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**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
LADERA BRISAS**

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**SECOND AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF LADERA BRISAS**

6 THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
7 AND RESTRICTIONS OF LADERA BRISAS (this "Declaration") is made this _____ day of
8 _____, 2015, by the owners (the "Owners") of the real property described
9 as:

10
11 Lots 1 through 106 and Common Area (Lots 107 and 108) of Ladera Brisas, a
12 Pima County subdivision, as shown in the Plat of Record in Book 30 at page 74
13 of Maps and Plats on record in the Pima County Recorder's Office (the
14 "Property").

15
16
17

RECITALS

18 WHEREAS, the Declarant executed the *Declaration of Covenants, Conditions and*
19 *Restrictions of Ladera Brisas*, recorded on April 17, 1979, in Book 6008, pages 1056-1074, office
20 of the Pima County Recorder, as amended and restated in its entirety by that certain *Amended*
21 *and Restated Declaration of Covenants, Conditions and Restrictions of Ladera Brisas*, which was
22 recorded on August 24, 1983, in Docket 7102, pages 590-657, office of the Pima County
23 Recorder (the "Original Declaration"); and

24
25 WHEREAS, the Owners adopted a *First Amendment to Amended and Restated*
26 *Declaration of Covenants, Conditions and Restrictions of Ladera Brisas*, which was recorded on
27 April 17, 2002, in Sequence 20020740734, office of the Pima County Recorder; and

28
29 WHEREAS, the Owners adopted a *Second Amendment to Amended and Restated*
30 *Declaration of Covenants, Conditions and Restrictions of Ladera Brisas*, which was recorded on
31 March 8, 2007, in Sequence 20070460028, office of the Pima County Recorder; and

32
33 WHEREAS, this Declaration was approved by the vote or written consent of the Owners of
34 not less than 67% of the Dwelling Units.

35
36 NOW, THEREFORE, the Owners hereby declare that the Property is and shall be held,
37 conveyed encumbered, leased, and used subject to the following covenants, conditions, uses,
38 restrictions, limitations, obligations, easements, equitable servitudes, charges and liens
39 (hereinafter collectively referred to as the "Restrictions"), all of which are for the purpose of
40 enhancing and protecting the value, desirability and attractiveness of the Property. The
41 Restrictions set forth herein shall run with the Property, shall be binding upon all persons having

1 or acquiring any right, title or interest therein, and shall inure to the benefit of, be binding upon
2 and enforceable by all Owners, the Association and their successors and assigns in interest.

3
4 **ARTICLE I.**
5 **DEFINITIONS**

6
7 Unless the context otherwise specifies or requires, the following words and phrases shall
8 have the meaning set forth below:

9
10 Section 1.1. “Articles” means the Articles of Incorporation of Ladera Brisas
11 Homeowners Association, Inc., an Arizona non-profit corporation, and amendments thereto
12 which are, or shall be filed with the Arizona Corporation Commission.

13
14 Section 1.2. “Assessment” shall refer to any or all of the assessments hereinafter
15 defined:

16
17 1.2.1. “Capital Improvement Assessment” means a charge against each Owner
18 and his Lot representing a portion of the cost to the Association for the installation or
19 construction of any capital improvements on any Common Area, as provided for in this
20 Declaration.

21
22 1.2.2. “Reconstruction Assessment” means a charge against each Owner and his
23 Lot representing a portion of the cost to the Association for the reconstruction of any portion(s)
24 of the Common Area or Lots as provided for in this Declaration.

25
26 1.2.3. “Regular Assessment” means a charge against each Owner and his Lot
27 representing that portion of the common expenses attributable to such Owner and his Lot as
28 provided for in this Declaration.

29
30 1.2.4. “Special Assessment” means a charge against a particular Owner and his
31 Lot directly attributable to such Owner for certain costs incurred by the Association or Declarant
32 as provided for in this Declaration.

33
34 Section 1.3. “Association” means Ladera Brisas Homeowners Association, Inc., an
35 Arizona non-profit corporation, and its successors and assigns.

36
37 Section 1.4. “Association Rules” means the rules and regulations adopted by the
38 Board, as the same may be amended from time to time.

39
40 Section 1.5. “Board” means the Board of Directors of the Association.

41
42 Section 1.6. “Bylaws” mean the Bylaws of the Association as amended from time to
43 time.

1 Section 1.7. “Common Area(s)” means all real property designated on the Plat as
2 Common Area, whether improved or unimproved, owned by the Association for the common
3 use and enjoyment of the Owners, including, without limitation, all recreational facilities
4 constructed thereon, if any, community and commercial facilities, if any, and private streets.
5

6 Section 1.8. “Common Property” means all Common Areas and any personal property
7 now or hereafter owned by or leased to the Association.
8

9 Section 1.9. “Declarant” means Michael R. Wattis, Inc., an Arizona corporation and its
10 nominees, successors or assignees while it was title holder of any Dwelling Unit, whether as
11 original Owner or Owner by reacquisition.
12

13 Section 1.10. “Declaration” means this instrument and any amendments thereto.
14

15 Section 1.11. “Dwelling Unit” means the real property and improvements placed within
16 the boundary of any Lot.
17

18 Section 1.12. “Eligible Mortgage Holder” means a holder of a first-mortgage on a
19 Dwelling Unit who has requested notice of certain matters in accordance with Section 10.5.
20

21 Section 1.13. “Lot” means any numbered parcel of real property shown on the Plat, but
22 shall not include Common Area.
23

24 Section 1.14. “Member” means every person and/or entity who holds membership in
25 the Association.
26

27 Section 1.15. “Mortgage” means any mortgage, deed of trust or contract to convey a
28 Lot, which secures the performance of an obligation.
29

30 Section 1.16. “Mortgagee” means and includes mortgagees, beneficiaries of deeds of
31 trust, vendors under contracts to convey and the holders of any indebtedness secured by
32 Mortgages.
33

34 Section 1.17. “Mortgagor” means and includes mortgagors, trustors under deeds of
35 trust, and purchasers under contracts to convey.
36

37 Section 1.18. “Owner(s)” means either (a) the record owner, whether one or more
38 persons or entities, of equitable or beneficial title (legal title if same has merged) of any
39 Dwelling Unit or, as the case may be, (b) the purchaser of a Dwelling Unit under an executory
40 contract to convey real property. The foregoing does not include persons or entities who hold
41 an interest in any Dwelling Unit merely as security for the performance of an obligation, or a
42 lessee or tenant of an Owner.
43

44 Section 1.19. “Person” means a natural individual or any other entity with the capacity
45 to hold title to real property.

1
2 Section 1.20. "Plat" means the subdivision plot covering the Property.

3
4 **ARTICLE II.**
5 **GENERAL RESTRICTIONS**

6
7 All property within the Property shall be held, used and enjoyed subject to the following
8 limitations and restrictions:

9
10 Section 2.1. Antennas and Exterior Additions. Subject to the Telecommunications Act
11 of 1996 and any other applicable law, no exterior antennas or other devices for the transmission
12 or reception of communication, television or radio signals, including satellite dishes, which are
13 not in keeping with similar devices already present within the Property, shall be erected or
14 maintained without prior written authorization of the Board of Directors. The installation of any
15 antenna, satellite dish or exterior device shall be made so as to minimize, to the greatest extent
16 possible, the visual impact of the installation. The Board may adopt guidelines governing the
17 installation of exterior antennas and other communication devices. Such guidelines are deemed
18 incorporated herein by this reference, and shall have the same force and effect as if they were
19 set forth in and were part of this Declaration. Furthermore, no exterior additions other than
20 initially built by Declarant shall be constructed on the exterior of a Dwelling Unit without the
21 prior written authorization of the Board.

22
23 Section 2.2. Insurance Rates. Nothing shall be done or kept on any Dwelling Unit or
24 Common Area which will increase the rate of insurance on such Property without the written
25 approval of the Board; nor shall anything be done or kept on any Dwelling Unit or Common Area
26 which will result in the cancellation of Insurance on any such Property or which would be in
27 violation of any law.

28
29 Section 2.3. Signs. No sign of any kind shall be on a Lot or Common Area, unless the
30 sign has been approved by the Board, except "For Sale," "For Rent," and security signs, and signs
31 or other postings which may be required by legal proceedings; or "Open House" signs which are
32 in place not more than two hours before and after the time of the event. No sign may exceed
33 more than three square feet in size. The placement of any sign shall not obstruct sidewalks or
34 any other area of public access. If the Owner(s) of any Lot wishes to sell or rent, the Owner or
35 his/her Realtor, with the Owner's permission, may erect one commercially-produced "For Sale"
36 or "For Rent" sign of industry standard size (18" x 24") on the Lot. Said sign shall be removed
37 within one week after close of escrow. The sign shall be the standard type used by real estate
38 professionals without additional advertising or adornment, except one sign rider that does not
39 exceed 6" x 24". Political signs are only allowed in accordance with State of Arizona statutes.
40 Final sign approvals rest with the Board of Directors or its designated representative or
41 committee.

42
43 Section 2.4. Animals. A reasonable number of generally-recognized house or yard pets
44 may be kept, provided that they are not kept, bred or maintained for any commercial purpose. All
45 animals must be kept under leash or controlled at all times so that they will not interfere with any
46 member's use and enjoyment of the Common Areas, and it shall be the responsibility of all pet

1 owners to clean up after their pets. No pets are allowed in the pool and recreation areas. No
2 animal shall be allowed to become a nuisance, and at night all pets must be kept in an enclosed
3 area. The Board shall conclusively determine, in its discretion, whether, for the purposes of this
4 Section, a particular animal is a nuisance, or whether the number of animals is reasonable.
5

6 Section 2.5. Nuisances. No nuisance shall be permitted to exist or operate upon any
7 portion of the Property. For purposes of this Declaration, a nuisance shall be defined as any
8 condition or event which is offensive or detrimental to the Property and/or interferes with the
9 Owners' quiet enjoyment of the Property, including by way of example and not limitation:
10 events and conditions which are unsightly, unsanitary, noisy, disorderly, or unsafe. No noise or
11 other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or
12 detrimental to any part of the Property or to its occupants. Without limiting the generality of any
13 of the foregoing provisions, no exterior speakers or other sound devices, except for security
14 purposes, shall be located, used or placed on a Lot without the prior written approval of the
15 Board. The Board in its sole discretion shall have the right to determine the existence of any such
16 nuisance.
17

18 Section 2.6. Growth and Planting. The growth and planting on all Common Areas or on
19 that portion of each Lot which is outside the boundary of a patio wall shall not be destroyed or
20 removed unless written permission is first obtained from the Board. Owners must obtain the
21 Board's written approval before planting in these areas. No common Bermuda grasses may be
22 planted or maintained on any Lot or Common Area. Only non-allergenic hybrid grasses may be
23 planted or maintained on the Property.
24

25 Section 2.7. Unsightly Articles. No unsightly articles shall be permitted if they are
26 visible from adjoining Dwelling Units or from the street or public way. No rubbish or debris of
27 any kind shall be placed or permitted to accumulate upon any Lot or Common Area within the
28 Property, and no odors shall be permitted to arise therefrom so as to render any such property or
29 any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the
30 vicinity thereof or to its occupants. At no time shall there be any outside storage of motor
31 vehicles in stages of construction, reconstruction, modification or rebuilding; or parts of motor
32 vehicles (such as frames, bodies, engines or other parts or accessories). Any and all items stored
33 in storage or yard area shall be stored so as to conceal the same from view from adjoining
34 property or from the streets or public way. Grass, shrub and tree clippings and all clotheslines,
35 machinery, storage piles, wood pile, and other personal property stored outside, shall be kept
36 within an enclosed structure or appropriately screened from view of adjoining property or from
37 streets or public way. The Board shall have sole discretion in determining if any activity by an
38 Owner is in violation of this Section 2.7.
39

40 Section 2.8. Trash Containers. No garbage or trash shall be placed or kept on the
41 Property, except in covered containers. All rubbish, trash or garbage shall be removed from the
42 Dwelling Units and shall not be allowed to accumulate thereon. No incinerators shall be allowed.
43 Trash and recycling containers shall be kept within an enclosed structure or appropriately
44 screened from view of adjoining property or from streets or public way, except when necessary

1 to make available for collection, and then only for the shortest time reasonably necessary to
2 effect such collection.

3
4 Section 2.9. Mailboxes. The location, color, size, design, lettering and all other
5 particulars of all mail and paper delivery boxes, and standards and brackets and name signs for
6 same shall be as originally installed by the Declarant or as otherwise approved by the Board, so
7 that all mailboxes in the Property are uniform in appearance.

8
9 Section 2.10. Vehicles. The use of all vehicles, including but not limited to trucks,
10 automobiles, bicycles and motorcycles shall be subject to the Rules, which may prohibit or limit
11 the use thereof, provide parking regulations or other rules regulating the same. The parking
12 and/or storing of recreational vehicles (including, but not limited to, motor homes, campers,
13 trailers and boats) is prohibited on all portions of the Property except that a recreational vehicle
14 may be parked in any designated Common Area parking area, so long as it does not interfere with
15 flow of traffic, for a period of not more than 72 hours in any seven-day period and not more than
16 144 hours in any 30-day period, for the purposes of loading, unloading, or for providing parking
17 for guests of residents of the Property who may be driving or pulling a recreational vehicle. Such
18 vehicles may also be stored or parked in any enclosed garage area. The use and/or occupancy of
19 a recreational vehicle as living quarters on either a temporary or permanent basis are strictly
20 prohibited on all portions of the Property.

21
22 Section 2.11. Improvements and Alterations. There shall be no excavation, construction,
23 or alteration which in any way alters the exterior appearance of any improvement in the
24 Property, including rocks, stones, gravel or earth without the prior approval of the Board. No
25 fences, hedges or walls shall be erected or maintained upon the property except as installed in
26 accordance with the initial construction of the buildings located thereon, or as approved by the
27 Board.

28
29 Section 2.12. Drainage. There shall be no interference with the established drainage
30 pattern over any portion of the Property unless adequate provision is made for proper drainage
31 conforming to County rules, regulations, ordinances and drainage criteria, and prior approval by
32 the Board. For purposes hereof “established drainage” is defined as the drainage which existed
33 at the time the overall grading of the Property was initially completed, or which is shown on any
34 plans conforming to County rules, regulations, ordinances, and drainage criteria and approved by
35 the Board.

36
37 Section 2.13. Carports or Garages. Each Dwelling Unit shall have either a carport
38 sufficient to provide parking for at least one vehicle or a garage of equivalent size.

39
40 **ARTICLE III.**
41 **PERMITTED USES, RESTRICTIONS AND RIGHTS – DWELLING UNITS**

42
43 Section 3.1. Private Residential Purposes & Permitted Business Activities. Dwelling
44 Units shall be occupied and used by the respective Owners solely for single-family residential use
45 and for no other purpose. “Single-family” means any group of one or more persons each related

1 to the other by blood, marriage or legal adoption, or a group of not more than three persons not
2 so related, who maintain a common household or dwelling. The following applies with respect to
3 business activities within the Property:

4
5 3.1.1. Criteria for Home Business. Generally, no trade or business may be conducted in
6 or from any Dwelling Unit; however, an Owner or occupant residing in any Dwelling Unit
7 may conduct business activities within the Dwelling Unit so long as: (A) the existence or
8 operation of the business activity is not apparent or detectable by sight, sound or smell
9 from outside the Dwelling Unit; (B) the business activity conforms to all zoning
10 requirements for the Property; (C) the business activity does not involve any person
11 conducting such business who does not reside in the Dwelling Unit or door-to-door
12 solicitation of residents of the Property; (D) the existence or operation of the business
13 does not increase that Dwelling Unit's use of Common Area facilities over the standard for
14 a single family dwelling; (E) the existence or operation of the business does not require
15 customers or delivery trucks to visit the Dwelling Unit; and (F) the business activity does
16 not constitute a nuisance, or a hazardous or offensive use, or cause the Owner(s) to
17 violate any other provisions of this Declaration, or threaten the security or safety of other
18 residents of the Property as may be determined in the sole discretion of the Board.

19
20 3.1.2. Pertinent Definitions. The terms "business" and "trade," as used in this provision,
21 shall be construed to have their ordinary, generally-accepted meanings, and shall
22 include, without limitation, any occupation, work or activity undertaken on an ongoing
23 basis which involves the provision of goods or services to persons other than the
24 provider's family and for which the provider receives a fee, compensation or other form
25 of consideration, regardless of whether: (A) such activity is engaged in full or part-time;
26 (B) such activity is intended to or does generate a profit; or (C) a license is required
27 therefore. Notwithstanding the above, the leasing of a Dwelling Unit shall not be
28 considered a trade or business within the meaning of this Section.

29
30 Section 3.2. Renting. Any Owner shall have the right to lease his or her Dwelling Unit
31 to a "Single Family," as defined in Section 3.1 of this Declaration, subject to the requirements of
32 this Section 3.2:

33
34 3.2.1. Definitions. The following definitions shall apply to this Section and all other
35 Sections of the Declaration.

- 36
37 (A) Rent: the amount paid by a tenant for the use or occupation of property.
38
39 (B) Rental: the amount received from a tenant for the use or occupation of property.
40
41 (C) Lease: the written document which permits a tenant to use or occupy the
42 property of another; the act of allowing a tenant to use or occupy one's property.
43

1 3.2.2. Common Practice of "Renting" is Prohibited. The common usage of the term
2 "rent/renting" to refer to an informal unwritten agreement between parties for the use
3 of the property of one of the parties by the other party is not recognized by this
4 Declaration. The practice of "renting" is prohibited in the Property.
5

6 3.2.3. Limitation on Number of Leased Units. No more than 20 Dwelling Units may be
7 leased at any one time. Before an Owner enters into a Lease Agreement with a
8 prospective tenant or allows a tenant to occupy a Dwelling Unit, he must obtain prior
9 written approval from the Association's Board of Directors or Community Manager, to
10 assure that no more than 20 Dwelling Units are leased within the Property at any one
11 time. The Board of Directors shall adopt and amend policies and procedures, as
12 necessary, to administer this restriction. For the purposes of this Section, the occupancy
13 by the parents or children of an Owner shall be considered a lease if the Owner is not
14 occupying the Dwelling Unit with them. The parents or children must adhere to all
15 provisions of this Section.
16

17 3.2.4. Applicability of Leasing Restriction. Any Owner of record as of March 8, 2007,
18 which is the date the rental restrictions were added to the Original Declaration, who was
19 leasing his or her Dwelling Unit to tenants on this date, retained the right to lease the
20 Dwelling Unit until he sold, conveyed or transferred it to a new Owner, as defined in
21 Section 1.18 of this Declaration.
22

23 3.2.5. Variances from Leasing Restriction. The Board of Directors, in its sole and
24 absolute discretion may allow a variance from the limitation in Section 3.2.3, to meet
25 special situations and to avoid undue hardship or practical difficulties. The Owner
26 requesting a variance must demonstrate that failure to be allowed to lease his or her
27 Dwelling Unit will result in an undue hardship. "Undue hardship" is defined as: a
28 financial hardship which requires the Owner(s) to lease the Dwelling Unit, a physical
29 condition which requires the Owner to move out of the Dwelling Unit, a job/military
30 transfer out of Tucson, an involuntary job loss, or other similarly compelling
31 circumstances.
32

33 3.2.6. Obligations of Tenants and Responsibility of Owner. All provisions of the
34 Declaration, the Bylaws, and the Rules which govern the conduct of Owners and which
35 provide for sanctions against Owners shall also apply to tenants. The Owner shall
36 provide his or her tenant with copies of the Declaration and the Rules. In the event the
37 Owner fails to do so, the Association shall provide copies to the tenant and charge the
38 Owner the cost of providing the copies. An Owner shall be responsible for any violation
39 of the Declaration and Rules by his or her tenant or any other persons residing in the
40 Dwelling Unit, and their guests or invitees. In the event of any violation, the Owner,
41 upon demand of the Association shall immediately take all necessary actions to correct
42 any such violations, including eviction.
43

44 3.2.7. Requirements for Lease Agreements. If a Lease Agreement does not comply with
45 the requirements of this Section, such Lease Agreement shall, at the option of the Board,

1 be declared null and void. All Lease Agreements shall be in writing and shall specifically
2 provide:

3
4 (A) The Agreement is subject in all respects to the provisions of the Declaration and
5 Rules.

6
7 (B) The failure of the tenant to comply with the terms and conditions of the
8 Declaration and Rules constitutes a material default of the Lease Agreement, and
9 the Owner shall be entitled to reenter and retake possession of the premises
10 pursuant to the provision of the Arizona Landlord Tenant Act, A.R.S. § 33-1301 *et*
11 *seq.*

12
13 (C) All Lease Agreements shall be for a minimum of 90 days.

14
15 3.2.8. Notification to Association. Within 15 days of lease inception, an Owner leasing
16 his or her Dwelling Unit shall give the Association, in writing, the name of the tenant of
17 the Dwelling Unit and such other information as the Association may reasonably require.

18
19 Section 3.3. Common Walls. The rights and duties of Owners with respect to common
20 walls shall be as follows:

21
22 (A) Each wall (including patio walls and structural support posts or piers) which was
23 constructed as a part of the original construction of the Dwelling Unit, any part of
24 which is placed on the dividing line between separate Dwelling Units, shall
25 constitute a common wall. With respect to any such wall, each of the adjoining
26 Unit Owners shall assume the burden and be entitled to the benefits recited in
27 this Section 3.3, and to the extent not inconsistent herewith, the general rules of
28 law regarding common wall shall be applied hereto.

29
30 (B) The Owners of contiguous Dwelling Units who have a common wall shall have
31 reciprocal easements for support and an equal right to use such wall provided
32 that such use by one Owner does not interfere with the use and enjoyment of
33 same by the other Owner.

34
35 (C) Unless other provisions of this Section 3.3 are applicable, the costs of reasonable
36 repair and maintenance of a common wall shall be shared equally by the Owners
37 who make use of the common wall.

38
39 (D) If any common wall is damaged or destroyed by one of the adjoining Owners, or
40 any of his or her guests or agents or family members (whether or not such act is
41 negligent or otherwise culpable), so as to deprive the other adjoining Owner of
42 the full use and enjoyment of such wall, then the Owner causing the damage or
43 destruction shall forthwith rebuild and repair the wall to as good condition as
44 formerly, without cost to the other Owner.

1 (E) If any common wall is damaged or destroyed by some cause other than the act of
2 one of the adjoining Owners, his or her agents, guest or family (including ordinary
3 wear and tear and deterioration from lapse of time), then both adjoining Owners
4 shall forthwith rebuild or repair the wall to as good condition as formerly at their
5 joint and equal expense.
6

7 (F) Notwithstanding any provision herein to the contrary, there shall be no
8 impairment of the structural integrity of any common wall without prior consent
9 of the Board. In addition to meeting the other requirements of these Restrictions
10 and of any applicable building code or similar regulation or ordinances, any
11 Owner proposing to modify, make additions to or rebuild his Dwelling Unit in any
12 manner which requires the extension or other alteration of any common wall
13 shall first obtain the written consent of the Board, which shall determine the
14 adjoining Owner's preference concerning the proposed modification, extension
15 or alteration of the common wall prior to giving any written consent thereto.
16

17 (G) In the event of a dispute between Owners with respect to repair or rebuilding of
18 a common wall or sharing expenses therefore, then upon written request of one
19 of such Owners delivered to the Association, the matter shall be heard and
20 determined by the Board, the judgment of the Board shall be final and binding.
21

22 Section 3.4. Easements for Encroachments. Each Dwelling Unit is subject to an
23 easement for encroachments created by construction, settling and overhangs, as original
24 constructed by the Declarant. A valid easement for said encroachments and for the
25 maintenance of same, so long as it stands, shall and does exist. In the event Dwelling Units are
26 partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments on
27 parts of the adjacent Dwelling Units due to construction shall be permitted and that a valid
28 easement for said encroachments and the maintenance thereof shall exist.
29

30 Section 3.5. Maintenance and Repair. The responsibility for maintenance, upkeep and
31 repair in the Property is as follows:
32

33 3.5.1. Owners' Responsibility. (A) Maintenance, upkeep, repair and restoration of
34 Dwelling Units, except as otherwise provided in Section 3.5.3, shall be the sole
35 responsibility of each Owner, and not in any manner the responsibility of the Association.
36 (B) This includes but is not limited to all fixtures and equipment installed within a Dwelling
37 Unit, including heating, ventilation and air conditioning equipment, together with the roof
38 on such Dwelling Unit, the exterior of the Dwelling Unit, and the patio walls. (C) The
39 Owner of a Dwelling Unit also is responsible for maintenance, repair and replacement of all
40 utility lines serving his or her Dwelling Unit other than the utility lines maintained by Pima
41 County. The Owner's responsibility includes the lateral sewer lines and water lines from
42 the Dwelling Unit to the point of connection with the main lines, including any area of the
43 lateral sewer or water line on Common Area, which needs to be restored after any
44 disturbance due to work on the utility lines. (D) In addition, the Owner is responsible to
45 maintain, repair and replace all fixtures on the Lot or in the Common Area in front of the

1 Dwelling Unit, including driveways, mailboxes and lamp-posts. (E) The Owner also is
2 responsible for maintenance and repair of any damage to his or her Dwelling Unit or utility
3 line resulting from encroachment of roots or branches from Common Area trees or plants.
4 The Association shall bear no responsibility or cost for such encroachment.
5

6 3.5.2. Owners' Failure to Maintain. If an Owner fails to maintain his or her Lot or
7 improvements thereon, then the Board with a 2/3rds vote may hire a contractor to enter
8 upon the subject property at reasonable times, to maintain the Lot and the
9 improvements thereon. The cost of such maintenance shall be added to and become a
10 part of the Assessment to which such Lot is subject. The Board in its sole discretion shall
11 have the right to determine whether or not a Lot or the improvements thereon is in need
12 of maintenance, repair and upkeep in order to conform to the standards of the general
13 neighborhood. The Owner shall be given at least 10 days' written notice to the Owner
14 before any entry by the Association or its agents onto the Lot.
15

16 3.5.3. Association's Responsibility. The maintenance and repair of all Common Areas,
17 excluding the exceptions set forth in Section 3.5.1 above and all landscaping outside of
18 individual patio walls shall be the sole responsibility of the Association. In general, the
19 Board shall use a reasonably high standard of care in providing for the maintenance and
20 repair of the Common Areas to reflect a high pride of ownership.
21

22 Section 3.6. Architectural Control.
23

24 3.6.1. Approval Required. No building, fence, well, or other structure shall be
25 commenced, erected, or maintained upon a Lot, nor shall any exterior addition to or
26 change in or alteration of a Dwelling Unit or the exterior color scheme thereof be made
27 until the plans and specifications showing the nature, kind, shape, height, materials, and
28 location of the same, shall have been submitted to and approved, in writing, as to
29 harmony of external design and location in relation to surrounding structures and
30 topography by the Board of Directors, or by an architectural committee appointed by the
31 Board. If the Board or its designated committee fails to approve or disapprove such design
32 and location within 30 days after such plans and specifications have been submitted to it,
33 approval will not be required and this Section shall be deemed to have been fully complied
34 with.
35

36 3.6.2. Right of Inspection. During reasonable hours and after reasonable notice, any
37 member of the Board, or any authorized representative designated by the Board, shall
38 have the right to enter upon and inspect a Lot (except the interior of Dwelling Units) for
39 the purpose of ascertaining whether or not an improvement or construction project is
40 completed according to approved plans and specifications, and such persons shall not be
41 deemed guilty of trespass by reason of such entry.
42

43 Section 3.7. Utility Easements. There is hereby created a blanket easement upon,
44 across, over and under the Property for ingress, egress, installation, replacing, repairing and
45 maintaining all utility and service lines and systems, including, but not limited to water, sewers,

1 gas, telephones and electricity, etc. By virtue of this easement, it shall be expressly permissible for
2 the providing utility or service company to install and maintain facilities and equipment on the
3 Property and to affix and maintain wires, circuits and conduits on, in and under the roofs and
4 exterior walls of Dwelling Units. This easement shall in no way affect any other recorded
5 easements on the Property. In no event shall any portion of the aforementioned easements for
6 utilities be construed to authorize the placing or installing of sewers, electrical lines, water lines or
7 other utilities under any permanent building structure constructed on the Property. This
8 easement shall be limited to improvements as originally constructed.

9
10 Section 3.8. Electrical, Service and Telephone Lines. All electrical service and telephone
11 lines shall be placed underground, and no outside electrical lines shall be placed overhead;
12 provided that no provisions hereof shall prohibit the erection of temporary power or telephone
13 structures incident to construction.

14
15 Section 3.9. Other Public Service Easements. There shall be an access easement for the
16 delivery and collection of the U.S. mail, police, fire, and for all other necessary public services,
17 including but not limited to garbage collection, ambulance service, and the like.

18
19 **ARTICLE IV.**
20 **THE ASSOCIATION**

21
22 Section 4.1. Organization.

23
24 4.1.1. Association. The Association is a non-profit Arizona corporation charged with the
25 duties and invested with the powers prescribed by law and set forth in the Articles,
26 Bylaws, and this Declaration.

27
28 4.1.2. Board of Directors and Officers. The affairs of the Association shall be conducted
29 by a Board of Directors and such officers and committees as the Board may elect or
30 appoint, in accordance with the Articles and Bylaws, as amended from time to time. The
31 composition of the Board shall be defined in the Bylaws.

32
33 4.1.3. Personal Liability. No member of the Board or any committee of the Association,
34 or any officer or employee of the Association, shall be personally liable to any Owner, or
35 to any other party, including the Association, for any damage, loss or prejudice suffered
36 or claimed on account of any act, omission, error, or negligence of the Association, the
37 Board, or any representative or employee of the Association, or any committee, or any
38 officer of the Association; provided that such person has, upon the basis of such
39 information as may be possessed by him, acted in good faith and without willful or
40 intentional misconduct.

41
42 Section 4.2. Membership.

43
44 4.2.1. Qualifications. Each Owner of a Dwelling Unit, by virtue of being an Owner and
45 for so long as he is an Owner, shall be deemed a Member of the Association. The

1 foregoing is not intended to include Persons who hold an interest in a Dwelling Unit
2 merely as security for the performance of an obligation. No Owner shall have more than
3 one membership for each Lot owned.
4

5 4.2.2. Transfer of Membership. Membership in the Association shall be appurtenant to
6 the Dwelling Unit owned and shall not be transferred, pledged, or alienated in any way
7 except upon the transfer of ownership of said Dwelling Unit, and then only to the
8 transferee thereof. Any attempt to make a prohibited transfer shall be void. Any
9 transfer of ownership of a Dwelling Unit shall operate automatically to transfer said
10 membership to the new Owner thereof.
11

12 Section 4.3. Voting Rights. The Association shall have one class of voting membership.
13 Each Owner shall be entitled to one vote for each Dwelling Unit owned. When more than one
14 Person holds an interest in any Dwelling Unit, all such persons shall be Members, and the vote for
15 each Dwelling Unit shall be exercised as they determine among themselves, but in no event shall
16 more than one vote be the cast with respect to any Dwelling Unit.
17

18 Section 4.4. Exterior Maintenance and Repair. The Association shall have the rights,
19 duties and obligations relating to maintenance, upkeep and repair as set forth in Section 3.5.3 of
20 this Declaration.
21

22 Section 4.5. Ownership of Common Area, Payment of Ad Valorem Taxes. The
23 Association owns the Common Areas and has all rights, duties and power with respect to the
24 Common Areas as prescribed by law, and set forth in the Articles, Bylaws and this Declaration. The
25 Association shall be responsible for payment of all ad valorem taxes on Common Property.
26

27 Section 4.6. Bylaws. The Bylaws shall, among other things, establish the procedure for
28 electing members of the Board and officers of the Association, the duties of the Board, the
29 procedure for regular and special meetings, and amendments to the Bylaws.
30

31 Section 4.7. Association Rules. The Board may adopt, amend, and repeal the Association
32 Rules which shall have the same force and effect as if set forth in this Declaration. The Association
33 Rules may restrict and otherwise govern the use and occupancy of the Property. However, the
34 Association Rules may not discriminate among Owners and shall not be inconsistent with this
35 Declaration, the Articles or the Bylaws and any amendments thereto. The Rules may be adopted,
36 amended, or repealed at any special or regular meeting of the Board upon a vote of a majority of
37 all the Directors, and shall take effect after 30 days' written notice to the Owners, unless the rule(s)
38 being adopted, amended or repealed has a compelling health or safety purpose, in which case
39 seven days' notice to the Owners is required. The Association Rules, as adopted, amended or
40 repealed, shall be available for review by each Owner upon written request to the Board. It shall
41 be the responsibility of each Owner to review and keep abreast of any changes in the Association
42 Rules.
43

1 **ARTICLE V.**
2 **OWNERSHIP, USE AND MANAGEMENT OF COMMON AREAS AND PROPERTY**
3

4 Section 5.1. Owners' Easements of Enjoyment. Every Owner shall have a right and
5 easement of enjoyment in and to the Common Property which shall be appurtenant to and shall
6 pass with title to every Dwelling Unit subject to Section 5.2.
7

8 Section 5.2. Conditional Use of Common Property. Each Owner, his family, invitees
9 and tenants or lessees, or contract purchasers who reside in a Dwelling Unit, shall be entitled to
10 use the Common Property subject to the provisions of the Articles, Bylaws, this Declaration and
11 the Association Rules, and the following:
12

- 13 (A) The right of the Association, in accordance with its Articles and Bylaws, to borrow
14 money for the purpose of improving the Common Areas and facilities thereon, if
15 any, and in aid thereof to mortgage or deed, in trust, said Common Areas or
16 encumber the Association's personal property;
17
- 18 (B) The right of the Association to take such steps as are reasonably necessary to
19 protect the Common Property against foreclosure;
20
- 21 (C) The right of the Association to suspend the voting rights of any Member for any
22 period during which any Assessment against his Lot remains unpaid and
23 delinquent;
24
- 25 (D) The right of the Association to dedicate or transfer all or any part of the Common
26 Areas to any public agency, authority or utility for such purposes and subject to
27 such conditions as may be agreed to by the Members, provided that no such
28 dedication or transfer shall be effective unless approved by the vote or written
29 consent of Members entitled to exercise not less than 2/3rds of the voting power
30 of the membership and an instrument in writing is recorded and signed by the
31 Secretary of the Association certifying that such dedication or transfer has been
32 approved by the required vote;
33
- 34 (E) The right of the Association to include in the Association Rules, rules and
35 regulations pertaining to the use of the Common Areas and the facilities thereon;
36
- 37 (F) The right of the Association to limit the number of guests of members in the
38 Common Areas;
39
- 40 (G) The Association's right to temporarily close all or any part of the Common Areas
41 as the Association deems necessary, including closure to prevent a dedication
42 thereof or an accrual of any rights other than to the Owners, their successors in
43 interest, and their permittees;
44

1 (H) The Association’s right to temporarily close, for a reasonable time, any part of the
2 areas for purposes of maintenance and repairs; and
3

4 (I) The right of the Association to charge reasonable admission and other fees for
5 the use of any recreational facility situated upon the Common Property.
6

7 Section 5.3. Delegation of Use. Any Member may delegate his right of enjoyment in
8 the Common Areas and facilities to the members of his family, his tenants or lessees or contract
9 purchasers who reside in a Dwelling Unit, subject to such rules, regulations and limitations as
10 the Association may, from time to time, establish. Such delegation shall not relieve said
11 Member of his obligations and responsibilities as a Member under the Bylaws, Association Rules
12 and this Declaration.
13

14 Section 5.4. Management. The Board shall control, maintain, manage and improve the
15 Common Property as provided in this Declaration, the Articles and Bylaws. Such right and power
16 of control and management shall be exclusive. In managing the Common Property, the
17 Association hereby accepts all responsibility for the control, maintenance, safety and liability of
18 such Common Property, including, but not limited to, collecting and paying taxes on Common
19 Areas which shall be assessed by the County Assessor. The Board shall have power to employ
20 and engage any persons or entities, including professional management, which it deems
21 desirable in the interest of efficient management. Notwithstanding the foregoing, any
22 agreement for professional management of the Property, and/or any other agreement providing
23 for the services of Declarant in connection with the Property, may not exceed two years in
24 duration and must provide for termination by either party without cause and without payment of
25 a termination fee on 60 days or less written notice.
26

27 Section 5.5. Damages. Each Owner shall be liable to the Association for any damage to
28 the Common Property which may be sustained by reason of the negligence or willful misconduct
29 of said Owner or of his family and guests, both minor and adult. In the case of joint ownership of a
30 Dwelling Unit, the liability of such Owners shall be joint and several, except to the extent that the
31 Association has previously contracted in writing with such joint Owners to the contrary. The
32 amount of such damage shall be an Assessment against the Dwelling Unit and may be enforced in
33 the manner provided for other Assessments.
34

35 **ARTICLE VI.**

36 **COVENANTS FOR MAINTENANCE ASSESSMENTS**

37
38 Section 6.1. Creation of the Lien and Obligation to Pay Assessments. Each Owner, by
39 acceptance of a deed to any Lot, whether or not expressly stated in such deed, is deemed to
40 covenant and agree to pay to the Association all Assessments as defined in Section 1.2 above,
41 such Assessments to be established and collected as hereinafter provided. All Assessments,
42 together with interest, costs, and reasonable attorney’s fees, shall be a charge on the Dwelling
43 Unit and shall be a continuing lien upon the property against which each Assessment is made.
44 Delinquent Assessments, together with interest, costs, and reasonable attorney’s fees, shall also
45 be the personal obligation of the Person who was the Owner of such Dwelling Unit at the time

1 when the Assessment was levied. The personal obligation for delinquent Assessments shall not
2 pass to the delinquent Owner's successors in title unless expressly assumed by them.

3
4 Section 6.2. Purpose of Assessments. The Assessments levied by the Association shall
5 be used exclusively to promote the recreation, health, safety, and welfare of the Members and
6 their guests for the improvement and maintenance of the Common Areas and for all purposes
7 set forth in the Articles, Bylaws and this Declaration.

8
9 Section 6.3. Annual Assessment. The Annual Assessment shall be payable in equal
10 monthly installments. Within 30 days prior to the end of the calendar year (January 1 through
11 December 31), the Board shall estimate the total charges to be paid during the forthcoming year
12 (including a reasonable reserve for contingencies, such as interest, maintenance and repair, etc.,
13 and less any expected surplus from the prior year), and shall use such estimate to compute the
14 per Dwelling Unit Annual Assessment. Written notice of the Annual Assessment shall be sent to
15 every Owner subject thereto in the event of its increase or decrease from the last Annual
16 Assessment. Notwithstanding the foregoing language in this Section 6.3, the Association's
17 power to increase the Annual Assessment shall be limited as follows:

- 18
19 (A) The Annual Assessment may be increased each year without a vote of the
20 membership by not more than the greater of: (i) 8% above the maximum Annual
21 Assessment for the previous year, or (ii) in conformance with increase, if any, of
22 the Consumer Price Index (published by the Department of Labor, Washington,
23 D.C.) for the preceding calendar year.
24
25 (B) The Annual Assessment may be increased above the maximum set forth in
26 paragraph (A) above by a vote of 2/3rds of the Members who have voted in
27 person or by absentee ballot at a meeting duly called for this purpose.
28

29 Section 6.4. Capital Improvement and Reconstruction Assessments. In addition to the
30 Annual Assessments authorized above, the Association may levy, in any Assessment year, a
31 Reconstruction or Capital Improvement Assessment applicable to that year only for the purpose
32 of defraying, in whole or in part, the costs of any construction, reconstruction, repair or
33 replacement of a capital improvement of the Common Area, including fixtures and personal
34 property related thereto, provided that any such Assessment shall have the assent of 2/3rds of
35 the votes of Members who are voting in person or by absentee ballot at a meeting duly called
36 for this purpose.
37

38 Section 6.5. Notice and Quorum For An Action Under Section 6.3 or Section 6.4.
39 Written notice of any meeting called for the purpose of increasing the Annual Assessment more
40 than the maximum permitted under Section 6.3, or for imposing a Capital Improvement or
41 Reconstruction Assessment, shall be sent to all Members not less than 10 days nor more than 60
42 days in advance of the meeting. At such meeting, the presence in person or by absentee ballot
43 of Members entitled to cast 51% of all the votes in the Association shall constitute a quorum
44 and shall be required for an action under Section 6.3 or Section 6.4.
45

1 Section 6.6. Uniform Rate of Assessment. All Annual, Reconstruction and Capital
2 Improvement Assessments must be fixed at a uniform rate for all Dwelling Units and may be
3 collected on a monthly basis.
4

5 Section 6.7. Effect of Nonpayment of Assessments: Remedies of the Association. Each
6 Owner shall be deemed to covenant and agree to pay to the Association the Assessments
7 provided for herein, and agrees to the enforcement of the Assessments in the manner herein
8 specified. All delinquent Assessments shall bear interest at the rate of 18% per year. In the
9 event the Association employs an attorney for collection of any Assessments, whether by suit or
10 otherwise, or to enforce compliance with or specific performance of the terms and conditions of
11 this Declaration, or for any other purpose in connection with the breach of this Declaration,
12 each Owner agrees to pay reasonable attorney's fees and costs thereby incurred in addition to
13 any other amounts due or any other relief or remedy obtained against said Owner. In the event
14 of a default in payment of any such Assessment when due, in addition to any other remedies
15 herein or by law provided, the Association may enforce each such obligation in any manner
16 provided by law or in equity, without limitation, or by either or both of the following
17 procedures:
18

19 6.7.1 Enforcement By Suit. The Board may cause a lawsuit to be commenced and
20 maintained in the name of the Association against an Owner to enforce each such
21 Assessment obligation. Any judgment rendered in any such action shall include the
22 amount of the delinquency, together with interest thereon at the maximum rate
23 permitted by law from the date of delinquency until paid, court costs, and reasonable
24 attorney's fees in such amount as the Court may adjudge against the delinquent Owner
25 or Member.
26

27 6.7.2 Enforcement By Lien. There is hereby created a right of claim of lien, with power
28 of sale, on each and every Dwelling Unit to secure payment to the Association of any and
29 all Assessments levied against any and all Owners together with interest thereon at the
30 rate of 18% per year from the date of delinquency until paid, and all costs of collection
31 which may be paid or incurred by the Association in connection therewith, including
32 reasonable attorney's fees. At any time within 90 days after the occurrence of any
33 default in the payment of any such Assessment, the Association, or any authorized
34 representative may, but shall not be required to, make a written demand for payment
35 upon the defaulting Owner, on behalf of the Association. Said demand shall state the
36 date and amount of the delinquency. Each default shall constitute a separate basis for
37 demand or claim of lien or a lien, but any number of defaults may be included within a
38 single demand or claim of lien. If such delinquency is not paid within 10 days after
39 delivery of such demand, or even without such a written demand being made, the
40 Association may elect to file a claim of lien against the Dwelling Unit of the defaulting
41 Owner. Such a claim of lien shall be executed and acknowledged by any officer of the
42 Association, and shall contain substantially the following information:
43

44 (A) The name of the delinquent Owner;
45

- 1 (B) The legal description, according to the Plat, of the Dwelling Unit against which
2 claim of lien if made;
3
- 4 (C) The total amount claimed to be due and owing for the amount of the delinquency,
5 interest thereon, collection costs, and reasonable attorney's fees (with any proper
6 offset allowed);
7
- 8 (D) That the claim of lien is made by the Association pursuant to this Declaration; and
9
- 10 (E) That a lien is claimed against said Dwelling Unit in any amount stated. Upon
11 recordation of a duly executed original or copy of such a claim of lien, and mailing
12 a copy thereof to said Owner, the lien claimed therein shall immediately attach
13 and become effective in favor of the Association as a lien upon the Dwelling Unit.
14 Such a lien shall have priority over all claims of liens created subsequent to the
15 recordation of the claim of lien thereof, except only tax liens for real property
16 taxes on any Dwelling Unit, assessments on any Dwelling Unit in favor of any
17 municipal or other governmental assessing unit, and the lien of any first Mortgage.
18 Any such lien may be foreclosed by appropriate action in Court or in the manner
19 provided by law for the foreclosure of a realty mortgage or trust deed, in the
20 Association's sole discretion, as set forth by the laws of the State of Arizona, as the
21 same may be changed or amended. The lien provided for herein shall be in favor
22 of the Association and shall be for the benefit of all other Owners. The Association
23 shall have the power to bid in at any foreclosure sale and to purchase, acquire,
24 hold, lease, mortgage, and convey any Dwelling Unit. In the event such
25 foreclosure is by action in court, reasonable attorney's fees, court costs, title
26 search fees, interest and all other costs and expenses shall be allowed as a cost of
27 suit. Each Owner hereby expressly waives any objection to the enforcement and
28 foreclosure of said lien in this manner.
29

30 Section 6.8. No Offset. The obligation of every Owner to pay Assessments levied by the
31 Association is absolute and shall not be affected by any claim the Owner may have, or believes he
32 has, against any other Person, including the Association, nor shall such obligation be affected by
33 any irregularity in the manner or timing in which notice of Assessment is given.
34

35 Section 6.9. Subordination of the Lien to Mortgage. The lien of the Assessments
36 provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any
37 Dwelling Unit shall not affect the Assessment lien. However, the sale or transfer of any Dwelling
38 Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien
39 of such Assessment as to payments which became due prior to such sale or transfer. No sale or
40 transfer shall relieve such Dwelling Unit from liability for any Assessments thereafter becoming
41 due or from the lien thereof.
42

1 **ARTICLE VII.**
2 **INSURANCE**
3

4 Section 7.1. Dwelling Unit Coverage. The Association shall maintain, to the extent
5 reasonably available, the following insurance for the Dwelling Units under the following terms
6 and conditions:
7

8 7.1.1. Insurance against loss or damage by fire or other hazards in an amount sufficient
9 to cover the full replacement value of all Dwelling Units, meaning actual replacement
10 value exclusive of the cost of excavation, foundations and footings, in the event of
11 damage or destruction from all reasonable hazards. Such insurance shall exclude
12 improvements and betterments installed by Owners and the personal property of
13 Owners. If available, said policy or policies shall provide that there shall be no
14 contribution with or offset against policies that any individual Owner may have in effect.
15

16 7.1.2. In addition to the insurance carried by the Association, it shall be the individual
17 responsibility of each Owner, at his own expense, to provide as he sees fit, owner's
18 liability insurance, theft, and other insurance covering damage or loss of personal
19 property, the deductible payable under the Association's insurance policy, and
20 improvements and betterments as described in Section 7.1.1 above.
21

22 7.1.3. In the event of damage or destruction to any Dwelling Unit, insurance proceeds
23 shall be paid to the Owner of the Lot, who shall be responsible for the payment of any
24 deductible amount charged by the insurance company.
25

26 7.1.4. In the event of damage or destruction by fire or other casualty to any Dwelling
27 Unit, Lot or other property covered by insurance written in the name of or for the benefit
28 of an Individual Owner, said Owner shall use any insurance proceeds for the repair of the
29 damaged property.
30

31 Section 7.2. Common Property Insurance. The Board shall obtain and maintain in
32 force the following policies of insurance applicable to the Common Property: (A) Fire and
33 extended coverage insurance on all Common Property, the amount of coverage to be not less
34 than 100% of the aggregate full insurable value, based on current replacement cost. Such
35 insurance shall include a standard "all risk" endorsement and an agreed amount and inflation
36 guard endorsement, if such endorsements are available. Such insurance shall insure the
37 Association's mortgagees, if any, as their interest may appear. (B) Public liability insurance,
38 including but not limited to bodily injury liability insurance, with limits of not less than
39 \$1,000,000 per person and \$2,000,000 per occurrence, and property damage arising from the
40 activities of the Association. If obtainable, the Association shall obtain a cross-liability
41 endorsement insuring each insured against liability to every other insured. (C) The Association
42 shall maintain Worker's Compensation Insurance to the extent such is necessary to comply with
43 any applicable laws. (D) Blanket fidelity bonds may be maintained by the Association for all
44 officers, directors, trustees and employees of the Association and all other persons handling or
45 responsible for funds of or administered by the Association, including, but not limited to, the

1 officers, employees and agents of any management agency employed by the Association who
2 deal with funds of or administered by the Association.

3
4 Section 7.3. Blanket Policies and Trusteeship. Said fire and liability insurance policies
5 shall be blanket or master policies covering the Dwelling Units and Common Property. Said
6 policies shall contain any anti-inflation riders or endorsements the Board deems necessary to
7 maintain coverage on a current replacement cost basis of 100% of the full insurable value of the
8 insured property. With respect to insurance proceeds from the Common Property only, the
9 Association shall be deemed trustee of the interests of all Owners in any insurance proceeds paid
10 to it under any such policies, and shall have full power to receive and to receipt for the their
11 interests in such proceeds and to deal therewith in the manner provided for in the Bylaws. The
12 Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent
13 of any loss under any policy carried pursuant to this Article VII. The Board is granted full right and
14 authority to compromise and settle any claim or enforce any claim by legal action or otherwise
15 and to execute releases in favor of any insurer.

16
17 Section 7.4. Insurance Premiums. Premiums for hazard insurance and all other
18 insurance obtained by the Board shall be a common expense payable through Assessments of
19 Dwelling Units.

20
21 Section 7.5. In General. Every policy of insurance obtained by the Association shall
22 contain an express waiver, if available, of any and all rights of subrogation against the Board and
23 such other persons or entities affiliated with the Association such as a manager and their
24 representatives, Members and employees, and a provision, if available, preventing any
25 cancellation or modification thereof except upon at least 30 days written notice to the insureds
26 and their mortgagees. In addition, every policy of insurance obtained by the Association shall
27 provide, if available, for the payment of Assessments which the insured property is obligated for
28 under this Declaration until the insured property is repaired and made habitable. The liability
29 insurance hereinafter specified shall name, as separately protected insureds the Association, the
30 Board and such other persons or entities affiliated with the Association such as a manager and
31 their representatives, members and employees as their interest may appear with respect to any
32 liability arising out of the maintenance or use of any insured property. As to each such policy,
33 which will not be voided or impaired thereby, the Association hereby waives and releases all
34 claims against the Board and such other persons or entities named in said insurance, their
35 agents and employees, with respect to any loss covered by such insurance, whether or not
36 caused by negligence of or breach of any agreement by said persons, but only to the extent that
37 insurance proceeds are received in compensation for such loss. Each hazard insurance policy
38 must be written by an insurance carrier which falls into a financial category, as designated in
39 Best's Key Rating Guide, of Class VI or better.

40 41 **ARTICLE VIII.**

42 **EMINENT DOMAIN – COMMON AREA**

43
44 Section 8.1. Taking. The term "taking," as used in this Article, shall mean either (A)
45 condemnation by eminent domain or (B) sale under threat of condemnation.

1
2 Section 8.2. Authority of Board. In the event of a threatened taking of all or any
3 portion of the Common Area, the Members hereby appoint the Board of the Association and
4 such Persons as the Board or the Association may delegate to represent all of the Members in
5 connection with the taking. The Board shall act in its sole discretion with respect to any awards
6 being made in connection with the taking and shall be entitled to make a voluntary sale to the
7 contemnor in lieu of engaging in a condemnation action.
8

9 Section 8.3. Partial Taking. In the event of a taking of less than all of the Common
10 Area, the rules as to restoration and replacement of the Common Area and the improvements
11 thereon shall apply as in the case of destruction of improvements upon the Common Area.
12

13 Section 8.4. Distribution of Proceeds. Any awards received on account of the taking
14 shall be paid to the Association. In the event of a total taking, the Board shall retain any award
15 in the general funds of the Association. Notwithstanding anything to the contrary in this Article
16 VIII, the distribution of any award or awards for a taking of all or any portion of the Common
17 Area shall be subject to the prior rights of Mortgagees.
18

19 **ARTICLE IX.**
20 **DESTRUCTION OF COMMON AREA IMPROVEMENTS**
21

22 Section 9.1. Duty of Association. In the event of a partial or total destruction of the
23 Common Area, Common Property or improvements thereon, it shall be the duty of the
24 Association to restore and repair the same to their former condition as promptly as is
25 practicable and in a lawful and workmanlike manner. The proceeds of any insurance maintained
26 pursuant hereto shall be used for such purpose, subject to the prior rights of Mortgagees whose
27 interests may be protected by said policies.
28

29 Section 9.2. Destruction: Proceeds Exceed 80% of Reconstruction Costs. If the
30 amount available from the proceeds of such insurance policies for such restoration and repair is
31 at least 80% of the estimated costs of restoration and repair, a Reconstruction Assessment, with
32 each Owner contributing a like sum, may be levied by the Association to provide the necessary
33 funds for such reconstruction and repair, over and above the amount of any insurance proceeds
34 available for such purposes.
35

36 Section 9.3. Destruction: Proceeds Less Than 80% of Reconstruction Costs. If the
37 amount available from the proceeds of such insurance policies for such restoration and repair is
38 less than 80% of the estimated cost of restoration and repair, the improvements shall not be
39 replaced or restored unless approved by the vote or written consent of Members entitled to
40 exercise 2/3rds of the voting power of the membership of the Association.
41

42 9.3.1. Rebuilding Not Authorized: First Mortgagee Approval. Notwithstanding the
43 foregoing, unless at least 51% of the Eligible Mortgage Holders, based on one vote for
44 each Mortgage held, have given their prior written approval, the Association shall not be

1 entitled to use hazard proceeds for losses to any Common Area for other than the repair,
2 replacement or construction of such improvements.

3
4 9.3.2. Community Park Use: First Mortgagee Approval. In the event of a determination
5 not to replace or restore the improvements on the Common Area, and provided that in
6 the event of such determination, the Association shall obtain the additional written
7 consent of 51% percent of such Eligible Mortgage Holders, based on one vote for each
8 Mortgage held, the Common Area shall be cleared and landscaped for community park
9 use; provided, however, that there shall exist in such Common Area adequate vehicular
10 and pedestrian rights-of-way for the Owners of Lots to insure legal access thereto, and
11 the costs thereof shall be paid for with the insurance proceeds, and any deficiency may
12 be raised by the levy of uniform Reconstruction Assessments in an amount determined
13 by the Board.

14
15 Section 9.4. Distribution of Proceeds: Excess Proceeds. In the event any excess
16 insurance proceeds remain, the Board shall retain such sums in the general funds of the
17 Association. Notwithstanding anything to the contrary contained in this Article IX, the
18 distribution of any insurance proceeds for any damage or destruction to the Common Area shall
19 be subject to the prior rights of Mortgagees.

20
21 **ARTICLE X.**
22 **MORTGAGE PROTECTION**
23

24 Section 10.1. Priority of Mortgage Lien. No breach of the Restrictions nor the
25 enforcement of any lien created by this Declaration, shall affect, impair, defeat or render invalid
26 the lien or change of any first Mortgage made in good faith and for value encumbering any Lot,
27 but all of the covenants, conditions, and restrictions established by this Declaration shall be
28 binding upon and effective against any Owner whose title is derived through foreclosure or
29 trustee's sale, or otherwise, with respect to a Lot.

30
31 Section 10.2. Curing Defaults. A Mortgagee who acquires title by judicial foreclosure,
32 deed in lieu of foreclosure, default of a contract to convey, or trustee's sale shall not be
33 obligated to cure any breach of the provisions of this Declaration which is non-curable or of a
34 type which is not practical or feasible to cure. The determination of the Board, made in good
35 faith, as to whether a breach is non-curable or not feasible to cure shall be final and binding on
36 all Mortgagees.

37
38 Section 10.3. Resale. It is intended that any loan to facilitate the resale of any Lot after
39 judicial foreclosure, deed in lieu of foreclosure, or trustee's sale is a loan made in good faith and
40 for value and entitled to all of the rights and protections afforded to other Mortgagees.
41

1 Section 10.4. Relationship with Assessment Liens.

2
3 (A) The lien provided for in Section 6.1 of this Declaration for the payment of
4 Assessments shall be subordinate to the lien of any first Mortgage which was
5 recorded prior to the date that any such Assessment became due.

6
7 (B) If any Lot subject to a monetary lien created by this Declaration is subject to the
8 lien of a first Mortgage (i) the foreclosure of any lien created by this Declaration
9 shall not impair the lien of such first Mortgage; and (ii) the foreclosure of the lien
10 of said first Mortgage, the acceptance of a deed in lieu of foreclosure of the
11 Mortgage, or the sale under a power of sale included in such Mortgage (such
12 events being hereinafter referred to as "events of foreclosure") shall not operate
13 to affect or impair the lien hereof, except that any Persons who obtain an interest
14 through any of the events of foreclosure shall take title free of the lien hereof for
15 all such charges as shall have accrued up to the time of any of the events of
16 foreclosure, but subject to the lien hereof for all of said charges that shall accrue
17 subsequent to the events of foreclosure.

18
19 (C) Any first Mortgagee who obtains title to a Lot by reason of any event of
20 foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take
21 title to such Lot free of any lien or claim for unpaid Assessments against such Lot
22 which accrue prior to the time such mortgagee or purchaser comes into
23 possession of the Lot, except for liens or claims for a share of such Assessments
24 resulting from a reallocation of such Assessments to all Lots within the Property.
25 d) Nothing in this Section shall be construed to release any Owner from his
26 obligation to pay for any Assessment levied pursuant to this Declaration.

27
28 Section 10.5. Rights of Eligible Mortgage Holders, Insurers and Governmental
29 Guarantors of Mortgages. Upon written request to the Association, identifying the name and
30 address of the holder, insurer or guarantor of a first Mortgage and the Dwelling Unit number or
31 address, any Eligible Mortgage Holder, insurer or guarantor shall be entitled to written notice of:

32
33 (A) Any condemnation loss or casualty loss as provided for in Section 10.11.

34
35 (B) Any delinquency in the payment of assessments as provided for in Section 10.9.

36
37 (C) Any lapse, cancellation or material modification of any insurance policy or fidelity
38 bond maintained under Article VII.

39
40 (D) Any proposed action which requires the consent of a specified percentage of
41 Eligible Mortgage Holders as set forth in this Declaration.

42
43 Section 10.6. Owner or Mortgagee Approval Requirements. Unless at least 2/3rds of
44 the Owners, based upon one vote for each Lot owned, and all Eligible Mortgage Holders have
45 given their prior written approval, the Association shall not be entitled to:

- 1
2 (A) by act or omission seek to abandon, partition, subdivide, encumber, sell or
3 transfer the Common Property owned, directly or indirectly, by the Association
4 (the granting of easements for public utilities or for other public purposes
5 consistent with the intended use of such Common Property shall not be deemed
6 a transfer within the meaning of this clause);
7
8 (B) change the method of determining the obligations, Assessments, dues or other
9 charges which may be levied against an Owner;
10
11 (C) by act or omission change, waive or abandon the scheme of regulations, or
12 enforcement thereof, pertaining to the architectural design or the exterior
13 appearance of Dwelling Units, the exterior maintenance of Dwelling Units, the
14 maintenance of the Common Property, party walls, walks or common fences and
15 driveways or the upkeep of lawns and plantings on the Property;
16
17 (D) fail to maintain fire and extended coverage insurance on insurable Common
18 Property on a current replacement cost basis in an amount not less than 100% of
19 the insurable value (based on current replacement cost); or
20
21 (E) use hazard insurance proceeds for losses to any Common Property for other than
22 the repair, replacement or reconstruction of such Common Property.
23

24 Section 10.7. Other Rights of First Mortgagees. Any first Mortgagee shall, upon written
25 request to the Association, be entitled to:
26

- 27 (A) Inspect the books and records of the Association during normal business hours.
28
29 (B) Receive the annual financial statements of the Association 90 days following the
30 end of the Association's fiscal year.
31
32 (C) Receive written notice of all annual and special meetings of the Members or of
33 the Board, and first Mortgagees shall further be entitled to designate a
34 representative to attend all such meetings in order to, among other things, draw
35 attention to violations of this Declaration which have not been corrected or made
36 the subject of remedial action by the Association; provided, however, nothing
37 contained in this Section shall give a first Mortgagee the right to call a meeting of
38 the Board or of the Members for any purpose or to vote at any such meeting.
39

40 Section 10.8. Mortgagees Furnishing Information. Mortgagees are hereby authorized
41 to furnish information to the Board concerning the status of any loan encumbering a Lot.
42

43 Section 10.9. Notice to First Mortgagees of Owner Default. Any first Mortgagee shall be
44 entitled to written notification from the Association of any default in the performance of the
45 obligations imposed by this Declaration by the Owner whose Lot is encumbered by such

1 Mortgagee’s Mortgage, which default has not been cured within 60 days of a request therefor
2 by the Association; provided, however, the Association shall only be obligated to provide such
3 notice to first Mortgagees who have previously requested such notice in writing.
4

5 Section 10.10. Conflicts. In the event of any conflict between any provision of this Article
6 and any other provision of the Declaration, the provisions of this Article shall control.
7

8 Section 10.11. Notice of Destruction or Taking. In the event that the Common Area or
9 any portion thereof is substantially damaged or is made the subject of any condemnation
10 proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority,
11 the Board shall promptly notify any Eligible Mortgage Holder affected by such destruction,
12 taking or threatened taking. As used herein, “substantially damaged” shall mean damage
13 exceeding \$10,000.00.
14

15 Section 10.12. First Mortgagees’ Right to Make Certain Payments. First Mortgagees of
16 Dwelling Units shall have the right to, jointly or singly, pay taxes or other charges which are
17 delinquent or otherwise in default and which may or have become a charge against the
18 Common Property. First Mortgagees of Dwelling Units shall also have the right to, jointly or
19 singly, pay overdue premiums on any insurance policy required to be maintained under this
20 Declaration. In the event any First Mortgagee makes such payment, such Mortgagee shall be
21 entitled to immediate reimbursement by the Association, and may enforce such entitlement by
22 any remedy available at law or in equity.
23

24 Section 10.13. Eligible Mortgage Holder Approval. In addition to any other actions which
25 require the approval of a specified percentage of Eligible Mortgage Holders, any election to
26 terminate the legal status of Ladera Brisas after substantial destruction or substantial taking in
27 condemnation of a portion of the Property or the Common Area shall require the approval of
28 51% of the Eligible Mortgage Holders, based on one vote for each Mortgage held.
29

30 **ARTICLE XI.**
31 **GENERAL PROVISIONS**
32

33 Section 11.1. Term. The covenants, conditions, and restrictions of the Declaration shall
34 remain in full force and effect for a period of 20 years from the date this Declaration is recorded.
35 Thereafter, they shall be deemed to have been renewed and automatically extended for
36 successive periods of 10 years each.
37

38 Section 11.2. Amendments. This Declaration may be amended at any time by an
39 instrument in writing, signed and acknowledged by the President and Secretary of the Association,
40 certifying that such amendment has been approved by the vote or written consent of the Owners
41 of not less than 67% of the Dwelling Units. The amendment shall be effective upon its recordation
42 in the office of the Pima County Recorder. All Eligible Mortgage Holders’ approval must be given
43 for the amendment of any provisions of this Declaration which are for the express benefit of
44 Mortgagees, Eligible Mortgage Holders or insurers or guarantors of first Mortgages on Dwelling
45 Units. In the event an Eligible Mortgage Holder who has received a written request to approve

1 such addition or amendment has not delivered or mailed a negative response to the party
2 requesting such approval within 30 days from the date of such request, such Eligible Mortgage
3 Holder shall be deemed to have approved such request.
4

5 Section 11.3. Termination of Legal Status. The termination of the legal status of Ladera
6 Brisas, other than termination after substantial loss or destruction of the Common Areas as the
7 result of a casualty or condemnation, shall require the consent of the holders of 67% of the
8 eligible votes in the Association and 67% of the Eligible Mortgage Holders, based on one vote for
9 each Mortgage held.

10
11 Section 11.4. Enforcement and Non-Waiver.
12

13 11.4.1. Enforcement. Except as otherwise provided herein, the Association or any
14 Owner, shall have the right to enforce by any proceeding at law or in equity, all
15 restrictions, conditions, covenants, reservations, liens or charges now or hereafter
16 imposed by provision of this Declaration.
17

18 11.4.2. Pre-Requisites to Litigation. In the event of a dispute between an Owner and the
19 Board of Directors, the complainant Owner, as an absolute condition precedent to
20 instituting a legal action against the Board or the Association, must first serve notice in
21 writing on the Board of Directors in the manner hereinafter provided, advising the Board
22 of the alleged grievance, the action or results desired and a date and time convenient for
23 a meeting for the purpose of arriving at a settlement of the controversy with the
24 complainant Owner. The Board shall have no more than 30 days from the date of such
25 notice until the date of the meeting. The Association may maintain an action against an
26 Owner for any violation of these Restrictions without the condition precedent stated
27 above first being satisfied.
28

29 11.4.3. Violations and Nuisances. Every act or omission whereby any provision of this
30 Declaration is violated in whole or in part is hereby declared to be a nuisance and may be
31 enjoined or abated, whether or not the relief sought is for negative or affirmative action,
32 by the Association, or any Owner or group of Owners of Dwelling Units within the
33 Property.
34

35 11.4.4. Violation of Law. Each and every provision of this Declaration and any
36 amendment hereto shall be subject to all Pima County ordinances and subdivision
37 regulations and any future amendments thereto. Any violation of any state, municipal or
38 local law, ordinance or regulation pertaining to the ownership, occupation or use of any
39 property within the Property is hereby declared to be a violation of these Restrictions
40 and subject to any or all of the enforcement procedures set forth herein or in the Bylaws.
41

42 11.4.5. Remedies Cumulative. Each remedy provided by these Restrictions is cumulative
43 and not exclusive.
44

1 11.4.6. Non-Waiver. Failure by the Board, the Association or any Owner to enforce any
2 of the provisions of these Restrictions at any time shall not constitute a waiver of the
3 right hereafter to enforce any such provision or any other provisions of these
4 Restrictions.
5

6 11.4.7. Recorded Notice Of Violation. In the event that any Owner, his guests, tenants or
7 family members are in violation of any of the provisions of this Declaration or the
8 Association Rules, the Association, after providing notice and an opportunity to cure the
9 violation, has the right to record a "Notice of Violation" with the office of the County
10 Recorder of Pima County, Arizona, stating the name of the Owner, the Lot and the
11 nature of the violation, and the Association's intent not to waive any of its rights of
12 enforcement. The Notice shall remain of record until the violation is cured.
13

14 11.4.8. No Obligation to Enforce. The Association is not obligated to take any
15 enforcement action if the Board determines, in its sole discretion, that because of
16 considerations pertaining to the Association's finances, possible defenses, the time and
17 expense of litigation or other enforcement action, the likelihood of a result favorable to
18 the Association, or other facts deemed relevant by the Board, enforcement action would
19 not be appropriate or in the best interests of the Association. The failure of the
20 Association or an Owner to take enforcement action with respect to a violation of the
21 Community Documents shall not constitute or be deemed a waiver of the right of the
22 Association or any Owner to enforce the Community Documents in the future.
23

24 Section 11.5. Easements. For the benefit of the Property, reciprocal easements of
25 access, ingress and egress may be used by Owners, their guests, tenants and invitees for
26 pedestrian walkways, vehicular access, and such other purposes reasonably necessary to the use
27 and enjoyment of a Dwelling Unit and Common Areas, including recreational facilities.
28

29 Section 11.6. Construction.

30
31 11.6.1. Interpretation. The provisions of this Declaration shall be liberally construed to
32 effectuate their purpose of creating a uniform plan for the development and operation
33 of the Property. This Declaration shall be construed and governed by the laws of the
34 State of Arizona. The Association, by the Board, shall have the exclusive right to
35 construe and interpret the provisions of this Declaration and the Association Rules. In
36 the absence of any adjudication to the contrary by a court of competent jurisdiction, the
37 Association's construction or interpretation of the provisions hereof shall be final,
38 conclusive, and binding as to all Persons and property benefited or bound by this
39 Declaration.
40

41 11.6.2. Severability. Invalidation of any covenant, restriction, provision or term of this
42 Declaration by judgment or court order shall not affect any other covenant, restriction,
43 provision or term hereof which shall remain in full force and effect.
44

1 11.6.3. Rule Against Perpetuities. In the event the provisions hereunder are declared
2 void by a Court of competent jurisdiction by reason of the period of time herein stated
3 for which the same shall be effective, then in that event, said periods of time shall be
4 reduced to a period of time which shall not violate the rule against perpetuities as set
5 forth in the laws of the State of Arizona.

6
7 11.6.4 Singular Includes Plural. Unless the context requires a contrary construction, the
8 singular shall include the plural and the plural the singular; and the masculine, feminine
9 or neuter shall each include the masculine, feminine and neuter.

10
11 11.6.5. Captions. All captions and titles used in this Declaration are intended solely for
12 convenience or reference purposes only and in no way define, limit or describe the true
13 intent and meaning of the provisions hereof.

14
15 Section 11.7. Delivery of Notices. Any notice required by or pertaining to this
16 Declaration may be delivered either personally or by mail. If by U.S. mail, notices shall be
17 deemed to have been delivered 72 hours after a copy of same has been deposited in the United
18 States mail, postage prepaid. Notices to the Association shall be addressed to the Association in
19 care of its management company. If there is no management company, then addressed to the
20 President of the Association. Notice to an Owner shall be sent to the address of any Dwelling
21 Unit within the Property owned, in whole or in part, by him or to any other address last
22 furnished by the Owner to the Association. An Owner may change his address of record at any
23 time by delivering written notice to the Association. Each Owner of a Dwelling Unit shall
24 promptly notify the Association in writing of any subsequent change of address.

25
26 Section 11.8. Binding Effect. By acceptance of a deed or acquiring any ownership
27 interest in any of the Property covered by this Declaration, each Person for himself or itself, his
28 heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs,
29 personal representatives, successors, transferees and assigns, to all of the provisions,
30 restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this
31 Declaration and amendments thereof. In addition, each such Person by so doing thereby
32 acknowledges that this Declaration sets forth a general scheme for the Property and hereby
33 evidences his interest that all restrictions, conditions, covenants, rules and regulations
34 contained herein shall run with the land and be binding on all subsequent and future Owners,
35 grantees, purchasers, assignees and transferees thereof. Furthermore, each such Person fully
36 understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and
37 enforceable by the various subsequent and future Owners.

1 IN WITNESS WHEREOF, the undersigned certify that this Declaration was approved by
2 the vote or written consent of the Owners of not less than 67% of the Dwelling Units.

LADERA BRISAS HOMEOWNERS ASSOCIATION, INC.,
an Arizona non-profit corporation

By: _____
Its: President

ATTEST:

By: _____
Its: Secretary

STATE OF ARIZONA)
 : ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, President of LADERA BRISAS HOMEOWNERS ASSOCIATION, INC., an Arizona non-profit corporation, on behalf of the corporation.

Notary Public

STATE OF ARIZONA)
 : ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, Secretary of LADERA BRISAS HOMEOWNERS ASSOCIATION, INC., an Arizona non-profit corporation, on behalf of the corporation.

Notary Public