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When recorded, mail to
Guy M. Kezirian, MD, MBA
President, Board of Directors
Merit Crossing Homeowners Association, Inc.

c/o Tri City Property Management Company
760 S. Stapley Drive
Mesa, AZ 85204

AMENDED AND RESTATED DECLARATION OF HOMEOWNER
BENEFITS AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
MERIT CROSSING
(A SINGLE-FAMILY SUBDIVISION)

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This Amended and Restated Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for Merit Crossing (A Single-Family Subdivision) is made as of the date set forth at the end of this Declaration by the Merit Crossing Homeowners Association, Inc., an Arizona non-profit corporation located in the city of Scottsdale, Maricopa County, Arizona.

BACKGROUND

A. GLAZ Corporation, a dissolved Arizona corporation, caused to be recorded that certain Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for Merit Crossing (the "Original Declaration") on September 24, 1999, at Document No. 1999-0890058, official records of Maricopa County, Arizona, against the following described property (the "Property") located in the City of Scottsdale, County of Maricopa, State of Arizona:

See Exhibit "A" attached to and incorporated in this Declaration by this reference.

B. The Property was developed by the GLAZ Corporation beginning in 1999 and control was subsequently transferred to Merit Crossing Homeowners Association, Inc. (the "Association") in 2003.

C. The Property is a residential subdivision consisting of detached single-family residences, common areas, a guard house, tracts, and other facilities.

D. Pursuant to Article 11, Section 11.7 of the Original Declaration, the Original Declaration may be amended by the Association upon the written consent of at least seventy-five percent (75%) of all of the Owners.

E. In compliance with the Original Declaration, at least seventy-five percent (75%) of all of the Owners have approved this Amended and Restated Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for Merit Crossing (A Single-Family Subdivision) (the "Declaration") by written consent.

F. These homeowner benefits and covenants, conditions, and restrictions are for the purpose of protecting the value, attractiveness, and desirability of the Property, and shall benefit, burden, and run

with the title to the Property and shall be binding upon all parties having any right, title, or interest in or to any part of the Property and their heirs, successors, and assigns. Each Owner by the acceptance of a deed of conveyance and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale and each person at any time hereafter owning or acquiring any interest in any part of the Property, accepts the interest subject to all covenants and the jurisdiction, rights and powers created or reserved by this Declaration.

NOW THEREFORE, the Original Declaration is hereby amended and restated to provide as follows:

ARTICLE 1: DEFINITIONS

- 1.1 "Ancillary Unit" shall mean all permanent or temporary guest houses, hobby houses, storage, outbuildings, garages, living quarters, cabanas, gazebos, carports, covered patios, or structures or items of any type similar to any of the foregoing that are not part of the Detached Dwelling Unit and related improvements originally approved for construction by the Architectural Committee.
- 1.2 "Architectural Committee" shall mean the committee established pursuant to Article 9 of this Declaration and the provisions of any other Project Documents.
- 1.3 "Architectural Committee Guidelines" shall mean any design guidelines that may be adopted or amended by the Architectural Committee.
- 1.4 "Articles" shall mean the Articles of Incorporation of the 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 set forth in the Articles.
- 1.5 "Assessment," "assessment," "annual assessment," and "special assessment" (and the plural of each) shall mean the assessments authorized in the Declaration including those authorized in Article 4.
- 1.6 "Association" shall mean Merit Crossing Homeowners Association, Inc., a nonprofit Arizona corporation, and shall mean additionally the Association's successors and assigns.
- 1.7 "Association Rules" shall mean any rules and regulations adopted by the Association, as may be amended from time to time.
- 1.8 "Board" and "Board of Directors" shall mean the Board of Directors of the Association.
- 1.9 "Bylaws" shall mean the bylaws of the Association, as may be amended from time to time in the manner set forth in the Bylaws.
- 1.10 "Common Area" shall mean all that real property described on the Plat as common area tracts but shall not include the real property identified on the Plat as individual Lots or as NAOS. The Common Area is reserved for the common use and enjoyment of the

Owners and is reserved exclusively for the Owners and not for the public, unless otherwise designated in the Declaration or on the Plat. The "Common Area" is owned by the Association for the common use and enjoyment of the Owners. The "Common Area" includes all entry walls, lighting, structures, facilities, roadways, fixtures, improvements, and landscaping, if any and if permitted, located on the common area tracts, and all rights, easements, and appurtenances relating to the real property owned by the Association.

- (a) Tract "A" as depicted on the Plat is referred to as the "Access Tract."
 - (b) Tracts "B", "C", and "O", as depicted on the Plat and all of which are part of the Common Area scenic corridor shall be referred to as the "Landscape and Drainage Tracts".
 - (c) Tracts "E", "F" and "G" as depicted on the Plat shall be referred to as "Utility Tracts".
- 1.11 "Declarant" shall mean the GLAZ Corporation, a dissolved Arizona corporation, the original declarant of the Original Declaration.
- 1.12 "Declaration" shall mean this Amended and Restated Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for Merit Crossing and the covenants and restrictions set forth in this entire document (in entirety or by reference), as may be amended from time to time in the manner set forth below.
- 1.13 "Detached Dwelling Unit" shall mean all buildings that are located on a Lot and that are used or are intended to be used for Single Family Residential Use, including all attached garages, carports, and open or closed patios.
- 1.14 "Developer" refers to the original developer of Merit Crossing, namely the GLAZ Corporation, a dissolved Arizona corporation.
- 1.15 "Long-Term Leasing" refers to leasing for a period of time greater than one calendar month, or the minimal time permitted by the City of Scottsdale, whichever is longer.
- 1.16 "Lot" shall mean any one of the lots that is described and depicted on the Plat and that is subject to this Declaration.
- 1.17 "Member" shall mean an Owner of a Lot that is a member of the Association.
- 1.18 "Mortgage" (whether capitalized or not) shall mean the conveyance or assignment of any Lot or the creation of a lien on any Lot to secure the performance of an obligation, and shall include the instrument evidencing the obligation, and may include a deed of trust, mortgage, assignment, or any other agreement for the purpose of creating a lien to secure an obligation or duty. "First Mortgage" shall mean a Mortgage held by a lender that is the first and most senior of all Mortgages on the applicable Lot.

- 1.19 "Mortgagee" (whether capitalized or not) shall mean a person or entity to whom a Mortgage is made and shall include a holder of a promissory note, a beneficiary under a deed of trust, or a seller under an agreement for sale. "First Mortgagee" shall mean a Mortgagee that is the first and most senior of all Mortgagees upon the applicable Lot.
- 1.20 "Mortgagor" shall mean 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.
- 1.21 "NAOS" means those areas of a Lot designated by the documents filed with Maricopa County and the City of Scottsdale, or the Architectural Committee, as being areas of natural area open space upon which no Detached Dwelling Unit, Ancillary Unit, pool, driveway, or wall may be constructed and that must remain naturally landscaped open space.
- 1.22 "Nonrecurring And Temporary Basis" shall mean that the event or act referred to either: (i) is for the sole purpose of loading and unloading noncommercial items for use on the Lot; or (ii) if not for the sole purpose of loading or unloading, does not last more than twenty-four (24) total hours for any one time and does not occur more than twice (regardless of the length of time of the event or act) in any six (6) month period. A violation of either of the foregoing standards (i.e., not solely for loading or unloading or more than twenty-four (24) hours or more than twice in a six (6) month period) will mean that the act or event is not on a Nonrecurring And Temporary Basis.
- 1.23 "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple legal title to any Lot. An "Owner" shall not include those persons having an interest in a Lot merely as security for the performance of an obligation or duty (i.e., a mortgagee). In the case of Lots 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 Lot shall be deemed to be the trustor. In the case of a Lot covered by an Agreement for Sale of Real Property as described in A.R.S. § 33-741, the buyer of the Lot shall be deemed to be the "Owner".
- 1.24 "Owner's Permittees" shall mean all family members, guests, tenants, licensees, invitees, and agents that use the Owner's Lot or other portions of the Property (including Common Area) with the implied or express consent of an Owner.
- 1.25 "Person" and "person" shall mean a natural person, a corporation, a partnership, a trust, or other legal entity.
- 1.26 "Plat" will refer to the subdivision plat for Merit Crossing recorded in Book 504 of Maps, page 46, in the Official Records of Maricopa County, as it may be amended from time to time.

- 1.27 "Project Documents" refers to this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Committee Guidelines, and the Plat, collectively, as any or all of the foregoing may be amended from time to time.
- 1.28 "Property Manager" shall mean individual or company retained by Association for a fee to administer the day-to-day activities of the Board of Directors.
- 1.29 "Screened From View" shall mean that the object in question is appropriately screened from view from abutting Lots, Common Area, and public and private streets by a gate, wall, shrubs, or other approved landscaping or screening devices. The Architectural Committee will be the sole judge as to what constitutes an object being Screened From View or appropriately screened.
- 1.30 "Single Family" shall mean 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 (4) adult persons not all so related who maintain a common household in a Detached Dwelling Unit located on a Lot.
- 1.31 "Single Family Residential Use" shall mean the occupancy or use of a Detached Dwelling Unit and Lot by a Single Family in conformity with the Project Documents and the requirements imposed by applicable zoning laws or other state, county, or municipal rules, ordinances, codes, and regulations.
- 1.32 "Visible From Neighboring Property" shall mean, with respect to any given object, that the object is or would be clearly visible without artificial sight aids to a person six (6) feet tall, standing on any part of the Property (including a Lot, Common Area, or public or private street) adjoining the Lot or the portion of the Property upon which the object is located.
- 1.33 "Yard" or "yard" shall mean all portions of the Lot including the area designated as NAOS, other than the portions of the Lot upon which the Detached Dwelling Unit or an Ancillary Unit is constructed in accordance with this Declaration.

ARTICLE 2: PROPERTY RIGHTS IN COMMON AREAS

- 2.1 Owners' Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area, in common with all other persons entitled to use the Common Area. An Owner's right and easement to use and enjoy the Common Area shall be appurtenant to and pass with the title to every Lot and shall be subject to the following:
 - (a) Charges and Regulations. The right of the Association to regulate the use of the Common Area; the right of the Association to limit the number of the Owner's Permittees who use the Common Area; the right of the Association to limit the number

and type of pets that use the Common Area; the right of the 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 Association to suspend the voting rights of any Owner and to suspend the right to the use of the Common Areas by an Owner or the Owner's Permittees for any period during which any assessment against that owner or owner's Lot remains unpaid, and, in the case of any nonmonetary infraction of the Project Documents, for any period during which the infraction remains uncured;
 - (c) Dedication/Grant. The right of the Association to dedicate or grant an easement covering all or any part of the Common Area to any provider utility company and municipality for the purposes, and subject to the conditions, that may be established by the Board of Directors.
- 2.2 Delegation of Use. Subject to and in accordance with the Project Documents, any Owner may delegate its right of enjoyment to the Common Area to the Owner's Permittees.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

- 3.1 Membership. Every Owner of a Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, shall be a Member of the Association and shall be bound by the provisions of the Project Documents, shall be deemed to have personally covenanted and agreed to be bound by all covenants and restrictions contained in the Project Documents, and shall be deemed to have entered into a contract with the 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 shall be deemed to be in addition to the real covenants and equitable servitudes created by the Declaration, and this personal covenant of each Owner shall not limit or restrict the intent that this Declaration benefit and burden, as the case may be, and run with title to all Lots and Common Area covered by this Declaration. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment. Upon the permitted transfer of an ownership interest in a Lot, the new Owner shall automatically become a member of the Association. Membership in the Association shall be restricted solely to Owners 'of Lots.
- 3.2 Class of Membership; Voting. The Association shall have one (1) class of voting membership. There shall be one membership for each Lot owned and each membership shall be shared by any joint Owners of, or Owners of undivided interests in, a Lot. Each membership shall be entitled to one vote. The vote for any jointly-owned Lot shall be exercised as the joint owners determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Any attempt to cast multiple votes for a given Lot shall result in the invalidity of all votes cast for that Lot.

ARTICLE 4: COVENANT FOR MAINTENANCE ASSESSMENTS

- 4.1 Lien and Personal Obligation for Assessments. Each Owner of any Lot, by accepting a deed for that Lot (whether or not it is expressed in the deed or conveying instrument) or otherwise becoming an "Owner", is deemed personally to covenant and agree to be bound by all covenants and restrictions and all duties, obligations, and provisions of the Project Documents and to pay to the Association:
- (a) Annual assessments or charges;
 - (b) Special assessments for capital improvements under Section 4.4, unexpected or extraordinary expenses for repairs of Common Area, or other Association matters;
 - (c) An amount sufficient to, on demand, indemnify and hold the Association harmless for, from, and against all obligations undertaken or incurred by the Association at or on account of that individual Owner's special request and to repay the Association for all expenditures on account of the special request;
 - (d) An amount sufficient to reimburse the Association for the cost of performing any obligation of an Owner under the Project Documents that the Owner has failed to timely pay or perform; and
 - (e) All other assessments as may be fixed, established, and collected from time to time as provided in this Declaration or the other Project Documents, including, without limitation, any accrued interest, taxable court costs, late fees, attorney fees, fines, penalties, or other charges.

The Association shall have a lien for any assessment levied against an Owner and for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments. The Owner shall also be personally obligated for all monetary amounts incurred that are not secured by the assessment lien

- 4.2 Assessments. The assessments and amounts described above, together with all accrued interest, court costs, attorney fees, late fees, and all other expenses incurred in connection with the assessments and amounts described above, whether or not a lawsuit or other legal action is initiated, shall be referred to in the Project Documents as an "assessment" or the "assessments". The assessments shall be a charge and a consensual and continuing lien upon the Lot against which the assessment is made or with reference to which each assessment is incurred. Each assessment also shall be the personal obligation of the person who was the Owner of the Lot at the time when the assessment became due or charge was incurred, or, in the case of more than one Owner, the personal obligation of each person, jointly and severally. The personal obligation for delinquent assessments shall not pass to the particular Owners successors in title unless expressly assumed by them; however, the personal obligation

of the prior Owner for the delinquent assessments or charges shall not be deemed released or discharged by reason of any assignment, conveyance, or transfer of title of a Lot. Notwithstanding the previous sentence, in the event of an assignment, conveyance, or transfer of title to any Lot, the assessment additionally shall continue as a charge against the Lot in the hands of the subsequent Owner, except in those circumstances described in Section 4.9 below. The recordation of this Declaration shall constitute record notice and perfection of any assessment or assessment lien, and, notwithstanding Section 4.10 below, further recordation of any claim of lien (or Notice and Claim of Lien) for assessment shall not be required for perfection, priority, or enforcement.

- 4.3 Purpose of Annual Assessments. The annual assessments levied by the Association shall be used for the purpose of:
- (a) Promoting the recreation, health, safety, welfare of the Owners, Common Area, and Lots;
 - (b) Operating the Common Area (including payment of all taxes, utilities, maintenance), and maintenance of the gate operation described on the Plat;
 - (c) Insuring (including a reserve fund for insurance deductibles), maintaining, repairing, resurfacing, painting, and replacing improvements in the Common Area (including any reserve fund for the foregoing); and
 - (d) Enhancing and protecting the value, desirability, and attractiveness of the Lots and Common Area generally.

The annual assessment may include a reserve fund for taxes, insurance, maintenance, repairs, and replacements of the Common Area and other improvements that the Association is responsible for maintaining.

- 4.4 Initial and Annual Assessments. Notwithstanding any provision contained herein, the Board, without a vote of the Members, may increase the maximum annual assessments during each fiscal year of the Association by an amount ("Permitted Percentage Increase") equal to but not exceeding ten percent (10%) over the prior year. Higher increases require approval, at a duly called regular or special meeting of the Members, by an affirmative vote (in person or by absentee ballot) of at least a majority of the members of the Association.
- 4.5 Special Assessments for Capital Improvements. The Association may, at any time and from time to time in any assessment year, in addition to the annual assessments authorized above or any other assessments authorized elsewhere in this Declaration, levy a special assessment for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, resurfacing, repair, or replacement (whether or not due to destruction, governmental taking, or otherwise) of a capital improvement upon the Common Area (including fixtures and personal property related to the Common

Area); or (ii) the cost of any other unexpected or extraordinary expenses for repairs of Common Area or other Association matters; however, any special assessment must be approved at a duly called regular or special meeting by an affirmative vote (in person or by absentee ballot) of at a majority vote of the eligible votes cast at that meeting of the Members. Notwithstanding the foregoing, no approval of the Members shall be needed to levy assessments on an Owner that arise out of the Owners failure to comply with the Project Documents including, without limitation, any assessment levied pursuant to Sections 4.1 (c),.4.1 (d), 5.2, 5.6, or 8.8 of the Declaration.

- 4.6 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.4 or 4.5 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first meeting called regarding any given proposal, the presence (at the beginning of the meeting) of Members or proxies entitled to cast at least twenty percent (20%) of all the eligible votes of the Association, regardless of class of membership, shall constitute a quorum. If the required quorum is not present, one other meeting for the same purpose may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be ten (10%) of all the eligible votes of the Association. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- 4.7 Uniform Rate of Assessment. Both the annual assessments outlined in Section 4.4 and the special assessments outlined in Section 4.5 must be fixed at a uniform rate for all assessable Lots. Assessments may be collected in advance on a semi-annual basis or on any other basis as the Board of Directors may determine. The provisions of this Section 4.7 shall not preclude the Association from making a separate or additional charge to, or special assessment on, an Owner for or an account of special services or benefits rendered to, conferred upon, or obtained by or for that Owner or the owner's Lot. If any expense incurred by the Association is caused by the misconduct of any Owner or the owner's Permittees, the Association may specially assess the expense exclusively against the offending Owner and/or Lot.
- 4.8 Date of Commencement of Assessments. The annual assessments established in this Declaration regarding any given Lot subject to this Declaration shall commence on the first day of each calendar month. The Board of Directors shall endeavor to fix the amount of the annual assessment against each Lot at least thirty (30) days in-advance of each annual assessment period; however, the annual assessment shall be binding notwithstanding any delay. Written notice of the annual assessment and of any special assessments shall be sent to every Owner subject to the assessment. The due dates shall be established by the Board of Directors. The Association, acting through the Board of Directors, upon written demand and for a reasonable charge, shall furnish to any Owner or the Owner's authorized representative a certificate signed by an officer of the Association setting forth whether the assessments and charges on a specified Lot have been paid and setting forth any other matters as may be required from time to time by Arizona law. A properly executed certificate of the Association as to the status of assessments on a Lot and any other required matters shall be binding on the Association

as of the date of issuance of the certificate and for the time period specified in the certificate. Assessments shall be payable in the full amount specified by the assessment notice, and no offsets shall be permitted for any reason whatsoever including, without limitation, abandonment of the Owner's Lot, a claim that the Association is not properly exercising its duties in maintenance or enforcement or the nonuse or claim of nonuse by Owner of all or any portion of the Common Area.

- 4.9 Effect of Nonpayment of Assessments — Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be subject to a one-time late charge as determined by the Board of Directors, provided that the late charge shall not exceed the greater of fifteen dollars or ten percent of the amount of the unpaid assessment. Each Owner of a Lot, by accepting a deed for that Lot (whether or not it is expressed in the deed or conveying instrument), or otherwise becoming an "Owner", vests in the 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 Project Documents as a debt and to enforce the lien securing the assessment by all methods available for the enforcement of liens, including foreclosure by an action brought in the name of the Association in the same manner as a mortgage of real property and a deed of trust. The lien shall be in favor of and shall benefit the Association. The association shall have the power to bid in any foreclosure, sheriff's sale, or similar sale (whether or not the foreclosure was initiated by the Association or some other person) and to acquire, hold, lease, mortgage, and convey the Lot purchased. The Association may institute suit to recover a money judgment for unpaid assessments of the Owner without being required to foreclose its lien on the Lot involved and without waiving the lien that secures the unpaid assessments. Any foreclosure may be instituted without regard to the value of the Lot, the solvency of the Owner, or the relative size of the Owner's default. The assessment lien and the rights of enforcement under this Declaration shall be in addition to and not in substitution of all other rights and remedies that the Association may have under the Project Documents or under Arizona law.
- 4.10 Subordination of the Lien to Mortgages. Regardless of whether or not a Notice and Claim of Lien has been recorded, the lien for the assessments established in this Declaration shall be superior to all liens, charges, homestead exemptions, and encumbrances that are imposed on any Lot after the date of recordation of this Declaration. The lien for the assessments established in this Declaration, however, shall be automatically subordinate to: (i) the lien of any First Mortgagee, except for the amount of assessments that accrues from and after the date upon which the First Mortgagee acquires title to or comes in possession of any Lot and except for amounts due to the Association as a result of the exercise of its self-help and lien rights described in Section 5.6 below; (ii) the lien and rights of the State of Arizona under the Certificate of Purchase; and (iii) any taxes, bonds, or assessments that by law are prior and superior to the lien for such assessments. The sale or transfer of any Lot shall not affect the lien for assessments or the personal obligation of the owner to pay all assessments arising during the Owner's ownership of the Lot; however, the sale or transfer of any Lot pursuant to a judicial foreclosure or trustee's sale by a First Mortgagee shall extinguish

that portion of the lien on the Lot that became due prior to the transfer or sale. In the case of a sale or transfer by judicial foreclosure or trustee's sale by a First Mortgagee, the First Mortgagee or other successor owner shall not be liable for any assessments that become due prior to the sale or transfer by the First Mortgagee. No sale or transfer pursuant to a judicial foreclosure or trustee's sale of any First Mortgagee shall relieve any Lot from the liability or the lien for any assessments that may become due or arise after the judicial foreclosure or trustee's sale. Nothing in this Declaration, however, shall be construed to release any Owner or previous Owner from the Owner's personal obligation to pay any assessment arising during the owner's or previous Owner's ownership of the Lot, and the Association may enforce collection of the assessments arising during his/her ownership of the Lot in any manner permitted under Arizona law or the Project Documents.

4.11 Notice of Lien. Recording of this Declaration constitutes record notice and perfection of the lien. Without affecting the priority and perfection of any assessment that has been perfected as of the date of recordation of this Declaration, the 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" which may state, among other things, the following:

- (a) The last known name of the delinquent Owner;
- (b) The legal description or street address of the Lot against which the claim of lien is made;
- (c) The amount claimed to be due and owing from the Owner and assessed against the Lot; and
- (d) A statement that the claim is made by the Association pursuant to the terms of the Declaration and the other Project Documents.

Each default in the payment of any assessment shall 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 Lot. The Notice and Claim of Lien may be executed by any officer of the Association, the managing agent for the Association, or legal counsel for the Association, but in all events the lien will remain that of the Association.

4.12 Multiple Lots. The annual assessments chargeable to each Lot were calculated based on the total number of Lots depicted on the Plat. In some cases, one or more Lots may be sold in groups to the same Owner. Notwithstanding the sale of a group of Lots to one Owner, the Owner will pay annual assessments and special assessments based on all Lots owned by that owner, as originally described in the Plat.

ARTICLE 5: COMMON AREA AND LOT MAINTENANCE

- 5.1 Common Area. Except as provided in Section 5.2, the Association shall be responsible for the maintenance, repair, and replacement of the Common Area, and, without any approval of the Owners, the Association may: (i) reconstruct, resurface, repair, replace, and refinish any landscaping or improvement located on or used in connection with the Common Area; and (ii) do any other acts deemed necessary to preserve, beautify, and protect the Common Area in accordance with the general purposes specified in the Project Documents. The Board of Directors shall be the sole and absolute judge as to the appropriate maintenance of the Common Area. Notwithstanding anything contained in this Section 5.1, the Association will have no obligation to perform any maintenance or repair work that is performed by any municipality or provider utility company that is responsible for the maintenance of any utilities or improvements located within any Common Area. No Owner shall 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 Common Area without the express written consent of the Architectural Committee.
- 5.2 Repairs Necessitated by Owner. In the event that the need for maintenance or repair to any Common Area 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 cost of the maintenance or repairs, including the deductible portion of any applicable insurance policy, shall be added to and become a part of the assessment against the Lot owned by that Owner, without regard to the availability of any insurance proceeds payable to the Association for the cost of the maintenance or repairs. In addition to the foregoing, if the Owner of a given Lot is held liable to the Association by a court of competent jurisdiction for maintenance or repair work performed by the Association to any other Lot (i.e., a Lot not owned by that owner), the amount of that judgment shall be added to and become a part of the assessment against the Lot owned by that owner.
- 5.3 Maintenance of Detached Dwelling Unit. The Detached Dwelling Unit and all other permitted Ancillary Units must be maintained by the owner of the applicable Lot in a clean, safe, neat, and attractive condition and repair and must be adequately painted and finished.
- 5.4 Access at Reasonable Hours. For the purpose of performing the maintenance, repairs, or replacements permitted under this Article 5, the Association and the Association's agents or employees shall have the right, after 48 hours written notice to an Owner (except in the case of emergency, in which case no notice need be given), to enter onto the Owner's Lot at any reasonable hours. For the purposes of performing the maintenance authorized by Section 5.1 upon any portion of the Common Area, the Association and the Association's agents or employees may enter onto the Common Area at any time without notice to any owner.
- 5.5 Landscaping. Plans for all landscaping, lawns, plants, irrigation systems, sprinkler, shrubs, trees, and the like (collectively called, in this Declaration, the "landscaping") that

are to be installed in permitted areas of the Owner's Lot must be approved prior to installation by the Architectural Committee under Article 9 of this Declaration. The Lot and all landscaping located in the Yard of a Lot must be maintained in clean, safe, neat, and attractive condition and repair solely by the Owner of that Lot, and Owner shall be solely responsible for neatly trimming and properly cultivating the Landscaping and for the removal of all trash, weeds, leaves, and other unsightly material located on the Lot.

- 5.6 Owner's Failure to Maintain. If an owner fails to perform any maintenance and repair required under the term of this Article 5, then, upon the vote of a majority of the Board of Directors and after not less than ten (10) days prior written notice to that Owner, and the Association shall have the right (but not the obligation) to enter upon or into that Lot and to provide the required maintenance or make the required repairs or replacements. Any entry by the Association or its agents shall not be considered a trespass. The cost of these maintenance items and repairs shall be added to the assessments charged to the owner, shall be paid promptly to the Association by that Owner as a special assessment or otherwise, and shall constitute a lien upon that Owner's Lot. The rights of the Association described above are in addition to any other remedies available to the Association under the Project Documents or Arizona law.

ARTICLE 6: DUTIES AND POWERS OF THE OWNERS' ASSOCIATION

- 6.1 Duties and Powers. In addition to the duties and powers enumerated in the other Project Documents or elsewhere in the Declaration, the Association, through its Board of Directors, shall have the power and authority to:
- (a) Common Area. Maintain and otherwise manage the Common Area and all other real and personal property that may be acquired by the Association.
 - (b) Easements. Subject to the limitations, if any, imposed by the Project Documents, grant easements where necessary for utilities and services on, under, over, through, upon, or across the Common Area to serve the Common Areas or any Lot;
 - (c) Purchase Insurance. Purchase insurance for the 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 6.2 below;
 - (d) Entry Gate. Provide at the Association's cost, any entry gate services or maintenance as the Members may determine necessary or convenient;
 - (e) Right-of-Way Landscape. Maintain and landscape those portions of the existing City of Scottsdale right-of-way that comprise a part of the Northern access on 91st Street to the Project, all in accordance with any applicable restrictions imposed by the City of Scottsdale; and

- (f) Enforcement. Enforce the provisions of this Declaration, the Articles, the Bylaws, and the other Project Documents by all legal means, including, without limitation, the expenditure of funds of the 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, the Articles, the Bylaws, and the other Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the nonprevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

6.2 Insurance.

- (a) Liability Insurance. Comprehensive general liability insurance covering the Common Area shall be purchased and obtained by the Board, and shall be maintained in force at all times. The premiums shall be paid out of the Association's funds. The insurance shall be carried with reputable companies authorized and qualified to do business in Arizona. The minimum amounts of coverage shall be \$1,000,000 bodily injury and property damage on a combined single limit basis. The policy shall be purchased on an occurrence basis and shall name as insureds the Owners, the Association (its directors, officers, employees, and agents in the scope of their employment). This policy shall include, but not be limited to, insurance against injury or damage occurring in or on the Common Area.
- (b) Hazard Insurance — Detached Dwelling Units. The Association shall not be obligated to obtain property, liability, theft, multi-peril, hazard, or flood insurance, or any other type of insurance covering the Detached Dwelling Units or the Lots. The procurement and maintenance of insurance on the Detached Dwelling Units and the Lots shall be the sole obligation of the owners of the respective Lot and Detached Dwelling Unit.
- (c) Other Insurance. The Board may purchase (but is not obligated to purchase) additional insurance as the Board may determine to be advisable or necessary. All premiums for these types of insurance and bonds shall be paid out of the Association's funds. The Association may assess the owners in advance for the estimated cost of these types of insurance.
- (d) General Provisions on Insurance. The Board of Directors of the Association is granted the authority to negotiate loss settlements with the appropriate insurance carriers covering insurance purchased and obtained by the Association pursuant to Paragraph 6.2. Any policy of insurance obtained by the Association may contain a reasonable deductible. The deductible shall be paid

by the party who would be responsible for the repair in the absence of insurance and, in the event multiple parties are responsible, the deductible shall be allocated in relation to the amount each party's responsibility bears to the total loss.

- (e) Non-liability of Association. Notwithstanding the duty of the Association to obtain insurance coverage as stated in this Declaration, neither the Association, nor any director, officer, or agent of the Association shall be liable to any Owner or any other party if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the owner may desire.
- (f) Provisions Required. All insurance maintained by the Association shall contain those endorsements and coverages determined by the Board, in its sole discretion.

6.3 Damage and Destruction — Reconstruction. In the event of damage or destruction to any portion of the Common Area, the Board shall 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 are insufficient to complete the repair or reconstruction, the deficiency shall be the subject of a special assessment against all Lots if approved by a vote of the owners as provided in Section 4.5. In the event that the cost of repairing or reconstructing the improvements in and upon the Common Area exceeds the available insurance proceeds and the responsible owner's payment under Section 5.2, and in the event that the Members, fail to approve a special assessment to cover the deficiency, the Board shall cause any remaining portion of the improvement that is not usable (as determined by the Board in its sole discretion) to be removed and the area cleared and landscaped in a manner consistent with the appearance of the remainder of the Project. In the event that a Detached Dwelling Unit or other structure on any Lot is substantially destroyed by fire or other casualty, the Owner of the Lot shall repair or replace the Detached Dwelling Unit or other structure.

6.4 Other Duties and Powers. The 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 Association or enforcement of this Declaration, shall obtain, provide, and pay for any other materials, supplies, labor, services, maintenance, repairs, structural alterations, or insurance, or pay any taxes or assessments. If, however, any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are specifically provided or apply to particular Lots, the cost shall be specially assessed to the Owners of these Lots. The Association may likewise pay any amount necessary to discharge any lien or encumbrance levied against any or all the Lots that, in the sole discretion of the Board, may constitute a lien against the Common Area. If, however, one or more Owner is responsible for the existence of a

lien against the Common Area, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of the lien or liens shall be specially assessed to the responsible Owners. The Association may exercise any other right or privilege given to it by the Project Documents and every other right or privilege implied from the existence of the Project Documents.

- 6.5 Association Rules. By a majority vote of the Board, the Association, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal rules and regulations. The 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 Project Documents; however, the Association Rules may not discriminate among Owners. A copy of the Association Rules shall be available for inspection by the Members at reasonable times. The Association Rules shall not be interpreted in a manner inconsistent with this Declaration or the Articles or Bylaws, and, upon adoption, the Association Rules shall have the same force- and effect as if they were set forth in full and were a part of this Declaration.

ARTICLE 7: BUILDING ENVELOPES AND NAOS

- 7.1 Determination of Building Setbacks. Each Lot will be subject to City of Scottsdale building setbacks, and additional setback requirements as the Architectural Committee may determine.
- 7.2 Preliminary NAOS. At the time of the recordation of the Original Declaration, the Declarant submitted to the City of Scottsdale a NAOS plan that designates NAOS for each Lot to be 21,780 square feet. The Architectural Committee, however, in its sole discretion, may relocate any preliminarily designated NAOS for a Lot.

ARTICLE 8: USE RESTRICTIONS

In addition to all other covenants and restrictions contained in this Declaration and the Other Project Documents, the use of the Common Area, Lots, Detached Dwelling Units, and Ancillary Units is subject to the following:

- 8.1 Restricted Use. Except as otherwise provided in this Declaration, a Lot shall be used only by a Single Family and only for Single Family Residential Use. All construction on any Lot shall be restricted to single-family houses and related improvements. No permanent or temporary prefabricated housing, modular housing, or manufactured housing may be placed on a Lot as a Detached Dwelling Unit or an Ancillary Unit. No Ancillary Unit, commercial or recreational vehicle (as defined below), or family vehicle (as defined below) may be used as living or sleeping quarters on a permanent or temporary basis while located at any time.
- 8.2 Business and Related Uses. No Lot shall ever be used, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing,

industrial, mercantile, commercial storage, vending, or other similar uses or purposes. The foregoing restriction shall not prevent an Owner from conducting his or her personal affairs on the Lot or in the Detached Dwelling Unit and shall not be deemed to prevent an Owner from using the Detached Dwelling Unit for business purposes that (1) utilize a minimal portion of the Detached Dwelling Unit; (ii) do not result in the use of the Detached Dwelling Unit for business meetings, appointments, gatherings, or day care; (iii) do not result in scheduled shipping or receiving from or to the Detached Dwelling Unit; and (iv) do not otherwise violate local zoning and use laws.

8.3 Signs. No emblem, logo, sign, or billboard of any kind shall be displayed on any of the Lots or Common Area so as to be Visible From Neighboring Property, except for: (i) signs on the Common Area as may be placed and approved by the Board of Directors, or by the Architectural Committee; (ii) any signs as may be required by legal proceedings; (iii) the signs of any construction builder, lender, or architect during the period of construction on the Lot (not to exceed twenty-four (24) months) as may be approved in advance by the Architectural Committee in terms of number, type, and style; (iv) signs (including political signs and symbols) as may be approved in advance by the Architectural Committee in terms of number, type, and style; and the following signs shall be permitted on an Owner's Lot:

(a) Political signs, provided that the political signs shall not be displayed earlier than seventy-one days before the day of the election and shall be removed no later than three days after the election;

(b) Only one "For Sale" sign may be located on a Lot. The sign must be commercially produced and shall not exceed eighteen by twenty-four inches, and the sign rider shall not exceed six by twenty-four inches; For Sale signs shall be of the Estate style having two 4X4 inch painted pillars with a painted cross beam used to suspend the sign.

(c) Open house sign as more particularly described in Article 11;

(d) Any other sign permitted by Arizona's Planned Community Act.

The foregoing will not be deemed to prevent the right of an Owner to display 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 to adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners;

8.4 Noxious or Offensive Activities. No noxious or offensive activity shall be engaged in (or permitted to be engaged in) on any Lot or by any Member or their Permittees. No act or use may be performed on any Lot that is or may become an annoyance or nuisance to the neighborhood generally or other Owners specifically, or that interferes with the use and quiet enjoyment of any of the owners and of the owner's Lot. No Owner shall

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

- 8.5 Restricted Residences. No Ancillary Units shall be constructed or maintained on any Lot at any time, unless located within the Building Envelope and 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 9 below prior to the commencement of construction. All Ancillary Units approved by the Architectural Committee for construction on a Lot must be constructed in compliance with all local and municipal codes, ordinances, and stipulations applicable to the Project and all restrictions contained in the 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 Project Documents or any local or municipal codes, ordinances, and stipulations must be removed upon notice from the Association at the sole loss, cost, and expense of the constructing Owner.
- 8.6 Animals. No animals, livestock, horses, birds, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure on a Lot; however, an Owner may keep a reasonable number of common household pets in the Detached Dwelling Unit or in an enclosed portion of the Building Envelope if permitted under local zoning ordinances. The Board will be the sole judge as to what constitutes a common household pet and a reasonable number of common household pets. These permitted types and numbers of pets shall 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 permitted pets shall be permitted to move about unrestrained on the Owner's Lot or any other Lot, Common Area, or street within the Project. Each Owner shall be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the Owner's Lot or any other Lot, Common Area, or streets. Owners shall 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.
- 8.7 Trash. All rubbish, trash, and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate on any Lot. In the case of an Owner who allows trash to accumulate on the Owner's Lot, the Board, on behalf of the Association, may arrange and contract for the removal and cleanup of the trash, and the costs shall become a special assessment to that owner. No incinerators shall be kept or maintained on any Lot. Refuse containers must be stored in a garage or other portion of the Lot that is not Visible from Neighboring Property. Refuse containers may be stored at or near the street so long as they are stored behind trash screening devices approved by the Architectural Committee. Refuse containers may be placed near the street for collection only on trash collection days and then only for a reasonable period of time.
- 8.8 Storage Areas. Storage areas may not be maintained upon any Lot, unless located in an enclosed portion of the Building Envelope. Covered or uncovered patios may not be

used for storage purposes whether or not Visible from Neighboring Property. At no time may an Owner maintain any outside storage of commercial or recreational vehicles or family vehicles of the type described in this Declaration in any stage of construction, reconstruction, modification, or rebuilding. No vehicle frames, bodies, engines, or other parts or accessories may be stored on a Lot.

- 8.9 Leasing. Nothing in the Declaration shall be deemed to prevent the Long-Term leasing of a Lot and Detached Dwelling Unit to a Single Family from time to time by the Owner. As defined in this Declaration 'Long-Term' leasing shall refer to leasing for a period of time greater than one calendar month, or the minimal time permitted by the City of Scottsdale, whichever is longer. Prior to the commencement of the lease term, the Owner shall provide the Association a copy of the signed lease and the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the tenants and each other person who will reside in the Detached Dwelling Unit during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person whom the Association may contact in the event of an emergency involving the Unit. Any Owner who leases his Detached Dwelling Unit must provide the tenant with copies of Project Documents. Lessees shall be considered "Permittees" as defined in Section 1 of this document, and accordingly shall be bound by the Project Documents. The Owner shall remain responsible for the Lessee's conduct and compliance with the Project Documents. The Owner shall also be liable for any fines, violations, and costs related to the Lessee. In the event of any violation of the Project Documents, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.
- 8.10 Machinery. No machinery of any kind shall be placed, operated, or maintained upon or adjacent to any Lot or Common Area other than machinery that is usual and customary in connection with the use, maintenance, or construction of a Detached Dwelling Unit, and other than machinery that the Association may require for the operation and maintenance. of the Property.
- 8.11 Restriction on Subdivision and Time Shares. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of a Lot may be conveyed or transferred by any Owner without the prior written approval of the Board. No Owner shall transfer, sell, assign, or convey any time share in any Lot, and any such transaction shall be void.
- 8.12 Drainage Plan. No detached Dwelling Unit, Ancillary Unit, pool, concrete area, or landscaping shall be constructed, installed, placed, or maintained on any Lot or Common Area in any manner that would obstruct, interfere, or change the direction or flow of water in accordance with the drainage plans for the Individual Lot, Project, Landscape and Drainage Tracts, drainage easements, or on lot storage facilities.
- 8.13 Hazardous Wastes. Except as may be necessary for normal household, landscaping, or automotive uses, no Owner shall permit any hazardous wastes (as defined under all

applicable federal and state laws), asbestos, asbestos containing material, or any petroleum products or byproducts to be kept, dumped, maintained, stored, or used in, on, under, or over any Lot.

- 8.14 Commercial and Recreational Vehicles. No commercial truck, recreational vehicle, semitrailer, wagon, freight trailer, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, dune buggy, all -terrain vehicle, bus, or similar commercial or recreational equipment or vehicle (whether or not equipped with any sleeping quarters) (collectively referred to in this Declaration as "commercial or recreational vehicles") that is owned, leased, or used by an Owner or the Owner's Permittees shall be stored or parked upon a Lot within the Project, unless: (i) the commercial or recreational vehicles are located fully within an enclosed garage located on the owner's Lot; or (ii) the commercial or recreational vehicles are located on the Owner's Lot fully within a recreational vehicle parking area that is Screened From View. All plans and specifications for any recreational vehicle parking area must be approved in writing by the Architectural Committee prior to any construction or installation.
- 8.15 Parking of Family Vehicles. Family vehicles must be parked in garages located on the Lot or in the driveway or in any recreational vehicle parking area of the type described in Section 8.14 above located on that Lot so long as the family vehicles are operable and are, in fact, operated from time to time. A "family vehicle" means any domestic and foreign cars, station wagons, sport wagons, pick-up trucks, vans, mini-vans, jeeps, sport utility vehicles, motorcycles, and similar noncommercial and nonrecreational vehicles that are used by the Owner of the applicable Lot or the owner's Permittees for family and domestic purposes only. Notwithstanding any less restrictive local or municipal codes, ordinances, or stipulations, family vehicles may be parked in any private street within the Project only on a Nonrecurring And Temporary Basis, and no other on-street parking is permitted within the Project.
- 8.16 Vehicle Repairs. Routine maintenance and repairs of family vehicles or commercial or recreational vehicles may be performed within an enclosed garage.
- 8.17 Mailboxes. Each Lot shall construct and maintain a mailbox consistent with others in the Community. All mailboxes must be kept in working order and promptly repaired in the case of damage or breakdown. Mailbox construction shall be subject to approval by the Architectural Committee.
- 8.18 Antenna and Satellite Dishes. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used or maintained outdoors on any Lot, Parcel or other property, whether attached to a Residential Unit, building or structure, unless said devise is a Direct Broadcast Satellite ("DBS") antenna less than one meter in diameter, a Multi-point Distribution Service ("MDT) antenna less than one meter in diameter, an antenna designed to receive television broadcast signals, or any other type of antenna which the Association must allow pursuant to rules promulgated by the Federal Communications Commission

("FCC") (hereinafter referred to as "Permitted Antennas"). if an Owner wishes to install a Permitted Antenna, the Owner must comply with all rules and guidelines established by the Architectural Committee.

8.19 Gate Damage.

- (a) Owners or Owner's Permittees who damage the gates are allowed 24 hours to report the damage to the Association. If the Owner admits fault, the Owner (or their insurance) will be allowed to pay for repairs without a fine, at cost. Repairs will be done through the Association's gate-maintenance contractor and billed to the homeowner.
- (b) Events where persons damage the gates and do not report the damage to the Association within 24 hours cause the Association to incur further expenses to have the images or videos pulled, evaluated, and a report generated. This service may be done by contracted parties at a cost of \$250 per incident, which will be charged to the offending Owner.
- (c) If the offending party can be identified based on video, photographic or other evidence, and is found to be an Owner, Owner's Permittee, or authorized contractor/construction worker/employee/etc. then the Owner shall be required to pay for repairs done by the Association's gate-maintenance contractor and billed to the homeowner, and pay a \$500 fine, per incident.
- (d) If the offending party cannot be identified then the matter may be referred to the Scottsdale Police Department for prosecution, at the discretion of the Board.
- (e) If the fine is not paid on time then the matter may be referred to the Scottsdale Police Department for prosecution, at the discretion of the Board.

ARTICLE 9: ARCHITECTURAL CONTROL

- 9.1 Architectural Approval. No Detached Dwelling Unit or Ancillary Unit may be constructed or maintained on a Lot, and no exterior addition, change, or alteration may be made to any Detached Dwelling Unit, Mailbox or approved Ancillary Unit located on a Lot, until 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 show the nature, type, size, style, color, shape, height, location, materials, floor plan, approximate cost, and their material attributes. 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 Lots. All decisions of the Architectural Committee shall be final. 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. **Architectural Guidelines are provided in the document entitled "Merit Crossing Homeowners Association Architectural Committee Guidelines" and can be obtained at the Merit Crossing webpage or from the Property Manager.**

- 9.2 Appointment of Architectural Committee. The appointment and removal of the Architectural Committee shall be governed by the Bylaws.
- 9.3 Architectural Committee Guidelines. The Architectural Committee, by majority vote or majority written consent, may adopt, amend, and repeal rules and regulations regarding procedures for Architectural Committee approval and the architectural style, nature, kind, shape, height, materials, exterior colors, surface texture, and location of any improvement on a Lot. These rules and regulations shall be called the Architectural Committee Guidelines. The Architectural Committee Guidelines shall not be interpreted in a manner that is inconsistent with the Declaration, the Articles, the Bylaws, or the Plat, and, upon adoption, the Architectural Committee Guidelines shall have the same force and effect as if they were set forth in full and were part of this Declaration.
- 9.4 Limited Effect of Approval. 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 by virtue of this Declaration, shall not be deemed to constitute a waiver of any requirement or restriction imposed by the City of Scottsdale any other law or requirement or restriction imposed by this Declaration and shall not be deemed an approval of the workmanship or quality of the work or of the integrity or sufficiency of the plans, drawings, or specifications.

ARTICLE 10: RESERVATION OF EASEMENTS

- 10.1 Public Utility Easements. Merit Crossing includes, as part of its design and structure, permanent and nonexclusive easements upon, across, over, and under those portions of the Lots and Common Area depicted and described on the Plat as a public utility easement or p.u.e., for the installation and maintenance of utilities servicing the community, including electricity, telephone, water, gas, cable television, drainage facilities, or other utility lines. All public utility easements depicted and described on the Plat may be used by the provider utility company and municipality without the necessity of any additional recorded easement instrument. The public utility easement described in this Section shall not affect the validity of any other recorded easements affecting the Project, and the term of this public utility easement shall be perpetual. All utilities and utility lines shall be placed underground, but no provision of this Declaration shall be deemed to forbid the use of temporary power or telephone structures incident to the construction of buildings or structures.
- 10.2 Easements for Ingress and Egress. A perpetual and nonexclusive easement for pedestrian ingress and egress is created and reserved by the Association for the benefit of the all Owners over, through, and across Tracts "A", "B", "C", "E", "F", "G" and "O". A perpetual and nonexclusive easement for vehicular ingress and egress is created for the

benefit of the Association and all owners over and across Tract "A". Additionally, access to any required on-Lot storm water storage facility will be granted to the City of Scottsdale consistent with Section 37-42, (12), b,4 of the City of Scottsdale Revised Code. The right of access described in this Section 10.2 is and will remain at all times an unrestricted right of ingress and egress.

- 10.3 Water Easement. Without limiting any other provision of this Declaration or the Plat, there is granted to the City of Scottsdale a permanent, nonexclusive, and blanket easement across the Property for the purpose of installing, repairing, reading, and replacing water meter boxes. In no event will this permanent easement be deemed to affect any portion of a Lot upon which a Detached Dwelling Unit or permitted Ancillary Unit is located.
- 10.4 Landscape and Drainage Easement. Declarant previously granted to and for the benefit of the City of Scottsdale and the Association a perpetual and nonexclusive easement in, through, across, and under the surface of the landscape and Drainage Tracts for the purpose of accepting storm water from the Project and installing, maintaining, and repairing underground drainage pipes, lines, drains, and other drainage facilities (together with the right to ingress and egress to perform the installation, maintenance, or repair). No buildings or similar structures may be erected on the Landscape and Drainage Tracts. No landscaping or vegetation may be planted in the Landscape and Drainage Tracts that would impede the flow of water into, through, over, or under the Drainage Tracts; however, the Association may install project signage, decoration entry walls, and lighted landscaping on the Landscaper and Drainage Tracts as approved by the City of Scottsdale. All landscaping installed in the Landscape and Drainage Tracts will be maintained by the Association.
- 10.5 Drainage Easement. Declarant previously granted to and for the benefit of the City of Scottsdale and the Association a perpetual and nonexclusive easement over and across those areas of the Lots depicted on the Plat as a "D.E." or "drainage easement". Except as approved by the Architectural Committee and City of Scottsdale for those areas of the Building Envelope that are located within a drainage easement, all drainage easements will be left in their natural state and free from any obstruction that would impede the natural flow of storm water. Those areas of the Building Envelope that are located within a drainage easement or storage basin must comply with the minimum capacity requirements imposed by the City of Scottsdale. Notwithstanding the grant of easement to the City of Scottsdale and the Association, all drainage easements and storage basins will be cleaned and maintained solely by the owner of the Lot upon which the drainage easement is located.
- 10.6 NAOS Easement. By accepting a deed for a Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner", each Owner acknowledges that the NAOS requirement applies to each Lot and will affect the areas upon which Detached Dwelling Units or Ancillary Units may be constructed. The area of each Lot that is to be NAOS will be 21,780 square feet.

ARTICLE 11: REALTOR OPEN HOUSE POLICY

- 11.1 Open House signs shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard sign rider which shall not exceed six by twenty-four inches.
- 11.2 All Open House signs shall be commercially produced, and signs are not permitted on the Common Areas.
- 11.3 Open Houses are permitted only between the hours of 8:00 a.m. and 6:00 p.m.
- 11.4 In the interest of residents' security, no signs revealing gate codes may be affixed to the gate access panel. A small, pre-approved notice of the Open House lot number is permitted for posting in the display case near the entry panel. Potential buyers must contact the person sitting the Open House from the access panel and the realtor is expected to release the gate to allow entrance.
- 11.5 Agents and visitors are asked to respect the privacy of Merit Crossing residents by taking the most direct route to and from the Open House.
- 11.6 The Merit Crossing Homeowners Association reserves the right to amend these rules at its discretion.

ARTICLE 12: VIOLATIONS AND REMEDIES

- 12.1 Establishment of a Violation. Non-compliance with this Declaration is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein, including, but not limited to the following:
 - (a) Architectural. Any improvements of any kind or nature erected, placed or altered on any Lot which has not been first approved by the Architectural Committee (AC) or which does not in all respects conform to that which has been so approved is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.
 - (b) Use Restrictions. Any activity or condition allowed to continue on any Lot that is in direct violation of Article VII of the Declaration, which is not expressly authorized by the Board, is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.
 - (c) Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Association is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

- 12.2 Violation; Adoption of Fine Policy. The Association shall have the authority, by a vote of the Board of Directors, to adopt, amend, and appeal a fine policy.
- 12.3 Corrective Action/Self-Help. Where a Violation is determined to exist and is referred to the Board, pursuant to any provision of this Enforcement Policy, Management, with the approval of the majority of the Board of the Association, may undertake to cause the Violation to be corrected, removed or otherwise abated by qualified contractors if Management, in its reasonable judgment, determines the Violation may be readily corrected, removed or abated without undue expense and without breach of the peace. Where management decides to initiate any action by qualified contractors, the following will apply:
- (a) Management must give the Lot Owner and any third party directly affected by the proposed action prior written notice of undertaking of the action. The forgoing notice may be given at any time.
 - (b) Cost incurred in correcting or eliminating the Violation will be referred to the Association to be recovered from the Lot Owner as an Assessment as set forth in Article IV of the Declaration.
 - (c) The Association, and its agents and contractors will not be liable to the Lot Owner or any third party for any damages or costs alleged to arise by virtue of action taken under this Paragraph 11.6 where the Association and its agents have acted reasonably and in conformity with this Enforcement Policy.
- 12.4 Referral to Legal Counsel. Where a Violation is determined to exist and is referred to the Board pursuant to any of the provisions of this Enforcement Policy and where Management deems it to be in the best interests of the Association, The Board may, at any time during the enforcement process, refer the Violation to legal counsel for action seeking injunctive relief against the Lot Owner to correct or otherwise abate the Violation, or to pursue any other legal or equitable remedy that may be available to the Association.
- 12.5 Notices. Any notice required by this Enforcement Policy to be given, sent, delivered or received in writing will be deemed to have been given, sent, delivered or received, as the case may be, upon the earlier to occur of the following:
- (i) When the notice is delivered electronically or by fax, the notice is deemed delivered when the sender receives an acknowledgment acknowledging delivery.
 - (ii) When the notice is placed into the care and custody of the United States Postal Service, the notice is deemed delivered as of the date the notice is deposited into a receptacle of the United States Postal Service with postage prepaid and addressed to the most recent address of the

recipient according to the records of the Association. Any Second Notice of Violation will be sent certified mail, return receipt requested.

- (iii) Where the interests of an Owner in a Lot have been handled by a representative or agent of such Owner or where Owner has otherwise acted so as to put the Association on notice that its interests in a Lot has been and is being handled by a representative or agent, any notice or communication from the Association or Management pursuant to this Enforcement Policy will be deemed full and effective for all purposes if given to such representative or agent.

- 12.6 Cure of Violation During Enforcement Process. A lot Owner may cure a Violation at any time during the pendency of any action or process instituted by the Association or other Owner as permitted by law or this Declaration. Upon verification by Management that the Violation has been corrected or eliminated, the Violation will be deemed no longer to exist and the Notice of Violation resolved. The Lot Owner will remain liable for all costs and fines, which costs, attorneys' fees, and fines, if not paid upon demand thereof, may be collected by the Association as an assessment pursuant to Article IV of the Declaration.

ARTICLE 13: GENERAL PROVISIONS

- 13.1 Enforcement. The Association, in the first instance, or any Owner, should the Association fail to act within a reasonable time, shall have the right to enforce by any proceeding at law or in equity all covenants and restrictions now or hereafter imposed by the provisions of this Declaration or the other Project Documents. Failure of the Association or any Owner to enforce any covenant and reservation in this Declaration or in the other Project Documents shall not be deemed a waiver of the right to do so thereafter. No act or omission by the Association shall act as a waiver or defense to the enforcement of this Declaration by the Association or any Owner. Deeds of conveyance of the Property, or any part of the Property, may incorporate the covenants and restrictions by reference to this Declaration; however, each and every covenant and restriction shall be valid and binding upon the respective grantees whether or not any specific or general reference is made in the deed or conveying instrument. Violators of any one or more of the covenants and restrictions may be restrained by any court of competent jurisdiction and damages 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, interest, rent, costs, attorney fees, or any other amount due, to obtain specific performance, or to obtain injunctive relief may be maintained without the foreclosing, waiving, releasing, or satisfying the liens created under this Declaration.
- 13.2 General provisions on Condemnation. If an entire Lot is acquired by eminent domain or if part of a Lot is acquired by eminent domain leaving the Owner with a remnant that may not practically be used for the purposes permitted by this Declaration (both instances being collectively referred to as a "condemnation" of the entire Lot), the

award shall compensate the Owner for his/her entire Lot and its interest in the Common Area, whether or not any Common Area interest is acquired by the condemning party. Upon acquisition by condemnation of an entire Lot, unless the condemnation decree provides otherwise, the affected Lot's entire Common Area interest, vote, and membership in the Association, and all common expense liabilities, will be automatically reallocated to the remaining Lots in the Project in proportion to the respective interests, votes, and liabilities of those Lots prior to the taking, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting these reallocations. For purposes of this Section, an Owner, by acceptance of a Lot or any interest in a Lot, shall be deemed to have appointed the Association, acting by and through the Board, as their attorney-in-fact for the purposes of amending, executing, and recording the Declaration. Any remnant of a Lot remaining after the taking under this Section 11.2 shall be deemed a part of the Common Areas.

- 13.3 Partial Condemnation of Lot. Except as provided in Section 11.2, if a part of a Lot is acquired by eminent domain, the award shall compensate the Owner for the reduction in value and its interest in the Common Area. Upon a partial taking, the Lot's interest in the Common Area, votes, and membership in the Association, and all common expense liabilities, shall remain the same as that which existed before the taking, and the condemning party shall have no interest in the Common Area, votes, or membership in the Association, or liability for the common expenses.
- 13.4 Condemnation of Common Area. If a portion of the Common Area is acquired by eminent domain, the award shall be paid to the Association.
- 13.5 Severability. Invalidation of any one or any portion of these covenants and restrictions by judgment or court order shall not affect the validity of any other provisions of the Project Documents, which shall remain in full force and effect.
- 13.6 Term. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years for so long as the Lots continue to be used for Single Family Residential Uses or unless terminated at the end of the initial or any extended term by an affirmative vote (in person or by absentee ballot) of the Owners of ninety percent (90%) of the total eligible votes in the Association.
- 13.7 Amendment. This Declaration may be amended by the consent of not less than two-thirds (2/3) of the eligible votes in the Association, and the amendment shall be executed on behalf of the Association by an officer of the Association. The Board also reserves the right to amend the Declaration or Plat without the vote of any Members to comply with applicable law or correct any error or inconsistency in the Declaration, provided the amendment does not materially and adversely affect the rights of any owner.

- 13.8 Construction. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development and maintenance of a residential subdivision consisting of Single Family Detached Dwelling Units and Common Area with maintenance as provided in this Declaration and the other Project Documents. Section and Article headings have been inserted for convenience only and shall 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, shall 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 such 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 contest, 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 shall automatically be deemed to include all amendments to this Declaration.
- 13.9 Notices. Any notice (other than notices issued pursuant to the Association's violation policy, as that procedure is set forth in the Declaration) permitted or required to be delivered may be delivered either personally, by mail, or by express delivery service. If delivery is made by mail, it shall be deemed to have been delivered and received two (2) business days after a copy of the notice has been deposited in the United States mail, postage prepaid, addressed to each person at the address given by such person to the Association for the purpose of service of such notice. If delivery is made by express delivery service, it shall be deemed to have been delivered and received on the next business day after a copy of the notice has been deposited with an "overnight" or "same-day" delivery service, properly addressed. This address may be changed from time to time by notice in writing received by the Association. If an Owner fails to provide the Association with an address for purposes of receiving notices, the address of any Detached Dwelling Unit owned by the owner may be used in giving the notice.
- 13.10 General Board Rights. The Board specifically reserves the right to construct such improvements to the Lots or Common Area as are consistent with this Declaration or the Plat without the vote of any members. The Board also reserves the right to amend the Declaration or Plat without the vote of any Members to comply with applicable law or correct any error or inconsistency in the Declaration, provided the amendment does not materially and adversely affect the rights of any owner.
- 13.11 Management Agreements. Any management agreement entered into by the Association, in any event, shall be terminable by the Association with or without cause and without penalty upon thirty (30) days written notice. The term of any management agreement entered into by the Association may not exceed one year and may be renewable only the affirmative agreement of the parties for successive periods of one year or less. Any property manager for the Association will be deemed to have accepted

these limitations, and no contrary provision of any management agreement will be enforceable.

- 13.12 No partition. There shall be no partition of any Lot, nor shall any Owner or other person acquiring any interest in any Lot, or any part of the Lot, seek any partition.
- 13.13 Developer's Right to Use Similar Name. The Association has irrevocably consented to the use by any other profit or nonprofit corporation that may be formed or incorporated by the Developer of a corporate name that is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of the other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association has agreed to 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 Developer to use a corporate name that is the same or deceptively similar to the name of the Association.
- 13.14 Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by the Declaration and the other Project Documents shall be joint and several.
- 13.15 Conflicts. In the event of any discrepancies, inconsistencies, or conflicts between the provisions of this Declaration and the Articles, Bylaws, Plat, Association Rules, or Architectural Committee Guidelines, the provisions of this Declaration shall prevail in all instances.
- 13.16 Survival of Liability. The termination of membership in the Association shall not relieve or release any former Member from any liability or obligation incurred under or in any way connected with the Association during the period of membership or impair any rights or remedies that the 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.
- 13.17 Waiver. The waiver of or failure to enforce any breach or violation of the Project Documents shall not be deemed a waiver or abandonment of any provision of the Project Documents or a waiver of the right to enforce any subsequent breach or violation of the Project Documents. The foregoing shall apply regardless of whether any person affected by the Project Documents (or having the right to enforce the Project Documents) has or had knowledge of the breach or violation.
- 13.18 Entry Gate. Each Owner understands and agrees that the Association (including its officers, directors, employees, and agents) is not responsible for the acts or omissions of any third parties or of any other Owner or the Owner's Permittees resulting in damages or injury to person or property. Any entry gate features (including gates, or other similar features) will be maintained by the Association under the Board's sole discretion, and

each Owner understands that, where permitted by the City of Scottsdale, any entry gate features that are in effect at the time the Owner purchases a Lot (or otherwise becomes an "Owner") may be abandoned, terminated, or modified at the sole discretion of the Board. The use of entry gate features shall not be deemed to be an assumption of any duty on the part of the Association with respect to the Project and its owners.

13.19 Attorney Fees. Without limiting the power and authority of the Association to incur and assess attorneys' fees as part of the creation or enforcement of any assessment, in the event an action is instituted to enforce any of the provisions contained in the Project Documents, the party prevailing in any action shall be entitled to recover from the other party all reasonable attorneys' fees and court costs. In the event the Association is the prevailing party in the action, the amount of attorney fees and court costs may be deemed all or part of a special assessment against the Lot and Owner involved in the action.

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[Signatures on following page(s).]

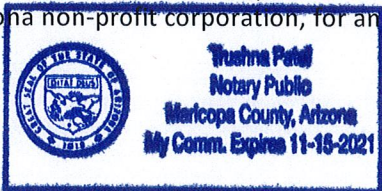
IN WITNESS WHEREOF, the Association has executed this Declaration on the day and year first above written.

MERIT CROSSING HOMEOWNERS ASSOCIATION, INC.,
an Arizona non-profit corporation

By: [Signature]
Name: GUY MIKELIAN MD MBA
Title: PRESIDENT, MERIT CROSSING HOA
Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 23 day of October, 2018 by Guy Mikelian, the President of Merit Crossing Homeowners Association, Inc., an Arizona non-profit corporation, for and on behalf of said corporation.



[Signature]
Notary Public

My Commission Expires: 11/15/2021

Exhibit A

(Legal Description of the Property)

Lots 1 through 20, inclusive, and Tracts A through G, inclusive, of MERIT CROSSING, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 504 of Maps, Page 46.

EXCEPTING AND RESERVING, however, unto the United States of America, all the coal and other minerals in the lands, as set forth in the Patent of said land.