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THIRD AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CASA SERENA HOMEOWNERS' ASSOCIATION, INC.

This Third Amended and Restated Declaration of Covenants, Conditions and Restrictions for Casa Serena Homeowners' Association, Inc., an Arizona nonprofit corporation ("Association"), is made this 19<sup>th</sup> day of May, 2022.

RECITALS:

- A. An Amended Declaration of Covenants, Conditions and Restrictions was recorded February 24, 1983 as Document No. 83-066765, records of Maricopa County, Arizona; a First Amendment was recorded June 17, 1983, as Document No. 83-236521, records of Maricopa County, Arizona; a Second Amendment was recorded July 8, 1983 as Document No. 83-267408, records of Maricopa County, Arizona; a Second Amended and Restated Declaration of Covenants, Conditions and Restrictions was recorded as Document No. 84-295830, records of Maricopa County, Arizona; a Declaration of Affirmation was recorded in Document No. 2015-0878180, records of Maricopa County, Arizona; a Second Amendment to Second Amended and Restated Declaration of Covenants, Conditions and Restrictions, recorded as Document 93-0678429, records of Maricopa County, Arizona; and an Amendment to the Declaration of Covenants, Conditions and Restrictions for Casa Serena Homeowners' Association, Inc. was recorded on February 21, 2019 as Document No. 20190117754, records of Maricopa County, Arizona, (collectively, the "Declaration");
- B. The Declaration is binding on all parties having any right, title or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the properties.
- C. The Members of the Association wish to amend and restate the Declaration.
- D. Article XII, Section 12.3 of the Declaration provides that the Declaration may be amended by written approval or affirmative vote of not less than sixty-seven percent (67%)

of the Owners. The Association has obtained the affirmative vote representing the above-mentioned requirements.

E. Any amendment to this Declaration, past, present or future, receiving written approval or affirmative vote of not less than sixty-seven percent (67%) of the Owners shall be subject to a presumption that sufficient notice of such amendment was provided to the Owners by the original Declaration, and that such amendment was reasonable and foreseeable to the Owners at the time of purchase. This amendment to the Declaration does not create any new affirmative obligations for Owners of Lots within the Association; rather, the amendments set forth herein refine the Declaration, correct an error, fill in a gap, and/or change the Declaration in a particular way.

NOW THEREFORE, based upon the approval of the Owners in accordance with the requirements of the Declaration, all of the Property will be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which run with the real property and are binding on all parties having any right, title or interest in the Property, including their heirs, successors and assigns, and will inure to the benefit of each Owner of any portion of such Property.

Upon recordation of this Third Amended and Restated Declaration, the Declaration and all amendments thereto will be null and void and of no force and effect, having been superseded in their entirety by this Third Amended and Restated Declaration.

## ARTICLE I

### DEFINITIONS

Section 1.1. "Act" shall mean the Arizona Planned Communities Act (Arizona Revised Statutes Section 33-1801, et seq.), as and if amended.

Section 1.2. "Articles" shall mean the Articles of Incorporation of the Association, as and if amended.

Section 1.3. "Assessment" shall mean all the assessments authorized and provided by Article IV. "Regular Assessments" shall mean the Assessments pursuant to Section 4.2.A and "Special Assessments" shall mean the Assessments pursuant to Section 4.2.D.

Section 1.4. "Association" shall mean Casa Serena Homeowners' Association, Inc., an Arizona non-profit corporation, its successors and assigns.

Section 1.5. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

Section 1.6. "Bylaws" shall mean the Bylaws of the Association, as amended.

Section 1.7. "Common Areas" shall mean all real and personal property conveyed to and owned by the Association for the common use and enjoyment of the Owners, including, but not limited to the following:

Tracts A through F, inclusive, as shown on the Casa Serena Subdivision Plat recorded in Book 391 of Maps, page 9, records of Maricopa County, Arizona; EXCEPT all groundwaters underlying the surface of said land as reserved in instrument recorded in Docket 9601, page 325, records of Maricopa County, Arizona;

and shall also include all recreational facilities, walls, landscaping, pipes, wires, conduits and other public utility lines located on Tracts A through F and all additions to such areas made by the Association.

Section 1.8. "Common Expenses" shall have the meaning provided in Article V.

Section 1.9. "Third Amended and Restated Declaration" means this instrument.

Section 1.10. "Living Unit" or "Dwelling Unit" shall mean any building, or portion of a building, situated upon the Property designed and intended for use and occupancy as a residence by a single family. Any reference to a Living Unit or Dwelling Unit shall be deemed to refer also to the underlying Lot whether or not developed and all permanent improvements thereon.

Section 1.11. "Lot" shall mean any plot of land and the improvements therein designated as a Lot upon any recorded subdivision map of the Property including amendment thereto. The platted Lots are referred to collectively herein as "Lots."

Section 1.12. "Majority of Members" shall mean those Members holding fifty-one percent (51%) of the votes in the Association, unless otherwise stated herein.

Section 1.13. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.14. "Mortgage" shall mean the conveyance or assignment for any purpose of creating a lien to secure an obligation or duty, and may include a deed of trust, mortgage, assignment, financing statement, or any other form of security instrument or agreement as now known or hereafter devised for the purpose of creating a lien to secure an obligation or duty.

Section 1.15. "Mortgagee" shall mean the mortgagee, holder or beneficiary (or trustee) under a Mortgage.

Section 1.16. "Mortgagor" shall mean a mortgagor or trustor, as the case may be, under a Mortgage.

Section 1.17. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, regardless of whether such owner actually resides on any part of the Lot and shall include a purchaser of a Lot who holds equitable title to a Lot purchased pursuant to a recorded contract of sale. The foregoing is not intended to include persons holding an interest in a Lot merely as a security for the performance of an obligation or the seller under a contract of sale.

Section 1.18. "Private Streets" shall mean any plots of land, and the improvements thereon, designated as private streets upon any subdivision map of the Property including amendments thereto. The Private Streets are owned by the City of Scottsdale.

Section 1.19. "Property" or "Project" shall mean that certain Property herein above described, and such additions thereto as are made subject to this Third Amended and Restated Declaration by supplementary declaration.

Section 1.20. "Rules and Regulations" shall mean such rules and regulations for the Project as shall be adopted and/or amended from time to time by the Board of Directors.

## ARTICLE II

### PROPERTY RIGHTS IN COMMON AREA

Every Owner shall have the following rights of enjoyment to the Common Areas:

Section 2.1. Owner's Easements of Enjoyment. Every Owner shall have a nonexclusive perpetual easement of use and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. Guests. The right of the Association to limit the number of guests or invitees of Members.

B. Change of Use. The right of the Board of Directors, upon adoption of a Resolution at an open meeting of the Board, to change the use of the Common Areas, in its sole discretion.

C. Rules. The right of the Board of Directors to establish Rules and Regulations pertaining to the use of any recreational or common facility situated upon the Common Areas.

D. Suspension of Right to Use. The right of the Board of Directors to suspend the right to use of all or any portion of the facilities situated upon the Common Areas by an Owner for any period during which an Assessment against such Owner's Lot remains unpaid or for any violation of this Third Amended and Restated Declaration, the Articles, Bylaws or the Rules and Regulations, provided that the Owner receives fifteen (15) days written notice of the violation. Suspension of an Owner's rights as provided herein shall not exceed sixty (60) days except in the case of an Owner's failure to pay an Assessment, in which event the suspension may extend to the time the Assessment is delinquent.

E. Dedication. The right of the Association to dedicate, sell, transfer or convey all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedications or transfers shall be effective unless an instrument signed by two-thirds (2/3) of the Members agreeing to such dedication or transfer has been recorded, and unless written notice of the proposed action is sent to every Owner not less than thirty (30) days nor more than sixty (60) days in advance of such action.

F. Borrowing. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to Mortgage the Common Area, provided that the rights thereby created in any Mortgagees with respect to the Common Area shall be subordinate to the rights of the Owners hereunder.

Section 2.2. Delegation of Use. Any Owner may delegate, in accordance with the Articles, Bylaws, and Rules and Regulations of the Association, his or her right of enjoyment of the Common Areas and facilities to the members of his family, his tenants, guests and invitees, provided that such delegation is to a reasonable number of persons, at reasonable times and for a reasonable duration.

### ARTICLE III

### ASSOCIATION

Section 3.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

Section 3.2. Voting Rights. The Association shall have one class of voting membership and the voting rights are as stated in the bylaws.

## ARTICLE IV

## ASSESSMENTS

Section 4.1. The making and collection of Assessments against Owners shall be pursuant to this Article IV, and each Owner, for himself, his heirs, successors and assigns, covenants and agrees by accepting a deed, entering into an agreement for sale, or other conveyance of an interest in a Lot, whether or not it shall be so expressed in any such deed or other conveyance, that he shall pay and his Lot shall be subject to Assessments as follows:

A. Amount of Assessment.

- (1) Each Lot's proportionate share of all Common Expenses.
- (2) Each Lot's proportionate share of such additional sums as the Board of Directors shall determine to be necessary to meet the primary purposes of the Association.
- (3) Each Lot's respective obligations, if any, pursuant to Section 4.1.C.

B. Lot's Proportionate Share. Each Lot's proportionate share of the total amount determined under Sections 4.1.A(1) and 4.1.A(2) shall be equal to one divided by the total number of Lots from time to time subject to this Third Amended and Restated Declaration, together with any additional amount owed by the Owners of such Lot pursuant to Section 4.1.C.

C. Lot Costs. Notwithstanding each Lot Owner's obligation for its proportionate share of the Assessments as stated herein, in addition thereto each Owner shall pay and reimburse the Association for any and all costs and expenses in connection with the following:

- (1) Obligations of such Owner pursuant to any other provisions of this Third Amended and Restated Declaration.
- (2) All costs incurred in the enforcement of the provisions of this Third Amended and Restated Declaration against any Owner including, but not limited to actual attorney's fees and court costs.

D. Purpose. The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Owners of Lots in the Project, enhancing the quality of life within the Project and enhancing and protecting the value, desirability and attractiveness of the Project, including, without limitation, the improvement and maintenance of the Common Areas, services and

facilities devoted to this purpose and the discharge of the Association's duties under this Third Amended and Restated Declaration.

#### Section 4.2. Determination of Assessments.

A. Regular Assessments. The amount to be prorated for each Lot pursuant to Section 4.1.A. shall be established annually by the Board of Directors, and the proportionate share to be paid pursuant to Section 4.1.B. shall be paid monthly or in such other installments as may be determined by the Board of Directors; provided, however, that the amount to be paid by the Owners pursuant to Section 4.1.A(3) shall be established and assessed at such time as the Board of Directors shall deem appropriate. Said amounts shall be based upon an estimated annual budget which the Board of Directors shall cause to be prepared for each fiscal year for the Association. The budget shall take into account the estimated Common Expenses, including amounts for reserves, and any other sums which the Board of Directors may deem to be prudent for the protection of the Project. The amounts for reserves shall include an adequate fund for maintenance, repairs and replacement of those Common Areas, or improvements thereon that must be replaced on a periodic basis. The budget shall also provide a summary of the Common Expense allocation, Assessments, and other fiscal activity of the Association for the previous fiscal year. Copies of the budget shall be transmitted to each Owner on or before the last day of February of the fiscal year of the Association for which the budget is made, or as soon thereafter as the Board of Directors is able to adopt such budget. If at any time during such fiscal year it appears that the amounts determined by the Board of Directors are not sufficient, or are in excess of the amounts required, the Board of Directors may amend the budget and increase or decrease the Regular Assessments, the amount prorated to each Owner, and the monthly amount to be paid by each Owner. If the budget is amended, a copy of the amended budget shall be furnished to each Owner within fifteen (15) days of the adoption thereof. After approval by the Board of Directors of the draft budget in November of the preceding year, the Assessments and each installment thereof, the "Monthly Regular Assessment Amount", shall be determined for each Living Unit and shall be assessed and paid as set forth in Section 4.3.

B. Maximum Regular Assessment. The annual Regular Assessment may be increased each year by the Board of Directors not more than five percent (5%) above the annual Regular Assessment for the previous year. The maximum annual Regular Assessment may be increased above five percent (5%) by a written vote of the Majority of Members.

C. Continuation of Assessment. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new Regular Assessments for any year or shall be delayed in doing so, each Owner shall continue to pay each month the

amount of his prior respective monthly Assessment on or before the first day of each such month, or as may otherwise be directed by the Board.

D. **Special Assessments.** In addition to the Regular Assessments, the Board of Directors may levy, in any fiscal year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or landscaping upon the Common Areas, including fixtures and personal Property related thereto, provided that any such annual Special Assessment shall be limited to One-Thousand Dollars (\$1,000) per Lot with a total of Forty-Five Thousand (\$45,000). Prior to voting to levy a Special Assessment, the Board of Directors shall provide notice of at least ten (10) days to the Owners of Lots of a board meeting for the Board's consideration of the levy of a Special Assessment. The notice to Lot Owners shall describe the need for the Special Assessment and shall encourage Lot Owners to provide written comment and to attend the Board of Directors meeting. If the Board recommends a Special Assessment of an annual amount greater than One-Thousand Dollars (\$1,000) per Lot, then the Special Assessment must be approved by a written vote of the Majority of Members. Any such Special Assessment shall be charged to the Owners in the same proportion as Regular Assessments, as provided by Section 4.1.B. The Owners shall pay all Special Assessments to the Association, or such depository as may be designated by the Board of Directors, within thirty (30) days after the levy thereof or in such other manner and within such greater time as the Board of Directors may direct.

#### Section 4.3. Payment of Assessments and Lien Rights.

A. **Notification of Regular Assessment.** At least annually and prior to the first day of each fiscal year of the Association, the Board of Directors or its designated representative shall notify the Owners of Lots of the total amount of the Regular Assessments for such fiscal year for all Lots, the amount to be prorated and assessed to each Lot for such fiscal year, and the monthly amount which each Owner shall pay, which amount shall be due and payable monthly on the first (1st) day of each calendar month and shall be paid prior to the fifteenth (15th) day of each month until the monthly amount due is changed by appropriate action of the Board of Directors, at which time the amount as changed shall be due and payable as aforesaid. The Board of Directors, with the consent by written ballot of Owners owning a majority of the Lots, may alter and change the above-designated dates and time periods. Each Owner, for himself, his heirs, successors, grantees and assigns, covenants that, with respect to Assessments so determined during the period that he is an Owner, he will remit these Assessments directly to the Association.

B. **Due Date of Payment.** Assessments and installments of such Assessments paid on or before fifteen (15) days after the date when due and payable shall not bear



interest, but all sums not paid on or before thirty (30) days after the first day of a month when due shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid. All payments on account shall first be applied to interest and then to the Assessment payment first due.

C. No Exemption. No Owner may exempt himself from paying Assessments by being a non-user of the Common Areas or by abandoning the Lot of which he is the record Owner or for any other reason.

D. Lien. Each Assessment or any other charge made on a Lot pursuant to this Third Amended and Restated Declaration, including, but not necessarily limited to, interest, attorneys' fees and costs, shall be a personal obligation of each Owner, and shall constitute a lien on such Lot to secure the payment of such amount, which lien and the right to foreclose the same shall be in addition to and not in substitution of all the rights and remedies which the Association or the Board of Directors may have in accordance with the provisions of this Third Amended and Restated Declaration or otherwise. Any lien which the Association may have on any Lot for the payment of Assessments provided for herein and attributable to such Lot shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon such Lot or Lots, except as provided in A.R.S. Section 33-1803(B). The sale or transfer of any Lot shall not affect the Assessment lien.

E. Lien Rights. Each Owner, by his acceptance of a deed to a Living Unit, or by becoming an Owner in any other fashion, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of all such Assessments or charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the like manner as a Mortgage of real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. In addition, the Association may make payments on any prior liens, including any Mortgage, tax or other assessment on the Lot, and such payments shall be added to the lien in favor of the Association. The lien provided for in this Section 4.3 shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid in such a foreclosure sale and to acquire and hold, lease, mortgage and convey the property so purchased. Either the Association, or the Board of Directors on behalf of the Association, may institute a suit to recover a money judgment for unpaid obligations of the Owner without being required to foreclose on the Lot involved and without waiving the lien which secures such obligations.

Section 4.4. Commencement of Obligation of Assessments. Unless otherwise specified by the Board of Directors, Assessments for each Lot and the liability of the respective Owners

therefor, shall commence upon conveyance of each respective Lot and the Living Unit thereon to the Owner thereof.

#### Section 4.5. Capital Contribution Fee

A. Buyer Obligation. Except as provided in the Subsection (B) of the Section 4.5, each Person or entity who/that purchases or otherwise becomes the Owner of a Lot, whether by Deed, by a Trustee's deed upon Sale, by a Deed in Lieu of Foreclosure, or any similar means, on or after the recording date of this Third Amended and Restated Declaration, shall pay to the Association, immediately upon becoming the Owner of the Lot, a Capital Contribution Fee in the amount equal to twelve and one-half (12.5) times the current Monthly Regular Assessment Amount.

B. Fee Exception. No Capital Contribution Fee shall be payable with respect to: (i) the transfer or conveyance of a Lot by device or intestate succession; (ii) a transfer or conveyance of a Lot for estate planning purposes; or (iii) a transfer or conveyance to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment for the Capital Contribution Fee in which event a Capital Contribution Fee shall be payable with respect to such transfer or conveyance.

C. Deposit to Reserve Account. All Capital Contribution Fees shall be deposited in the Association's separate reserve account, not commingled with any other funds of the Association, and shall be deemed a contribution to the capital of the Association. Capital Contribution Fees shall be non-refundable and shall not be considered as an advance payment of assessments.

D. Fees Used for Common Areas. Capital Contribution Fees shall be exclusively used by the Association as required by Arizona Planned Communities Act for the construction or installation of buildings on the common area or for additions, repairs, maintenance or other improvements to existing buildings or other improvements on the common area. All of the expenditures of Capital Contribution Fees as herein provided are hereby deemed and shall be construed to touch and concern the land which is appurtenant to the title of each and every lot as provided in the Third Amended and Restated Declaration.

## ARTICLE V

## COMMON EXPENSES

The Association through the Board of Directors is hereby authorized to obtain and secure the following items and services which shall be deemed Common Expenses:

- A. Expenses of administration of the Project, Common Areas and/or the Association including, but not limited to, legal, accounting and management fees contracted for, at the discretion of the Board of Directors, if it deems such necessary for such administration.
- B. Utility service for the Common Areas;
- C. Insurance as required by Section 7.2;
- D. Maintenance, operation, repair replacement and betterment of the Common Areas including, but not limited to, painting, landscaping, repairs, replacements, alterations, additions, reconstruction, services, supplies, labor, materials, equipment and other related items;
- E. Any valid charge against the Project as a whole as determined by the Board of Directors including, but not limited to, all costs of enforcing compliance with this Third Amended and Restated Declaration, together with such costs as are deemed necessary to meet the primary purpose of the Association;
- F. An adequate reserve fund for maintenance, repairs and replacement of those Common Areas that must be replaced repaired or maintained on a periodic basis. The reserve fund will be maintained in a segregated account for the use and benefit of the Association;
- G. Taxes, assessments and similar charges assessed against or payable in connection with the Common Areas;
- H. Removal of rubbish from the property;
- I. Maintenance of the lawns, trees and landscaping on the Lots as provided in Section 7.1.B. below; and
- J. Any other items or services that the Board reasonably determines to be necessary in the administration and management of the Association.

## ARTICLE VI

## ACCOUNTING

The Board of Directors shall at all times keep true and correct records of account for the Project and Association. The Board shall cause an annual accountant's compilation to be performed by a Certified Public Accountant. All records of the Association shall be available for examination by the Owners at convenient hours designated by the Board in accordance with A.R.S. Section 33-1805. If a management agent contracts with the Association to perform all or a part of the Association duties, the management agreement therefor shall require such management agent to maintain records in accordance with the foregoing requirement, and to provide the Board of Directors with a report of its activities under such management agreement prior to January 31 of the following year and at such additional times as may be requested by the Board of Directors. The information set forth in such report shall be included in the annual budget from the Board of Directors to the Owners required by Section 4.2.A.

## ARTICLE VII

## DUTIES AND POWERS OF THE OWNERS' ASSOCIATION

Section 7.1. Duties and Powers. In addition to the duties and powers enumerated in the Articles and Bylaws, or elsewhere provided for herein, and without limiting the provisions thereof, the Association shall:

A. Common Areas. Maintain and otherwise manage all of the Common Areas and all improvements, facilities, improvements, lawns and landscaping from time to time constructed or installed thereon including, without limitation, the swimming pool, ramada, restroom facilities, landscaped areas, walls and fences thereon, and all other property that may be acquired by the Association. The Board of Directors shall have the sole discretion and authority to determine the proper and appropriate maintenance and management of the Common Areas and to obtain and maintain for the Common Areas such furniture, furnishings, fixtures, accessories and equipment as shall be necessary or proper.

B. Homeowner Lawns, Trees, Landscaping and Irrigation Systems. For the lawns, trees, landscaping and irrigation systems for each Lot within the area between the street abutting such lot and exterior fence or wall of the living unit thereon facing such abutting street, the Board of Directors is authorized to establish rules to allocate the ownership and maintenance responsibilities between the Association and the Owners. Each Owner, at its own expense shall irrigate its lawns, trees and

landscaping wherever located in a manner sufficient to maintain such lawns, trees and landscaping in a viable condition. Each Owner shall maintain at its own expense all landscaping, trees, irrigation systems and lawns on its lot not maintained by the Association.

C. The Association shall not be obligated to maintain any Owner's landscaping, trees or lawn within any enclosed areas, including courtyards and backyards.

D. Turf Removal. On an Owner's Lot within the area between the street abutting such Lot and exterior fence or wall of the Living Unit thereon facing such abutting street, upon application by an Owner and approval by the Board of Directors, an Owner may replace the turf with plants, gravel, hardscape and other landscaping. The Board shall establish standards to be followed by Owners for such replacement.

E. Utilities and Refuse Collection. Have the authority to obtain all utility services, including but not limited to, water, gas, sewer, electricity, and refuse collection for the Common Areas.

F. Legal and Accounting Services. Have the authority to obtain legal and accounting services necessary or proper in the operation of the Project or the enforcement of this Third Amended and Restated Declaration

G. Easements. Grant easements where necessary for utilities and sewer facilities over the Common Areas to serve the Common Areas and the Lots.

H. Employ. For reasonably negotiated compensation, the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association.

I. Reserve Fund. Have the power to establish and maintain a reserve fund. Said fund shall be used by the Association as the Directors shall deem fit to maintain the Common Areas as provided in Section 7.1.A.

J. Purchase Insurance. Have the power to purchase insurance for the Common Areas and for such risks facing the Association. The insurance may be purchased from such companies and in such amounts as the Board of Directors of the Association shall determine and the premium costs shall be assessed as part of the Regular Assessments provided for in Section 4.2.

## Section 7.2. Insurance.

A. Property and Liability Insurance. Public liability and Common Area property damage insurance shall be purchased by the Board and shall be maintained in force at

all times, the premium thereon to be paid out of the Association's Regular Assessments. The insurance shall be carried in reputable companies authorized to do business in Arizona or with surplus lines companies when advised by the Association's insurance producer. The minimum amounts of coverage shall be \$500,000.00 for personal injury to any one person, \$1,000,000.00 for personal injury to any number of persons sustained in any one accident or mishap, and \$50,000.00 property damage. The policy shall insure the Association, its directors, officers, employees and agents in the scope of their employment. The policy shall insure against, but may not be limited to, injury or damage occurring in the Common Area. The policy or other policies obtained by the Association shall provide Directors and Officers coverage.

B. Fire Insurance - Master Policy for Common Area. A master or blanket fire insurance policy may also be purchased or acquired by the Board and shall thereafter be maintained in force at all times, the premium thereon to be paid out of the Association's funds. Said insurance shall be carried with reputable companies qualified to do business in the State of Arizona or, when advised by the Association's insurance producer, with surplus lines companies. This insurance shall insure against loss from fire and other hazards therein covered, for the full insurable value of all of the permanent improvements upon the Common Area. Said policy may contain extended coverage and replacement cost endorsements, if available, as well as vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause, and a determinable cash adjustment clause, or a similar clause or clauses to permit cash settlement covering full value of the improvements in the event of partial destruction. The policy shall be in such amounts as shall be determined from time to time by the Board. The policy shall name the Association as insured.

C. Owner's Property and Liability Insurance - Individual Living Units. Property insurance coverage, liability insurance coverage and coverage for related risks for individual Lots and Living Units shall be the sole responsibility of the Owner of each Lot. Any such policies shall include a waiver of subrogation clause against the Association and all other Owners.

D. Other Insurance. The Board of Directors of the Association may purchase such additional insurance as the Board, in its discretion, may determine to be reasonably necessary or advisable in the best interests of the Association including, but not limited to, workmen's compensation insurance, demolition insurance to remove improvements that are not rebuilt, fidelity bonds, and insurance on Association-owned personal property. All premiums therefor shall be paid out of the Association's Regular Assessments.

Section 7.3. Other Duties and Powers. The Association and its Board of Directors acting in its behalf shall obtain, provide and pay for any other materials, supplies, furniture, labor,

services, maintenance, repairs, structural alterations, insurance, or pay any taxes or assessments which the Board is required to secure or pay for pursuant to the terms of this Third Amended and Restated Declaration or by law or which in its opinion shall be necessary or proper for the operation of the Project or for the enforcement of this Third Amended and Restated Declaration. The Association may likewise pay any amount necessary to discharge any lien or encumbrance levied against the entire Project or any part thereof which may, in the opinion of the Board, constitute a lien against the Common Areas, rather than merely against the interests therein of a particular Owner, provided that where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said Owners.

## ARTICLE VIII

### UTILITIES AND EASEMENTS

Section 8.1. Rights and Duties of Owners. The rights and duties of the Owners with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities shall be governed by the following:

A. Easement. Subject to the foregoing limitations, wherever sanitary sewer or water connections or electricity, gas, telephone, or other similar lines, pipes or facilities are installed within the Project ("Utility Lines") which Utility Lines, or any portions thereof, lie in or upon Lots owned by other than the Owner of the Lot served by said Utility Lines, the Owners of any Lot served by said Utility Lines, shall have the right, and are hereby granted an easement to the full extent necessary therefor, at reasonable hours, to enter upon the Lot within the Project in or upon which said Utility Lines, or any portions thereof, lie, to repair, replace and generally maintain said connections, lines and pipes, as and when the same may be necessary. Notwithstanding anything to the contrary contained in this Section 8.1.A, no Utility Lines may be installed or relocated except as approved by the Board of Directors.

B. Common Connections, Lines and Pipes. Wherever Utility Lines are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by said Utility Lines shall be entitled to the full use and enjoyment of such portions of said Utility Lines as service his Lot. Common Utility Lines shall not be erected or maintained over, under or through any Living Unit.

Section 8.2. Association's Easement. Easements over the Property for the installation and maintenance of Utility Lines and for drainage facilities, as shown on any recorded plat of the Property and as may be hereafter required or needed to service the Property or any Lots are hereby reserved to the Association.

Section 8.3. Easements for Overhangs. Each Lot and the Common Areas shall be subject to an easement for overhangs and minor encroachment by walls, structures and fences upon adjacent Lots as constructed by the original builder or as reconstructed or repaired in accordance with the original plans and specifications. In addition, the Common Areas shall be Subject to an easement in favor of adjacent Lot Owners for concrete slab driveways extending approximately eight (8) feet into the Common Areas and for overhangs extending approximately three (3) feet into the Common Areas, all as constructed by the original builder or as reconstructed or repaired in accordance with the original plan and specifications.

## ARTICLE IX

### USE RESTRICTIONS

In addition to all other covenants contained herein, the use of the Lots and each Living Unit thereon is subject to the following:

Section 9.1. Restricted Use. Except as otherwise provided herein, none of the Lots shall be used except for single family detached dwellings for residential use having a minimum of 1,425 square feet. No Lot shall have more than one Living Unit or casita thereon. No dwelling shall be erected, altered, placed or permitted to remain thereon other than a single family detached dwelling for residential use.

Section 9.2. Business and Related Use. All Lots shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Lot, except that an Owner, Lessee, or Occupant of a Lot may conduct a business activity within a Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell from outside the Lot; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Association; (c) the business activity is conducted solely on the Lot; (d) the business activity does not involve persons coming to the Lot, an increase in vehicular traffic and/or the door-to-door solicitation of Owners, Lessees, or Occupants; and (e) the business activity is consistent with the residential character of the Association and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners, Lessees, or Occupants, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity.



Section 9.3. Signs. Without the prior written approval of the Architectural Committee, no sign or billboards of any kind shall be displayed to the public view on any portion of the Property except (i) signage expressly permitted by A.R.S. Section 33-1808, and/or (ii) one name and address sign of reasonable size for each Lot.

Section 9.4. Noxious or Offensive Activities. No noxious or offensive activity shall be carried on upon any part of the Property, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners, of his respective Lot or which shall in any way increase the rate of insurance. The Board, in its sole discretion, shall have the authority to determine whether any particular circumstance constitutes a nuisance or offensive activity under this Section 9.4.

Section 9.5. Restricted Residences. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 9.6. Vehicles and Recreational Equipment. No trailer, camper, boat or similar equipment, or bus, van or truck having a carrying capacity in excess of three quarter (3/4) tons, shall be permitted to remain upon any Lot or the Common Areas. Commercial vehicles used for the purposes of homeowner maintenance and repair may remain on a Lot, street or Common Area, provided that overnight parking of commercial vehicles is not allowed.

Section 9.7. Maintenance Obligations of Owners. Every Owner shall maintain in good condition and repair the exterior and interior of its Living Unit and any and all other improvements located on such Owner's Lot, including without limitation, the roof and walls of the Living Unit or any other Structure on the Lot, and any other walls or fences or other improvements of any nature located on such Owner's Lot. The Association shall have the right to enforce such maintenance obligations by the same remedies and to the same extent as is provided in Section 13 below. Should an Owner fail to perform, or perform without due care and diligence, the repair or maintenance required by the Declaration, he shall be liable for all damages to the Project caused by such failure.

Section 9.8. Negligence or Carelessness of Lot Owner. Each Lot Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, pets or lessees. Such liability shall include any increase in insurance rates occasioned by such act, neglect or carelessness, use, misuse, occupancy or abandonment of any Lot, Common Area or their appurtenances. The expense of maintenance, increased insurance, repair or replacement required shall be charged to the Lot as an Assessment for such Lot.

Section 9.9. Use of Common Areas. The Common Areas shall be used for only such purposes as may be permitted by the Association. An Owner shall abide by such Rules and Regulations as the Board of Directors may from time to time adopt relating to the time, manner and nature of the use of the Common Areas.

Section 9.10. Animals. No animals, livestock, poultry, or reptiles of any kind shall be raised, bred, or kept on or within any Lot or Living Unit except that dogs or cats may be kept on or within the Lots or Living Units, provided, they are not kept, bred or maintained for any commercial purpose or in unreasonable numbers. Notwithstanding the foregoing, no dogs or cats may be kept on the Property which result in any annoyance to or are obnoxious to other Lot Owners or tenants in the vicinity. No animals, livestock, poultry or reptiles may be taken or kept in any Common Area.

Section 9.11. Drilling and Mining. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon the surface of the Property, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of the Property or within five hundred (500) feet below the surface of the Property. No derrick or other structure designed for use in boring for water, oil, or natural gas shall be erected, maintained or permitted upon the Property.

Section 9.12. Trash. No garbage or trash shall be placed on any Lot except in sanitary containers which are screened or fenced from the view of any adjoining Lot, Common Areas or streets. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon.

Section 9.13. Outside Storage. All clotheslines, refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any Lot, unless obscured from view of the adjoining Lot, streets or Common Areas by a fence, wall or appropriate screen approved by the Board of Directors.

Section 9.14. Antennas. No antenna or other device for the transmission or reception of television or radio signals including but not limited to television antennas, satellites or microwave dishes in excess of one (1) meter in diameter or which are visible from neighboring property shall be erected, used or maintained upon any Lot without the prior written approval of the Board of Directors, which will grant approval for such devices consistent with the Federal Communication Commission's rule(s) regarding Over-the-Air Reception Devices ("OTARD").

Section 9.15. On-Street Parking. On-street parking is restricted to delivery vehicles, commercial vehicles used for maintenance and repair and guests or invitees. Overnight parking on the streets is strictly prohibited.

Section 9.16. Outside Speakers and Amplifiers. No radio, stereo, broadcast or loudspeaker units, or amplifier shall be operated upon any Lot or facility or improvement located thereon in such manner that the sound therefrom is audible so as to disturb occupants of any Lot within the Property.

Section 9.17. Outside Lighting. No outside lighting shall be placed, allowed or maintained on any Lot in a manner inconsistent with the general lighting appearance of other Lots, nor shall such lighting be operated in a manner constituting a nuisance or unreasonable annoyance to the residents of other Lots. No reflective materials shall be permitted on windows, roofs or other exterior structures.

Section 9.18. Sidewalk Encroachments. No tree, shrub or plant of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk or any other pedestrian way.

Section 9.19. Violation of Statutes, Ordinances and Regulations. No Lot shall be maintained or utilized in such a manner as to violate any applicable statute, ordinance or regulation of the United States of America, the State of Arizona, the County of Maricopa, or any other governmental agency or subdivision authority having jurisdiction over the Lots or the use or occupation thereof.

Section 9.20. Landscaping. No existing vegetation visible from a street, adjoining lot or sidewalk shall be removed from any Lot without the prior review by the Landscape Committee and written approval of the Board of Directors. No landscaping visible from a street, adjoining lot or sidewalk shall be commenced without the prior review by the Landscape Committee and approval of a landscaping plan by the Board of Directors.

Section 9.21. Conveyance. No portion less than all of a Lot shall be conveyed or encumbered. Nothing herein shall prevent the dedication or conveyance of or granting of easements over portions of the Property for public utilities or other public purposes in which event the remaining portion of any Lot affected shall, for the purpose of these restrictions, be considered a whole Lot.

Section 9.22. Rentals. Only entire Lots may be rented, provided the occupancy thereof is only by the lessee and his family and guests. With the exception of a lender in possession of a Lot following a default in a first Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his Lot for transient or hotel purposes, which shall be defined as any lease or rental for a period of less than thirty (30) consecutive days. No Owner may lease less than his entire Lot. All lease agreements shall be in writing and shall provide that the term of the lease shall be subject in all respects to the provisions of this Third Amended and Restated Declaration, Bylaws and Rules and Regulations and the lease must state that any failure by a lessee to comply with the terms of such documents shall be a default under the lease. Each Owner of a Lot that is being rented

or leased shall provide the Board of Directors with documentation of each such existing tenancy within thirty (30) days of adoption of this provision or the date of commencement of the tenancy, whichever is earlier, and thereafter with documentation of each new tenancy within thirty (30) days of commencement of each such tenancy. Such documentation shall include: Name(s) and contact information for any adults occupying the property; the time period of the lease including the beginning and ending dates of the tenancy; and a description and the license plate numbers of the tenants' vehicles. On the request of the foregoing documentation, the managing agent or, if there is no managing agent, the association may charge a fee of no more than twenty-five dollars, which shall be paid within fifteen days after the postmarked request. The fee may be charged for each new tenancy for that unit but may not be charged for a renewal of a lease. For purposes of this Third Amended and Restated Declaration, "lease" shall mean any agreement for the leasing or rental of a Lot including, but not limited to, "month-to-month rentals." The Board of Directors from time to time may adopt rules governing rentals.

Section 9.23. Timeshares and Fractional Shares Prohibited. No Lot shall be used as a timeshare property as defined by state law, which is currently A.R.S. §32-2197 (29). No Lot may be marketed, conveyed or sold as a timeshare property or in fractional shares. No Lot may be subdivided or marketed/conveyed or sold as less than the entire interest in the Lot.

## ARTICLE X

### COMMON WALLS

Section 10.1. General Rules of Law to Apply. Each wall which is built as a part of the construction of the Dwelling Units upon the Property and placed on the dividing line between the Lots whether as a concrete wall, fence or block wall, shall constitute a common wall, and to the extent not inconsistent with the provisions of this Article X, the Owners of contiguous Lots who have a common wall shall both equally have the right to use such common wall, provided such use by one Owner does not interfere with the use and enjoyment of the same by the other Owner.

Section 10.2. Sharing of Repair and Maintenance. In the event any common wall is damaged or destroyed including, but not limited to, deterioration from ordinary wear and tear, and/or lapse of time, other than by the act of the Owner of another Lot, or his agents, guests, family or lessees, the cost of reasonable repair and maintenance of a common wall shall be jointly and equally shared by the Owners whose Lots adjoin such common wall.

Section 10.3. Negligent Destruction. In the event a common wall is destroyed or damaged through the negligent or willful act of any Owner or any of his agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild or repair the common wall without cost to the other

adjoining Lot Owner or Owners.

Section 10.4. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article X shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 10.5. Resolution of Disputes. In the event of any dispute arising concerning a common wall, or under the provision of this Article X, the Owners shall have the option of submitting the matter to the Board of Directors for review and consideration. If the Board of Directors determines it to be appropriate, it shall render a decision which shall be final and binding on the Owners. However, the Board of Directors shall retain full discretion to opt against rendering a decision regarding a dispute between Owners in which case the matter shall be resolved directly between the Owners.

## ARTICLE XI

### ARCHITECTURAL AND LANDSCAPE CONTROL

Section 11.1. Architectural Approval. No building, fence, wall, exterior equipment or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plan and specifications showing the nature, kind, color, shape, height, materials, location and other material attributes of the same shall have been reviewed by the Architectural Control Committee and submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors in accordance with architectural control rules that may be adopted by the Board. All structures or buildings erected upon each Lot shall be new construction, and no buildings or structure shall be moved from other locations onto any Lot. In the event the Board of Directors does not approve such plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required and this Section 11.1 will be deemed to have been fully complied with.

Section 11.2. Appointment of Architectural Control Committee. The Board of Directors shall appoint the Architectural Control Committee consisting of not less than three (3) members, who shall remain in office at the pleasure of the Board. Any member of the Architectural Control Committee must be an Owner but need not be a member of the Board of Directors, provided, however, the Chair of the Committee must be a member of the Board of Directors.

Section 11.3. Landscape Committee. The Board of Directors shall appoint the Landscape Committee consisting of not more than three (3) members who shall remain in office at the pleasure of the Board. Any member of the Landscape Committee must be an Owner but

need not be a member of the Board of Directors. The Landscape Committee shall monitor the condition and maintenance of the Property's landscaping, shall coordinate the maintenance with the landscape vendor and shall make recommendations to the Board of Directors about areas of needed landscape repairs and upgrades. The Landscape Committee has the authority to authorize landscape maintenance expenditures as budgeted by the Board of Directors.

Section 11.4. Landscape Changes. No change in landscaping to an Owner's Lot visible from the street, sidewalk or adjoining Lot may be made until a description of the change has been presented to and reviewed by the Landscape Committee and submitted to and approved by the Board of Directors in accordance with landscape rules that may be adopted by the Board. In the event the Board of Directors does not approve such change within thirty (30) days after the description has been submitted to the Board of Directors, approval will not be required and this Section 11.4 will be deemed to have been fully complied with.

## ARTICLE XII

### Acquisition of Lots on Foreclosure

Section 12.1. Acquisition Right of Association. At any foreclosure sale of a Lot, the Board of Directors may, with the authorization and approval by the affirmative written vote of a Majority of Members, as required by the Declaration, acquire in the name of the Association or its designee, a Lot being foreclosed. The term "foreclosure" as used in this Article shall mean and include the foreclosure of any lien, including a lien for Assessments.

Section 12.2. FHLMC. FNMA FHA/VA. Notwithstanding anything to the contrary herein, to the extent that this Third Amended and Restated Declaration or any provision thereof shall be contrary to or inconsistent with provisions, rules and regulations of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Housing Administration and Veterans Administration, if any may be applicable to the Association, this Third Amended and Restated Declaration or the contrary or inconsistent provision shall be considered superseded by such provisions, rules or regulation.

## ARTICLE XIII

### GENERAL PROVISIONS

Section 13.1. Enforcement. The limitations, restrictions, Rule and Regulations, liens and charges now or hereafter imposed by the provisions of this Third Amended and Restated Declaration, or any amendment hereto, may be enforced by any one or more of the following: (a) the Association, by and through the Board of Directors, which shall have the right and duty to enforce the same and expend Association funds in pursuance thereof; and (b) the Owner or Owners of any Lot or Lots. Enforcement shall be by proceedings at law or

in equity (either to recover damages or to restrain a violation) against any person or persons violating or attempting to violate any Rule, Regulation or provisions of this Third Amended and Restated Declaration; provided that the Association by and through its Board of Directors is additionally authorized to enforce any Rule, Regulation or this Third Amended and Restated Declaration by taking any action reasonably required to remedy a violation hereunder. In the event the Association employs an attorney or attorneys to enforce any Rule, Regulation, lien or to collect any moneys due pursuant to this Third Amended and Restated Declaration, takes any action reasonably required to remedy a violation hereunder, or otherwise seeks to enforce this Third Amended and Restated Declaration, the Association shall be reimbursed by the Owner or Owners whose actions necessitated the enforcement remedy or proceeding for all costs, including all attorneys' fees, expended in such enforcement effort, regardless of whether or not a civil action actually commenced. Said amounts shall be the personal obligation of each Owner and shall constitute a lien against each Lot. Nothing herein shall be deemed to indicate that damages at law constitute an adequate remedy for violation of a Rule, Regulation or of the provisions of this Third Amended and Restated Declaration. Failure by the Association or any Owner to enforce any limitation, condition, reservation, Rule, Regulation, lien, charge, covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. All instruments of conveyance of the Property, or any part thereof, may refer to this Third Amended and Restated Declaration, but whether or not such reference is made in such deeds, or any part thereof, the terms and provisions of this Third Amended and Restated Declaration shall be binding upon all persons affected by its terms.

Section 13.2. Self Help. The Association, by and through the Board of Directors, shall also have the authority and discretion to enforce any Rule, Regulation or the provisions of this Third Amended and Restated Declaration by exercising self help to correct any outstanding violation after providing the Owner with reasonable notice and an opportunity to be heard, the costs of which shall become the Owner's personal responsibility and shall constitute a lienable assessment against the Lot.

Section 13.3. Determination by the Board Binding. In the event of any dispute or disagreement between the Association and any Owner(s) relating to the Project or any question of interpretation or application of this Third Amended and Restated Declaration, the Articles of Incorporation, the Bylaws, or Rules and Regulations, the determination thereof by the Board of Directors shall be final and binding on each and all of the Owners.

Section 13.4. Severability. Invalidation of any one of the covenants or restrictions of this Third Amended and Restated Declaration, or any portion thereof by judgment or court order shall in no ways affect any other provisions which shall remain in force and effect.

Section 13.5. Duration. This Third Amended and Restated Declaration shall continue in full force and effect from the date of recording unless terminated by the affirmative written vote of the Owners representing ninety percent (90%) or more of the votes in the

Association. If the necessary votes are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary of the Association, with their signatures acknowledged. Thereupon this Third Amended and Restated Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 13.6. Amendment. Notwithstanding the provisions of Section 13.5, this Third Amended and Restated Declaration may be amended by the affirmative written vote of Owners of not less than sixty-seven percent (67%) of Owners and recorded in the Maricopa County Recorder's Office.

Section 13.7. Construction of Terms. This Third Amended and Restated Declaration and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the laws of the State of Arizona. This Third Amended and Restated Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of single family detached dwellings for residential use and for the maintenance of common recreational facilities and areas. The Article and Section headings have been inserted for convenience only and shall not be considered in resolving questions of interpretation or construction. All terms and words used in this Third Amended and Restated Declaration 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, masculine, feminine or neuter, as the context or sense of this Third Amended and Restated Declaration or any Article or Section herein may require, with the same effect as if such number and word had been fully and properly written in the required number and gender. Wherever the words and symbol "and/or" are used in this Third Amended and Restated Declaration, it is intended that this Third Amended and Restated 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 said words and symbol "and/or."

Section 13.8. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by postal mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of same 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 or to the address of the Living Unit of such person if no address has been given. Such address may be changed from time to time by notice in writing to the Association. Each Owner shall be solely responsible for keeping an up-to-date address on file with the Association. Unless otherwise expressly required by applicable law, Owners shall also be entitled to opt for receipt of notices via email by providing the Board of Directors with a valid email address, in which case delivery via email shall constitute valid and proper notice.



Section 13.9. Prior Recorded Instruments. With the exception of the Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements for McCormick Ranch recorded in Docket 9148, at page 76, Records of Maricopa County, Arizona, as amended (the "McCormick Ranch Declaration"), all prior recorded documents affecting the Property are expressly subject to this Third Amended and Restated Declaration and the provisions hereof. To the extent that the provisions of this Third Amended and Restated Declaration are inconsistent with or in derogation of any of the provision of the aforesaid instruments, with the exception of the McCormick Ranch Declaration, then this Third Amended and Restated Declaration shall control.

Section 13.10. Change of Circumstances. Except as otherwise expressly provided in this Third Amended and Restated Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions hereof.

Section 13.11. The Third Amended and Restated Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the Property included within this Third Amended and Restated Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees, lessees and assigns consents to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed pursuant to this Third Amended and Restated Declaration and any amendments hereto. In addition, each such person or entity by so doing thereby acknowledges that this Third Amended and Restated Declaration sets forth the general scheme for the maintenance, improvement and development of the Property covered hereby and thereby evidences his intent that all restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, lessees, assignees and transferees thereof. Furthermore, each such person or entity fully understands and acknowledges that this Third Amended and Restated Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners of all or any portion of the Property.

Section 13.12. Rules Against Perpetuities. If any provision hereof shall violate the rule against perpetuities, such provision shall not be deemed invalid but rather shall be deemed to provide for the maximum period allowed by law and shall otherwise be applied in a manner consistent with applicable law.

Section 13.13. Equal Treatment of Owners. This Third Amended and Restated Declaration shall be applied to all Owners without discrimination.

Section 13.14. Condemnation.

A. Total. In the event all of the Project is taken by condemnation, eminent domain, or equivalent proceeding the proceeds, if any, derived from such proceedings shall be apportioned and distributed among the Owners based upon the number of Lots owned

by each respective Owner.

B. Partial-Common Area. In the event all or any part of the Common Area is taken by condemnation, eminent domain, or equivalent proceeding, the award, if any, derived from such proceedings shall be used by the Association for needed restoration and for repair to the remaining Common Areas, and any portion of the award not so used shall be retained by the Association for the maintenance and improvement of the remaining Common Areas.

Section 13.15. Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey the Owner's Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association or any other party, and no provision of this Third Amended and Restated Declaration, the Articles of Incorporation, the Bylaws or Rules and Regulations shall be enacted, construed or applied to create or affect such a right.

Section 13.16. Conflicts. In the case of any conflict between the Articles of Incorporation and this Third Amended and Restated Declaration, this Third Amended and Restated Declaration shall control; in the case of any conflict between the Original Declaration and this Third Amended and Restated Declaration, this Third Amended and Restated Declaration shall control.

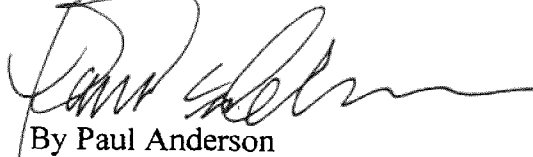
Section 13.18. Certification. By attesting to this Amended and Restated Declaration, the President and Secretary certify that this Amended and Restated Declaration was properly adopted by the Association in accordance with the requirements of the Declaration.

IN WITNESS WHEREOF, the undersigned President and Secretary of Casa Serena Homeowners' Association, Inc. have executed and acknowledged this Third Amended and Restated Declaration as of the 14<sup>th</sup> day of May, 2022.

CASA SERENA HOMEOWNERS' ASSOCIATION,  
INC.



By Brian Forrester  
Its President

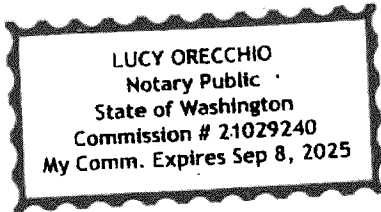


By Paul Anderson  
Its Secretary

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

I certify that I know or have satisfactory evidence that Paul Anderson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Secretary of Casa Serena Homeowners' Association, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of May, 2022.




Lucy Orecchio  
Printed name: Lucy Orecchio  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Mill Creek  
My commission expires: 09/08/2025

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

I certify that I know or have satisfactory evidence that Brian Forrester is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Casa Serena Homeowners' Association, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of May, 2022.

Anthony Paul Balletti   
Printed name: \_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Arizona, residing  
at 7349 Yucca Road, Scottsdale, AZ  
My commission expires: 07/21/25 AZ  
85258

