, all administrative and management services provided under any Subsidiary Declaration will be provided solely by the Subsidiary Association and not the Active Adult Housing Association.

Section 12.08. Assessments Specifically. The Active Adult Housing Association will have the rights described in Section 2.07 above to take control of the Subsidiary Association for any period of time that may be necessary to bring about collection of the assessments. Control may be accomplished through the removal and substitution of officers and directors of the

Subsidiary Association or any other manner permitted under Arizona law. The Active Adult Housing Association also will have the right to file a lien against the Parcel or any Living Unit of any delinquent Owner within the subsidiary community in an amount equal to:

- (a) all amounts owed by the delinquent Owner for Assessments or otherwise;
- (b) all costs of collection (including attorney fees); and
- (c) all applicable late charges and interest.

To enforce and collect these amounts, the Active Adult Housing Association may enforce an assessment lien against the applicable Parcel or Living Unit or may exercise any other remedy available to the Active Adult Housing Association under the Active Adult Project Documents.

Section 12.09. Enforcement under Subsidiary Declaration. To the fullest extent permitted under Arizona law, all disputes solely between Owners within a Parcel subject to a Subsidiary Declaration will be handled and resolved by the Subsidiary Association, and, unless the Active Adult Housing Association otherwise elects to be involved, the Active Adult Housing Association will not be involved in these types of disputes.

Section 12.10. Subsidiary Association Meetings. If requested by the Active Adult Housing Association, the Builder, or the Subsidiary Association will provide notice to the Active Adult Housing Association of all regular or special meetings of the Subsidiary Association's members or directors. A representative of the Active Adult Housing Association may attend these meetings.

Section 12.11. Remedies of Master Association. Without limiting the remedies of the Active Adult Housing Association outlined above, the Active Adult Housing Association will have all rights and remedies available under Arizona law to enforce this Declaration or any Subsidiary Declaration including the right to commence an action in contract against any Owner, the Builder, and/or the Subsidiary Association.

ARTICLE XIII

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Section 13.01. Dispute Resolution Agreement.

(a) *Alternative Dispute Resolution.* All Bound ADR Parties, as identified and defined below, agree that it is in their respective best interests to encourage the amicable resolution of claims, grievances, controversies, disagreements, or disputes involving the Active Adult Housing Community or the Active Adult Project Documents in order to avoid or limit wherever possible the emotional and financial costs of litigation. Accordingly, each Bound ADR Party covenants and agrees that all Covered Claims, as defined below, between one or more Bound ADR Party must be resolved using the alternative dispute resolution procedures established below in this Declaration and the Active Adult Bylaws in lieu of filing a lawsuit or initiating administrative proceedings.

The Board is empowered to impose and enforce these procedures and rules for alternative dispute resolution.

(b) *Bound Parties.* As used in the Active Adult Project Documents, the term "**Bound ADR Parties**" means the Active Adult Housing Association, Board, Declarant, any affiliate of the Declarant, all Builders, any property manager or association manager for the Active Adult Housing Community, all Owners, any tenant of an Owner, any family member residing in the Owner's Detached Dwelling Unit, and any person not subject to this Declaration who voluntarily agrees to be subject to the dispute resolution procedures described below. The Bound ADR Parties include all officers, directors, members, partners, principals, managers, and committee members of the foregoing. Unless they otherwise agree, Mortgagees and Institutional Guarantors are not Bound ADR Parties.

(c) *Covered Claims.* As used in the Active Adult Project Documents, the term "**Covered Claims**" means all claims, grievances, controversies, disagreements, or disputes that arise in whole or part out of: (i) the interpretation, application, or enforcement of the Declaration or the other Active Adult Project Documents; (ii) any alleged violation of the Active Adult Project Documents by any of the Bound ADR Parties or the rights, duties, or obligations of any Bound ADR Party under the Active Adult Project Documents; (iii) the authority of the Active Adult Housing Association or the Board to take or not take any action under the Active Adult Project Documents; (iv) the failure of the Declarant or the Active Adult Housing Association or the Board to properly conduct elections, give adequate notice of meetings, properly conduct meetings, allow inspection of books and records, or establish adequate warranty and reserve funds; (v) the performance or non-performance by any of the Bound ADR Parties of any of their respective obligations or responsibilities under the Active Adult Project Documents to or on behalf of any other Bound ADR Party; (vi) the design, engineering, or construction of any Detached Dwelling Unit (other than matters in the judgment of the Architectural Committee or Board, all of which are not subject to further review through any alternative dispute resolution procedures or legal action); or (vii) any alleged violation or defect with respect to the maintenance or construction of the Active Adult Common Area or any improvements or landscaping on the Active Adult Common Area or the Areas of Active Adult Housing Association Responsibility. The term "**Covered Claims**," however, specifically does not include any Exempt Claims of the type described in Section 13.02 below.

(d) *Alleged Defects.* The term "**Alleged Defects**" means only those Covered Claims described in Section 13.01(c)(vi) and (vii) above.

Section 13.02. Exempt Claims. The following claims, grievances, controversies, disagreements, and disputes (each an "**Exempt Claim**" and, collectively, the "**Exempt Claims**") are exempt from the alternative dispute resolution provisions described in this Declaration:

(a) *Collection of Assessments.* Any action taken by the Active Adult Housing Association against any Bound ADR Party to enforce the collection of any Assessments, to enforce or foreclose any lien in favor of the Active Adult Housing Association, or to determine the priority of any lien for Assessments;

(b) *Specific Actions.* Any claim, grievance, controversy, disagreement, or dispute that primarily involves:

(i) Title to any Living Unit or Active Adult Common Area;

(ii) A challenge to a property taxation or condemnation proceeding;

(iii) The eviction of a tenant from a Living Unit;

(iv) The breach of fiduciary duty by any one or more of the Board of Directors or officers of the Active Adult Housing Association;

(v) The rights of any Mortgagee or Institutional Guarantor;

(vi) Any employment matter between the Active Adult Housing Association and any employee of the Active Adult Housing Association; or

(vii) The invalidation of any provision of the Declaration or any of the covenants and restrictions contained in the Active Adult Project Documents.

(c) *Injunctive Relief.* Any suit by the Active Adult Housing Association to obtain a temporary or permanent restraining order or equivalent emergency equitable relief (together with any other ancillary relief as the court may deem necessary) in order to maintain the then-current status of the Active Adult Housing Community and preserve the Active Adult Housing Association's ability to enforce the architectural control provisions of the Active Adult Project Documents and the use restrictions contained in this Declaration;

(d) *Owner Actions.* Any suit solely between Owners (that does not include as a party the Active Adult Housing Association, Declarant, or any Builder) seeking redress on any Covered Claim that would constitute a cause of action under federal law or the laws of the State of Arizona regardless of the existence of the Active Adult Project Documents;

(e) *Separate Written Contracts.* Any action arising out of any separate written contract between Owners, between the Declarant or any Builder and any Owner, or between Declarant and any Builder that would constitute a cause of action under the laws of the State of Arizona regardless of the existence of the Active Adult Project Documents; and

(f) *Not Bound Parties.* Any suit in which less than all parties are Bound ADR Parties (unless the parties that are not Bound ADR Parties voluntarily agree to be subject to the alternative dispute resolution procedures established in this Declaration and

the Active Adult Bylaws). Any Bound ADR Party having an Exempt Claim may submit it to the alternative dispute resolution procedures established in this Declaration and the Active Adult Bylaws, but there is no obligation to do so and no obligation of any other Bound ADR Party to agree to have the Exempt Claim submitted to the alternative dispute resolution procedures. The submission of an Exempt Claim involving the Active Adult Housing Association or Declarant to the alternative dispute resolution procedures below requires the approval of the Active Adult Housing Association or Declarant, as applicable.

Section 13.03. Enforcement of Resolution. This agreement of the Bound ADR Parties to negotiate, mediate, and arbitrate all Covered Claims is specifically enforceable under the applicable arbitration laws of the State of Arizona. After resolution of any Covered Claim through negotiation, mediation, or arbitration in accordance with the provisions outlined above, if any Bound ADR Party fails to abide by the terms of any agreement or Arbitration Award, any other Bound ADR Party may file suit or initiate administrative proceedings to enforce the agreement or Arbitration Award without the need to again comply with the procedures set forth above. In this case, the Bound ADR Party taking action to enforce the agreement or Arbitration Award is entitled to recover from the non-complying Bound ADR Party (or if more than one non-complying Bound ADR Party, from all non-complying Bound ADR Parties pro rata) all costs incurred in enforcing the agreement or Arbitration Award, including, without limitation, attorney fees, and court costs.

Section 13.04. Alleged Defects. If any Owner or the Active Adult Housing Association desires or intends to bring a claim of any sort against the Declarant, any Builder, or their respective affiliates or contractors (as applicable, referred to as the "**Developer Entities**") for an Alleged Defect, the following provisions will apply to provide full and fair notice of the existence of the Alleged Defect and an opportunity to repair or correct the Alleged Defect without costly and time-consuming litigation.

(a) **Notice of Alleged Defect.** If any Owner or the Active Adult Housing Association discovers an Alleged Defect, the discovering party (referred to as a "**Defect Claimant**") will give written notice to the Developer Entities of the Alleged Defect and, if known, the repair or remedy sought by the Defect Claimant.

(b) **Right to Enter.** Within a reasonable time after the receipt by Developer Entities of written notice of the Alleged Defect (or Developer Entities' independent discovery of a possible Alleged Defect), Developer Entities will have the right to enter the Active Adult Housing Community and any affected Living Units or Active Adult Common Area to inspect, test, and, if deemed necessary or advisable by the Developer Entities in their sole discretion, cause the repair or correction of the Alleged Defect. All tests, inspections, and applicable repairs may be made by Developer Entities or their agents or independent contractors (including contractors and subcontractors) as they may deem necessary or desirable under the circumstances but can be commenced only after reasonable written notice by the Developer Entities to the Defect Claimant and must be made only during normal business hours.

(c) *Developer Entities' Discretion.* In performing the tests, inspections, or repairs, as applicable, Developer Entities will be entitled to utilize methods or take actions that it deems appropriate or necessary, and Developer Entities' sole obligation with respect to the Defect Claimant will be to restore the affected area as close as reasonably possible to its condition prior to the testing, investigations, or repairs. No statute of limitations will be tolled during any testing, investigation, or repair period.

(d) *No Extension of Warranties.* The existence of this right to notice and an opportunity to inspect and/or cure is irrevocable but will not be deemed to impose any obligation on the Developer Entities to test, inspect, or repair any Alleged Defect or to establish or extend any applicable warranty of any builder, developer, or seller (including Developer Entities) that may be applicable to the Living Unit or Active Adult Common Area. Notwithstanding Section 13.05 below, the provisions of this Section 13.04 may not be modified, amended, waived, or terminated in any manner during any period of time that Developer Entities or their affiliates or contractors may remain liable or responsible for the Alleged Defect or any resulting injury or damage from the Alleged Defect, without the prior and express written consent of Developer Entities given in a recorded instrument.

(e) *Active Adult Housing Association Action for Alleged Defect.* In addition to obtaining the approvals to litigation described in Section 11.02 above, the Active Adult Housing Association, prior to commencing any action for an Alleged Defect and concurrent with providing the disclosures to the Members described in Section 11.02(e) above, must provide written notice to the Members describing: (i) a description of the attempts of Developer Entities to correct the Alleged Defect and the opportunities provided to the Developer Entities to correct the Alleged Defect; (ii) a copy of any reports prepared by any engineer or construction inspector for the Active Adult Housing Association that describes the Alleged Defect and the scope of work necessary to correct the Alleged Defect; and (iii) the estimated costs necessary to correct the Alleged Defect.

(f) *Recoveries for Alleged Defects.* Any amounts recovered by a Defect Claimant in an action for an Alleged Defect, whether attributable to the cost to repair or replace, any diminution in value, or consequential damages, must be first used to correct or repair the Alleged Defect to ensure the value and attractiveness of the Active Adult Housing Community as a whole and each specific Village.

(g) *Specific Villages.* To the extent any claim of an Alleged Defect involves only one Builder or one Village but has been approved by the requisite number of members under Section 11.02 above, the Active Adult Housing Association will have the power to allocate all cost associated with the Alleged Defect litigation to the Owners of the applicable Village.

Section 13.05. Amendments to Article XIII. The alternative dispute resolution procedures established in Article XIII of this Declaration may not be modified, amended, terminated, or waived in any manner without Declarant's prior and express written consent, as evidenced by a recorded instrument, for so long as Declarant owns at least one Living Unit within the Active Adult Housing Community. After Declarant ceases to own at least one Living

Unit within the Active Adult Housing Community, the alternative dispute resolution procedures of Article XIII may be modified, amended, or terminated in accordance with the procedures established in the Active Adult Project Documents; however, to the extent any Covered Claim still involves the Declarant, the Declarant can elect for the Covered Claim to be governed by the alternative dispute resolution procedures previously contained in the Active Adult Project Documents (as though not modified, amended, or terminated). Nothing contained in this Section 13.05 is intended to shorten, modify, or amend the provisions of Section 13.04 with respect to the notice and opportunity to inspect and/or cure an Alleged Defect.

Dated as of September 27, 2002.

"Declarant"

Hancock-MTH Communities, Inc., an Arizona corporation

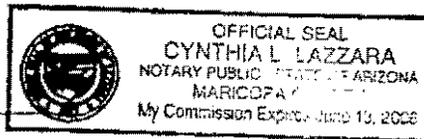
By: [Signature]
Name: Greg Hancock
Title: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 27th day of September, 2002, by Greg Hancock, the President of Hancock-MTH Communities, Inc., an Arizona Corporation, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.

[Signature]
Notary Public

My Commission Expires: 6/13/06



**CONSENT OF OWNER
OF PARCEL 12, 13, 28A, & 29**

Hancock – MTH Builders, Inc., an Arizona corporation (“**Consenting Owner**”), as the Owner of fee title to the real property (“**Owner Property**”), consents to the recordation of the Declaration, subjects the Owner Property to the covenants and restrictions contained in the Declaration, and joins in the grant, reservation, and creation of the various easements described in the Declaration to the extent they apply to the Owner Property.

By execution of the Declaration to which this Consent of Owner is attached, Consenting Owner is designated as a Builder, the Owner Property is designated for reference purposes only as “**Parcel 12, 13, 28A, and 29**”, and the Land Use Classification of the Owner Property is designated as **Single Family Detached Housing Use**. Additionally, the Final Plats recorded at Book 596, Page 21; Book 596, Page 24; Book 596, Page 22; and Book 496, Page 26 as recorded in the County Recorders Office of Maricopa County, Arizona are designated as a Qualified Residential Plat under Section 1.47 of the attached Declaration

All capitalized terms used in this Consent of Owner will have the meanings ascribed in the attached Declaration, unless otherwise described above.

Dated as of September 27, 2002.

“Owner”

Hancock – MTH Builders, Inc. an
Arizona Corporation

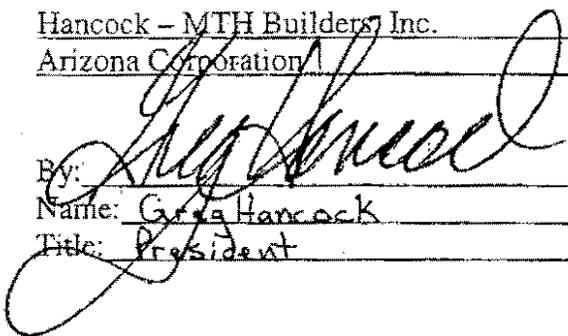
By: 
Name: Greta Hancock
Title: President

EXHIBIT "A"
TO
DECLARATION OF ACTIVE ADULT HOMEOWNER BENEFITS AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SUNDANCE ACTIVE ADULT HOUSING COMMUNITY

(Legal Description)

Lots 298 through 345, inclusive, and Tracts "A" through "F", inclusive, Sundance Parcel 12, according to the plat of record as shown in Book 596 of Maps, Page 21, Official Records of Maricopa County, Arizona.

Lots 195 through 297, inclusive, and Tracts "A" through "H", inclusive and "J", Sundance Parcel 13, according to the plat of record as shown in Book 596 of Maps, Page 24, Official Records of Maricopa County, Arizona.

^{28A} Lots 92 through 194, inclusive, and Tracts "A" through "G", inclusive, Sundance Parcel ~~12~~, according to the plat of record as shown in Book 596 of Maps, Page 22, Official Records of Maricopa County, Arizona.

Lots 1 through 90, inclusive, and Tracts "A" through "F", inclusive, "H", and "I", Sundance Parcel 29, according to the plat of record as shown in Book 596 of Maps, Page 26, Official Records of Maricopa County, Arizona.

EXHIBIT "B"
TO
DECLARATION OF COMMON BENEFITS AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SUNDANCE ACTIVE ADULT HOUSING COMMUNITY

(Equivalent Units)

For purposes of determining voting rights and the ratio for the sharing of assessments, all Parcels within the Active Adult Housing Community will be assigned Equivalent Units based on the following formulas:

1. Except for Living Units within a Parcel designated as Apartment Use, all Living Units within the Active Adult Housing Community will be assigned one Equivalent Unit.
2. Any Living Unit located within a Parcel designated for Apartment Use will be assigned one-half an Equivalent Unit.

With respect to Parcels within the Active Adult Housing Community that have not been finally subdivided into Living Units (as evidenced by the recordation of a final plat, condominium plat, or equivalent), Equivalent Units will be assigned to the Parcel based on the product obtained by multiplying the total number of net acres (exclusive of public dedications but including easements) within the Parcel by four. Equivalent Units will be allocated to the Parcels, however, under Paragraphs 1 above, once final platting, etc. occurs, regardless of whether or not houses or dwelling structures are actually built on the Parcels or Lots.

With respect to a Parcel that is designated for Apartment Use but upon which the improvements have not been actually completed (as evidenced by a final certificate of occupancy or equivalent approval), Equivalent Units will be assigned to the Parcel that has been designated for Apartment Use based on an assumed number of Living Units equal to the product obtained by multiplying the total number of net acres (exclusive of public dedications but including easements) within the Parcel by 9. Equivalent Units will be allocated to a Parcel designated for Apartment Use; however, under Paragraph 3 above, once final completion of the apartment project has occurred as evidenced by the issuance of a final certificate of occupancy or equivalent approval based on the total number of Living Units actually constructed (each Living Unit being assigned one-half of an Equivalent Unit).

Notwithstanding anything to the contrary in this Exhibit "B" above:

- A. For a period of up to three years after the initial conveyance to a Builder of a Parcel designated with a Land Use Classification of Single Family Detached Housing Use or Cluster Housing Use, each Living Unit within a Parcel so designated will be assigned Equivalent Units as follows: (i) for the first two years after the initial conveyance of a Parcel to a Builder, 25% of the Equivalent Unit that would otherwise be assigned (i.e. one-quarter of one Equivalent Unit);

(ii) after the date that is the second anniversary of the initial conveyance of the applicable Parcel to a Builder (and continuing throughout the third year), 50% of the Equivalent Unit that would otherwise be assigned (i.e. one-half of one Equivalent Unit);

- B. For a period of up to 18 months after the initial conveyance of a Parcel designated for Apartment Use to a Builder, all Living Units within a Parcel designated as Apartment Use will be assigned 50% of the one-half portion of an Equivalent Unit that would otherwise be assigned (i.e., assigned one-quarter of one Equivalent Unit).

Except as to Living Units within a Parcel designated for Apartment Use (which will be assigned the full value of their Equivalent Units only after 18 months), upon the conveyance of a Living Unit to an Owner other than the Builder, the applicable Living Unit will be assigned the full value of its Equivalent Unit, regardless of when the Parcel was initially conveyed to the Builder.

