



SHAW & LINES, LLC

ATTORNEYS AT LAW

2026 SUMMARY OF ARIZONA COMMUNITY ASSOCIATION LAW

Authored by:

PROF. AUGUSTUS H. SHAW IV, Esq., CCAL
PRESIDENT, COLLEGE OF COMMUNITY ASSOCIATION LAWYERS (CCAL)
Faculty Associate, Arizona State University O'Connor College Of Law

SHAW & LINES, LLC
1490 South Price Road, Suite 318
Chandler, Arizona 85286
Phone: (480) 456-1500
Fax: (480) 456-1515
E-mail: ashaw@shawlines.com
Website: www.shawlines.com

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I. WHAT IS A HOMEOWNERS OR COMMUNITY ASSOCIATION

A. What is a Homeowners Association

A homeowners association (“association”) is a common-interest community consisting of landowners in a residential neighborhood (or sometimes commercial property) that has restrictive covenants placed on the property. Owners become subject to restrictive covenants imposed on the real estate encompassing the association and contractual provisions located within the restrictive covenants, regardless of express acquiescence.¹

Over 2.2 million residents live in one of the approximately 9,900 community associations in Arizona (more than 30% of Arizona residents) and approximately 74.1 million people live in community associations throughout the United States.²

Arizona law divides associations into three (3) basic types: Condominiums,³ Planned Communities,⁴ and “others.”

1. Definition of Planned Community

As defined under A.R.S. § 33-1802(6), a Planned Community “means a real estate development that includes real estate owned and operated by [...] a nonprofit corporation or unincorporated association of owners, that is created for the purpose of managing, maintaining or improving the property and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the association for these purposes.”

Summarily, a Planned Community is an association where deed restrictions are placed on property owned by owners who are required to be members of the association. Moreover, any common spaces or common area located within the Planned Community is owned by the Planned Community association.

2. Definition of Condominium

A Condominium under A.R.S. § 33-1202(12) is defined as “real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.”

¹ *See, Lacer v. Navajo County*, 141 Ariz. 392, 394 (App. 1984). “When a grantee accepts a deed containing restrictions, he assents to those restrictions and is bound to their performance as effectively as if he had executed an instrument containing them.”

² *The Community Association Fact Book, National and State Statistical Review for 2021*: Fact Book 2021 Dashboard - Foundation for Community Association Research (caionline.org).

³ *See*, Arizona Condominium Act, Arizona Revised Statutes (“A.R.S.”) §§ 33-1201, et seq.

⁴ *See*, Arizona Planned Communities Act, A.R.S. §§ 33-1801, et seq.

In essence, a Condominium is a community association in which the individual owners own an undivided interest in the common elements or common spaces of the condominium. The common elements is property to be equally enjoyed by the owners of units in the condominium.

3. Definition of Real Estate Cooperative

A Real Estate Cooperative is a common interest community where a corporation owns the property that makes up the entire cooperative, which typically constitutes an entire building. The owner purchases a shared interest in the corporation and with that purchase, the owner has a right to occupy a portion of the building. This portion is generally called an apartment. Anything outside the apartment becomes the common area maintained by the corporation.

4. Townhomes, Patio Homes, and Cluster Housing

These are all marketing names for different types of common interest communities. To know what type of common interest community exists, it is necessary to know how the common area is structured.

II. STATUTES THAT GOVERN HOMEOWNERS ASSOCIATIONS

A. Arizona Planned Communities Act

The Arizona Planned Communities Act is found in Arizona Revised Statutes (“A.R.S.”) Sections 33-1801 *et seq.* Planned communities must have property owned by the association, and mandatory membership by the owners of separate lots in an association with the power to impose assessments.

B. Arizona Condominiums Act

The Condominium Act is found in A.R.S. § 33-1201 *et seq.* It applies to all condominiums, whenever formed.

C. Arizona Nonprofit Corporations Act

Arizona’s Nonprofit Corporation Act is found in A.R.S. §§ 10-3101 through 10-11702 *et seq* and is applicable to those incorporated associations.

III. DOCUMENTS THAT GOVERN HOMEOWNERS ASSOCIATIONS

Governing documents of homeowner associations are divided into two (2) basic categories: (1) documents that restrict the use of the property or the behavior of residents concerning the property; and (2) documents that govern the corporate entity embodying the association. Association documents that restrict the use of the property or the behavior of owners concerning the property are:

1. The Declaration of Covenants, Conditions, and Restrictions;
2. The Rules and Regulations; and
3. Architectural Guidelines.

Association documents that govern the corporate entity embodying the association are:

1. The Articles of Incorporation;
2. The Bylaws; and
3. Resolution of the Board of Directors.

A. Restrictive Covenants

The Merriam Webster Dictionary defines a restrictive covenant as “a covenant acknowledged in a deed or lease that restricts the free use or occupancy of property (as by forbidding commercial use or types of structures).” In the context of homeowner associations, restrictive covenants and deed restrictions constitute a “contract between the subdivision’s property owners as a whole and the individual lot owners.” *Ahwatukee Custom Estates Mgmt. Ass’n, Inc. v. Turner*, 196 Ariz. 631, 634, 2 P.3d 1276 (App. 2000). Where a grantee purchases a property encumbered by restrictive covenants, that person is bound to perform them. *Heritage Heights Home Owners Association v. Esser*, 115 Ariz. 330, 333, 565 P.2d 207, 210 (App. 1977); *see also, Johnson v. Pointe Community Ass’n, Inc.*, 205 Ariz. 485, 490-91, 73 P.3d 616, 621-22 (App. 2003) (A planned community association must comply with planned community documents.).

The “contract” discussed above usually comes in the form of the Declaration of Covenants, Conditions, and Restrictions, the Rules and Regulations; and the Architectural Guidelines.

1. Declaration of Covenants, Conditions and Restrictions

The Declaration of Covenants, Conditions, and Restrictions (commonly referred to as the “Declaration”) is a document that creates a scheme of enforceable covenants and restrictions that run with a property. Both the Condominium Act⁵ and the Planned Communities Act⁶ have defined terms for the Declaration. The Condominium Act contains requirements that require certain provisions to be incorporated into a condominium’s Declaration.⁷ As a document that places restrictions on property, the Declaration must be recorded with the applicable county recorder.

2. Rules and Regulations

Most Declarations allow associations to draft and adopt reasonable Rules and Regulations that help explain the restrictions found in the Declaration. Arizona law allows associations to draft and enact reasonable Rules and Regulations related to governing the

⁵ A.R.S. § 33-1202(15).

⁶ A.R.S. § 33-1802(4).

⁷ A.R.S. § 33-1215.

common area property only.⁸ The Rules and Regulations are usually developed by the association's Board of Directors and have the same enforceability as the Declaration, even though the Rules and Regulations for the most part are not recorded with the county recorder.

Rules and Regulations may only explain regulations found in the Declaration. Rules and Regulations may not contradict provisions of the Declaration, nor may they add restrictions that are not found in the Declaration unless the association's Declaration allow the association's rules and regulations to add additional restrictions to the Declaration.⁹ If Rules and Regulations conflict with the Declaration, then they are generally unenforceable.

3. Architectural Guidelines

Architectural Guidelines also derive their authority from the association's Declaration. The Architectural Guidelines usually provide a framework for the decision-making process of an Architectural Committee. The Architectural Guidelines have the same enforceability as the Declaration, even though they are usually not recorded with the county recorder.

B. Corporate Governing Documents

1. Articles of Incorporation

The Articles of Incorporation establish the Association as a separate legal and corporate entity and must meet certain statutory criteria found in the Arizona Nonprofit Corporation Act.¹⁰ The Articles of Incorporation constitute the corporate charter and are filed with the Arizona Corporation Commission.

2. Bylaws

The Bylaws of an Association set out the procedures for the internal government and operation of the Association.¹¹ The Bylaws guide the association concerning how owners may vote regarding corporate issues. The Bylaws also regulate the conduct of the association's Board of Directors as well as outline how an association's Board of Directors is elected.

3. Resolutions

⁸ *See*, A.R.S. § 33-1242(A)(1) (Condominiums) and the Restatement (Third) of Property: Servitudes § 6.7(3) (2000) (for Planned Communities). *See also*, *Wilson v. Playa de Serrano*, 211 Ariz. 511, 123 P.3d 1148 (App. 2005) ruling that community Associations may not place restrictions on the use of individual units or lots via rules and regulations, unless the community Association's Declaration provide it with the ability to develop rules that reasonably regulate activity in units or on lots.

⁹ Some Declaration allow the Association to create rules and regulations that can add additional restrictive covenants not expressly provided for in the Declaration.

¹⁰ A.R.S. § 10-3202.

¹¹ A.R.S. § 10-3206.

Corporate resolutions are decisions of the association's Board of Directors that are reduced to a formal written document. Resolutions usually contain official written policies and procedures of the association such as an enforcement policy or an assessment collection policy.

IV. CORPORATE GOVERNANCE OF ASSOCIATIONS

Pursuant to the Planned Communities¹² Act and the Condominium Act,¹³ an association can be either an incorporated entity or an unincorporated association of owners. The vast majority of associations in Arizona are organized as Arizona Non-Profit Corporations.

If an association is incorporated as an Arizona Non-Profit Corporation, the association will be subject to the Arizona Non-Profit Corporations Act¹⁴ and will be usually taxed as a 501(C)(4) Non-Profit entity or under Internal Revenue Code Section 528.

A Non-Profit association is comprised of two basic actors; the Members that compromise the association and the association Board of Directors.

A. Association Board of Directors

Pursuant to Arizona Law¹⁵ and most association Articles of Incorporation and Bylaws, associations must have a duly elected Board of Directors. The Board of Directors serves to operate the association and is the primary executive source or power.

Directors and Officers of an association are charged with a "fiduciary duty" to the association. The Board's "fiduciary duty" may be broken down into two distinct duties: (1) the duty of care; and (2) the duty of loyalty.

Directors have an obligation to exercise reasonable care in making decisions on behalf of the association. This obligation is referred to as the duty of care. To meet the duty of care when making decisions concerning association issues, the association's Board of Directors:

1. Must act in good faith, in a manner that he or she believes to be in the best interest of the association and its members;
2. Must make decisions that any other reasonable director would make in the same situation or circumstances;
3. Must exercise discretion within the scope of their authority under relevant statutes, covenants and restrictions;
4. Must treat members equally and fairly; and

¹² A.R.S. § 33-1802(1).

¹³ A.R.S. § 33-1241.

¹⁴ A.R.S. §§ 10-3101 through 10-11031, et seq.

¹⁵ A.R.S. § 10-3830.

5. Must maintain and repair the association's common area property.¹⁶

The above concept is also discussed in the “business judgment rule” which is found in both Arizona case law¹⁷ and in A.R.S. § 10-3830 of the Arizona Nonprofit Corporation Act.¹⁸ The business judgment rule states that a Board member will have met his or her duties when he or she acts “in good faith[,] with the care an ordinarily prudent person in a like position would exercise under similar circumstances, [and] in a manner the director reasonably believes to be in the best interests of the corporation.”¹⁹

This rule also protects Board members from personal liability if they make a decision after relying on “information, opinions, reports or statements, including financial statements and other financial data,” received from “legal counsel, public accountants or other person as to matters the director reasonably believes are within the person’s professional or expert competence.”²⁰ In other words, if the Board’s decision ends with a bad result – even a financial loss – the directors should be shielded from claims of personal liability if the decision was made pursuant to the advice of the association’s attorney.

Another duty relating to the fiduciary responsibilities of a member of an association Board is a duty of loyalty. Directors should have undivided loyalty to the association. This duty prohibits directors from receiving a benefit for serving on the Board at the expense of the association or its members. This duty of loyalty is breached when a Board member acts in his or her own interest or with a conflicting interest.²¹

One example of a breach of the duty of loyalty is when a Board member has a financial interest in a transaction or decision before the Board and fails to properly follow Arizona law.²² Another example of breaching the duty of loyalty or fiduciary duty is to discuss with other members matters that are either protected by attorney/client privilege (*i.e.*, correspondence, communications or advice from legal counsel) or matters that are reserved for executive session Board meeting discussions provided in Arizona statutes.

To avoid breaching this duty of loyalty, Board members should consider and ensure the following:

¹⁶ *See, Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 204, 165 P.3d 173, 178 (App. 2007).

¹⁷ *See, Tierra Ranchos Homeowners Ass’n v. Kitchukov*, *supra*.

¹⁸ If the community Association is a nonprofit corporation.

¹⁹ Codified in A.R.S. § 10-3830 (Arizona Nonprofit Corporation Act - General standards for directors).

²⁰ *See*, A.R.S. §§ 10-3830(B) – (D).

²¹ *See*, A.R.S. § 33-1811 (Planned Communities) and A.R.S. § 33-1243(C) (Condominiums) indicating that: “If any contract, decision or other action for compensation taken by or on behalf of the Board of directors would benefit any member of the Board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the Board of directors or a parent or spouse of any of those persons, that member of the Board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the Board before the Board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this [section/subsection] is void and unenforceable.”

²² *See*, A.R.S. § 33-1811 (Planned Communities) and A.R.S. § 33-1243(C) (Condominiums).

1. Enforce the governing documents equally, not selectively, and without regard to whether the owner is a neighbor, friend or relative;
2. Fully disclose any potential conflict prior to any deliberations;
3. Ask to be dismissed and do not participate in the decision-making process for any issues where a conflict may exist;
4. Maintain accurate records; and
5. Keep confidences (*i.e.*, attorney/client communications and results from executive session meetings).

Occasionally there will be factions and differences of opinions among members of the Board. Diverse positions among Board members can lead to progressive discussion and innovative administration. Board members, however, must understand that Board decisions are made by majority vote. If the minority is outvoted on an issue, the minority should attempt to provide unified support, unless the action taken by the majority is unlawful.

Since Board members serve at the will of the members of each community, the general membership of each community has the ability to remove Board members who the members believe are not taking action in accordance with the desires of the majority. As such, dissident Board members should use caution when challenging a valid decision of the Board majority.

B. Homeowner Association Meetings

There are four (4) main types of association meetings: (1) meetings of the association's Board of Directors; (2) meetings of committees of the association; (3) annual meetings of the association; and (4) special membership meetings of the association.

All association meetings must be held or originate in the State of Arizona.²³ This means that the origin of the meeting must be in Arizona. Teleconferences and video conferences (such as Zoom or Teams) are allowed so long as the call or video originates in Arizona.²⁴

Also, except for limited circumstances that will be discussed below, association meetings are open to all members of the association or any person designated by a member in writing as the member's representative. Members or their designated representatives also have the right to speak at an appropriate time during the deliberations and proceedings of association meetings.²⁵ The Board may place reasonable time limits restrictions on those persons speaking during the meeting but must permit a member or the member's designated representative to speak once after the Board has discussed a specific agenda item but before the Board takes formal action on that item.²⁶

²³ A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).

²⁴ A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).

²⁵ A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

²⁶ A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

Recent changes to Arizona statutory law applicable to associations also serve to establish the State Legislature’s public policy belief that associations meetings should be as open as possible to association member attendance. A.R.S. § 33-1248(F) (Condominiums) and A.R.S. § 33-1804(F) (Planned Communities) outlines the Legislature’s “public policy” belief that an association should err on the side of open meetings instead of closed meetings. This means that the Board of Directors and management must do all they can to ensure that associations only meet in executive session or have an emergency meeting when the applicable statutory allowance is at play.

To implement its public policy beliefs, the Arizona Legislature has enacted a number of laws geared toward open association meetings. Both the Arizona Planned Community Act and Condominium Act each state that agendas must be provided to all members at least 48 hours before the start of an association Board meeting.²⁷

Since there are a number of Arizona statutes that cover the various types of association meetings, it is important to discuss each type in more detail.

1. Board Meetings

There are three (3) types of Board of Director meetings: (1) Regular Board Meetings; (2) Executive Session Board Meetings; and (3) Emergency Board Meetings. The most common type of Board of Director meeting is their Regular Board Meetings.

i. Regular Board Meetings

Regular Board Meetings are meetings in which the association conducts general “day-to-day” business of the association. Regular Board Meetings are usually held once a month or once per quarter. A Regular Board Meeting occurs whenever a quorum of the Board meets either formally or informally to discuss association business.²⁸

Unless otherwise stated in the association’s Bylaws, the association must provide at least 48-hours’ notice to owners of meetings of the Board.²⁹ Said notice shall be by “newsletter, conspicuous posting or any other reasonable means as determined by the Board of directors.”³⁰ Also, Regular Board Meetings are open to all members of the association or any person designated by the member in writing as the member’s representative.³¹

Agendas must be provided to all members at least 48 hours before the start of an association Board meeting.³² Members or their designated representatives also have the right to speak at an appropriate time during the deliberations and proceedings of Regular Board

²⁷ A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).

²⁸ A.R.S. § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).

²⁹ A.R.S. § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums).

³⁰ A.R.S. § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums).

³¹ A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

³² A.R.S. § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).

Meetings.³³ Also, attendees of Regular Board Meetings have the right, subject to reasonable association rules, to audiotape or videotape those portions of the meetings that are open to the members.³⁴ In addition, if the association audio or video records a Board Meeting open to the Members, the association must retain any recording (unedited) for 6 months and make any recording (unedited) available for review by Members of the association, said review being subject to the provisions of A.R.S. § 33-1258 (Condominiums) and A.R.S. § 33-1805 (Planned Communities).³⁵

ii. Executive Session Board Meetings

Executive Session Board of Director Meetings are meetings of the Board that are exempt from the open meeting requirements. These meetings are closed to the members. Executive Session Board Meetings are held to discuss issues that are not required by statute to be discussed in a Regular Board Meeting. These meetings occur “behind closed doors” or outside the presence of, and without participation from, the members.

In addition, A.R.S. § 33-1248(C) (Condominiums) and A.R.S. § 33-1804(C) (Planned Communities) both state:

BEFORE ENTERING INTO ANY CLOSED PORTION OF A MEETING OF THE BOARD OF DIRECTORS, OR ON NOTICE OF A MEETING UNDER SUBSECTION D OF THIS SECTION THAT WILL BE CLOSED, THE BOARD SHALL IDENTIFY THE PARAGRAPH UNDER SUBSECTION A OF THIS SECTION THAT AUTHORIZES THE BOARD TO CLOSE THE MEETING.

The reference to “any closed portion of a meeting” in the first sentence of the statute refers to executive session Board of Director meetings. There are five (5) topics or issues that may be discussed in these executive session Board of Director meetings:

1. Legal advice from an attorney for the Board or for the association;
2. Pending or contemplated litigation;
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association;

³³ A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

³⁴ A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums). *Infra* Page 6.

³⁵ A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of a contractor of the association who works under the direction of the association; and
5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in open session.

A.R.S. § 33-1248(C) (Condominiums) and A.R.S. § 33-1804(C) (Planned Communities) will make it critical that an association's Board and managers understand when an association may meet in executive session. Also, it is advisable to have an agenda available to hand out to the members regarding an executive session meeting. When providing notice of your executive session meetings, the notice should also include an agenda.

iii. Emergency Board Meetings

An Emergency Board of Directors meeting may only be called to discuss business or take action that cannot be delayed for the 48 hours required for notice of a regular meeting of the Board of Directors. Thus, in order for the Board to conduct an emergency Board meeting, there must be a serious threat to life or property. Also, only "emergency matters" may be discussed at an Emergency Board meeting.³⁶

The minutes of the Emergency Board Meeting must state the reason necessitating the emergency meeting. Also, the minutes of the Emergency Board Meeting shall be read and approved at the next regularly scheduled meeting of the Board.³⁷

2. Association Committee Meetings

Association committees provide an opportunity for association members to serve their community in specialized areas. They aid the Board of Directors in governing the association. Association committees are functions of the association's Board of Directors. Some common association committees include Architectural Control, Landscaping, and "Welcome Wagon" committees.

Most association committees meet on a regular basis. If an association committee meets on a regular basis, the committee must meet in the State of Arizona.³⁸ Also, association members or their designative representatives have the right to attend and speak at committee meetings.³⁹

3. Annual Meetings of the Members

Arguably the most important meeting an association is required to conduct is the Annual Meeting of the members. Not only do association governing documents require

³⁶ A.R.S. § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums). *Infra* Page 7.

³⁷ A.R.S. § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).

³⁸ A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).

³⁹ A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

associations to conduct Annual Meetings, but Arizona law requires associations to conduct an Annual Meeting at least once per year.⁴⁰

i. Purpose of Annual Meetings

Annual Meetings are meetings of the members. Annual Meets are held to conduct the “business” of the membership and allow the membership to address their association. In most associations, Annual Meetings are conducted for three (3) main purposes:

1. To conduct member business;
2. To elect members to the association’s Board of Directors; and
3. To allow the members to address their association.

ii. Conduct Member Business

Annual Meetings are forums where member business may be conducted. Member business can take many forms, including:

1. Approval of the previous year’s Annual Meeting Minutes (see Section below on Annual Meeting Minutes);
2. Amendment of the association’s governing documents; and
3. Authorization increases in the annual assessments or special assessments.

Arizona law and most association documents allow Member business at Annual Meetings. The challenge, however, lies in statutory requirements concerning absentee ballots, which will be discussed below.

iii. To Elect Members to the Board of Directors

The most important purpose of the Annual Meeting is to elect members to the association’s Board of Directors. Effectuating an election to the Board of Directors takes a great deal of forethought, especially in light of Arizona law.

A successful and legal election to the Board starts at least two (2) months prior to the Annual Meeting. This is due, in large part, to the requirements found in Arizona law.⁴¹ Arizona law requires that associations send ballots to all members of the association.⁴²

When drafting an absentee ballot, the association must keep Arizona’s statutory requirements in mind. Specifically, A.R.S. § 33-1812(A) sets out the ballot requirements for Planned Communities and A.R.S. § 33-1250(A) sets out the ballot requirements for Condominiums.

⁴⁰ A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).

⁴¹ *See* A.R.S. § 33-1812(A) (Planned Communities) and § 33-1250(A) (Condominiums).

⁴² *See* A.R.S. § 33-1812(A) (Planned Communities) and § 33-1250(A) (Condominiums).

In relevant part, the above statutes on ballot requirements state that:

If absentee ballots are used at an Annual, Regular or Special Meeting, then the members must comply with all of the following:

1. The absentee ballot will set forth each proposed action.
2. The absentee ballot will provide an opportunity to vote for or against each proposed action.
3. The absentee ballot is valid only for one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
4. The absentee ballot specifies the time and date by which the ballot must be delivered to the Board of directors in order to be counted, which will be at least seven days after the date that the Board delivers the unvoted absentee ballot to the member.
5. The absentee ballot does not authorize another person to cast votes on behalf of the member.

If an association provides for absentee ballots or ballots provided by some other form of delivery, the completed ballot must contain the name, address and signature of the person voting, unless the association documents permit secret ballots, in which case only the envelope must contain name, address and signature. The ballots, envelopes and related materials must be retained and made available for unit owner or member inspection for at least one year after completion of the election.

If an association chooses to permit electronic voting in addition to providing for votes to be cast in person and by absentee ballot, the association must be sure to comply with the following:

1. The association must provide **notice** to members that the vote will be conducted by electronic means.
2. The notice must include a “reasonable” procedure for members to obtain and cast a ballot through some other form of delivery, including U.S. Mail and fax transmission.
3. The online voting system must also meet all of the following requirements:
 - a. Authenticates the member’s identity;
 - b. Authenticates the validity of each electronic vote to ensure that the vote is not altered in transit;
 - c. Transmits a receipt to each member who casts an electronic vote; and

d. Stores electronic votes for recount, inspection and review purposes.⁴³

iv. To Allow Members to Address their Association

It is important to remember that the Annual Meeting is a meeting of the members, which means that the members should be provided with the opportunity to address their Board of Directors and other members of the association.

Many associations attempt to limit who may speak at an Annual Meeting. A good policy is to let all members who wish to speak have the opportunity to speak but limit how long they may speak.

4. Special Meetings of the Members

Special Meetings of the members are another form of member meeting. Special Meetings of the members are unique because they vary depending on the purpose of the Meeting of the members.

i. Who May Call A Special Meeting of the Members

The question of who may call a Special Meeting of the members is usually answered in the governing documents of the association. If the association's governing documents are silent, applicable Arizona statutes require that Special Meetings of the members may be called by the president, by a majority of the Board, or by owners having at least twenty-five percent (25%), or any lower percentage specified in the Bylaws, of the votes in the association.⁴⁴

ii. Common Purposes for Special Meetings of the Members

Special Meetings of the members may be called for a number of reasons, such as:

1. To authorize a Special Assessment or an increase to Annual Assessments.
2. To authorize an amendment of the association's governing documents.
3. To remove members of the association's Board of Directors.
4. To vote on other issues pursuant to the association's governing documents.

iii. Special Meeting of the Members to Authorize a Special Assessment or Increase in the Annual Assessments

Generally, the association's Declaration will dictate how Special Meetings of the members may be called to vote on a special assessment or increase in the annual assessment of the association. Voting and quorum requirements concerning this type of Special Meeting

⁴³ *See*, A.R.S § 33-1812(A) (Planned Communities) and § 33-1250(C) (Condominiums) which require that election materials, including electronic ballots and non-ballot-related material, are retained and made available to owners for at least one year.

⁴⁴ *See*, A.R.S. § 33-1804(B) (Planned Communities) and A.R.S. § 33-1248(B) (Condominiums).

of the members will also generally be found in the association's Declaration. Additionally, any Special Meetings of the members must be conducted using absentee ballots pursuant to A.R.S. § 33-1812 (Planned Communities) and A.R.S. § 33-1250 (Condominiums).

iv. Special Meeting of the Members to Amend the Association's Governing Documents

Pursuant to most association governing documents, Special Meetings of the members may be called to vote amending certain provisions of the association's governing documents. Voting and quorum requirements concerning this type of Special Meetings of the members should also be generally found in the specific association governing document that is being amended. Additionally, any Special Meetings of the members must be conducted using absentee ballots pursuant to A.R.S. § 33-1250(C) (Condominiums) and A.R.S. § 33-1812(A) (Planned Communities).

v. Special Meeting of the Members to Remove Members of the Association's Board of Directors

Recent changes in Arizona law have changed the way members of an association's Board of Directors may be removed. A.R.S. § 33-1813 (Planned Communities) and A.R.S. § 33-1243 (Condominiums) now trump any language in the association's governing documents regarding Board member removal, and the statutes provide procedures concerning a Special Meeting of the members to remove members of the association's Board of Directors.

It is important that an association follow the quorum requirements of A.R.S. § 33-1813(A)(4)(e) (Planned Communities) and A.R.S. § 33-1243(H)(4)(e) (Condominiums). It is equally important that the association carefully study A.R.S. § 33-1243 and § 33-1813 in order to abide by its provisions. If one or less than a majority of the Board is removed, the member(s) vacant seat shall be filled as provided in the association's documents. This means that prior to the removal meeting being effectuated, the association must review the association's documents to determine how the Board seat(s) will be filled if the recall is successful and inform the owners of how the seat(s) will be filled.

If the community documents do not discuss how to replace a removed director, the procedures discussed below will apply.

If a majority of the Board members or all of the Board of Directors are removed, then the association must elect their replacements and a duly called special meeting of the members. The special meeting of the members must be held no later than thirty (30) days from the date of the recall meeting.

The Board of directors shall retain all documents and other records relating to the removal and replacement of the member(s) of the Board of directors for at least one year and shall permit members to inspect those documents and records.

Finally, a member of the Board of Directors who is removed is not eligible to serve on the Board again until after her original term has expired unless the governing documents require a longer period of time.

V. PRIMARY FUNCTIONS OF A HOMEOWNERS ASSOCIATION

One of the primary duties of a homeowner's association is to enforce the restrictions in the association's governing documents.⁴⁵ In some circumstances, associations may have an obligation to enforce the restrictions found in the association's governing documents.⁴⁶ It is important to understand how and when to properly enforce an association's governing documents.

A. Protect and Maintain the Common Property

Both Arizona statutory law⁴⁷ and case law⁴⁸ assert that associations have a duty to protect and properly maintain the common area property to which the association, either through ownership or exclusive control, has the power to solely maintain or otherwise control. The duty to maintain the safety of common area property applies not only to physical conditions on the land but also to dangerous activities on the land.⁴⁹

B. Enforcement of Restrictive Covenants

Restrictive covenants may be enforced in three (3) basic ways:

1. Imposing fines;
2. Filing a lawsuit seeking injunctive relief; and
3. Exercising "Self-Help."

In selecting any one of these options, an association should rely on all three (3) main questions guiding the enforcement:

1. What enforcement action is allowed by the association's governing documents?
2. Which contemplated method of enforcement action is likely to gain compliance?

⁴⁵ *See, Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 201, 165 P.3d 173, 179 (App. 2007), which states that among other duties, the Association has a duty to act reasonably in exercise of its discretionary powers including rulemaking, enforcement, and design-control powers. *See also, College Book Centers, Inc. v. Carefree Foothills Homeowners' Ass'n*, 225 Ariz. 533, 241 P.3d 897 (App. 2010).

⁴⁶ *See, Gfeller v. Scottsdale North Townhomes Ass'n*, 193 Ariz. 52, 969 P.2d 658 (App. 1998); *Johnson v. Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, 489, 73 P.3d 616, 620 (App. 2003).

⁴⁷ *See*, A.R.S. § 33-1247(A) (Condominiums) and A.R.S. § 33-1802(1) (Planned Communities).

⁴⁸ *See, Martinez v. Woodmar IV Condominiums Homeowners Ass'n, Inc.*, 189 Ariz. 206, 941 P. 2d 218 (1997).

⁴⁹ *See, Martinez v. Woodmar IV Condominiums Homeowners Ass'n, Inc.*, *supra*.

3. Which method of enforcement action is reasonable under the circumstances?

These principles will help an association safely navigate the complexity involved with enforcement of the Declaration. The above principles, along with the enforcement actions, are discussed in greater detail below.

In addition and prior to engaging in certain enforcement mechanisms, an association must follow provisions of Arizona statutory law.

A.R.S. § 33-1242(D) (Condominiums) and A.R.S. § 33-1803(E) (Planned Communities) state that before an association may take enforcement action other than sending an enforcement letter or “courtesy notice” (*i.e.*, impose a fine or file an injunction lawsuit), the association must inform any owner that he/she may provide the association with a written response concerning the violation by sending a certified letter to the address referenced in the violation letter **within 21-calendar days after the date of the initial violation letter**.

A.R.S. § 33-1242(D) and A.R.S. § 33-1803(E) require the association to provide written notice to an owner of their option to petition for an administrative hearing on any enforcement action. Thus, in an enforcement action, an association is required to notify an owner of the option to petition the Arizona Department of Real Estate for a hearing on the matter.

1. Waiver of Enforcement

Many associations struggle with the concept of waiver of enforcement. This concept addresses whether an association may require remediation of long-standing violations of the restrictions.

The above waiver of enforcement concept has been addressed further by Arizona Courts. In *College Book Centers, Inc. v. Carefree Foothills Homeowners’ Ass’n*, 225 Ariz. 533, 241 P.3d 897 (App. 2010), the Court articulated that:

[W]hen Declaration contain a non-waiver provision, a restriction remains enforceable, despite prior violations, so long as the violations did not constitute a “complete abandonment” of the Declaration. *Id.* at 399, ¶ 26, 87 P.3d at 87. Complete abandonment of deed restrictions occurs when “the restrictions imposed upon the use of lots in [a] subdivision have been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions [and] defeat the purposes for which they were imposed[.]” *Id.* (quoting *Condos v. Home Dev. Co.*, 77 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954)).

The Court in *College Book* ultimately held that, so long as an association has a non-waiver provision in its Declaration, the association may enforce its restrictions against owners

who are in long standing violation of the restrictions, so long as the association has not abandoned the Declaration.

In fact, the *College Book* case further suggests that the association has a duty to enforce the long standing violation. The Court specifically declared that (225 Ariz. at 541, 241 P.3d at 905):

Similarly, we agree that applying a plainly worded non-waiver clause will not encourage discriminatory conduct by homeowners' Associations because they are constrained by principles of fairness and reasonableness. In *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, we adopted the Restatement (Third) of Property: Servitudes § 6.13, which includes the duty of an Association to "treat members fairly" and to "act reasonably in the exercise of its discretionary powers including rulemaking, enforcement, and design-control powers." 216 Ariz. 195, 201, ¶ 25, 165 P.3d 173, 179 (App. 2007).

Additionally, the failure of an Association to take appropriate action to enforce restrictive covenants may subject it to liability. *See, e.g., Johnson v. Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, 489, ¶ 22, 73 P.3d 616, 620 (App. 2003) (holding that an Association's interpretation of its own restrictive covenants in a dispute with a homeowner is not entitled to judicial deference; reversing trial court's dismissal of claim for breach of fiduciary duty). In our view, these considerations will discourage an HOA from engaging in selective enforcement of restrictive covenants.

2. Mechanisms of Enforcement

i. Gaining Compliance by Imposing Fines

Imposing a fine for the violation of restrictive covenants is the most common means of gaining compliance in associations. Under A.R.S. § 33-1803(B) (Planned Communities) and A.R.S. § 33-1242(A)(11) (Condominiums), an association may fine an owner who is in violation of the restrictions, so long as the following criteria are met:

- ✓ the fine is "**reasonable**"; and
- ✓ the fine is only imposed after the following:
 - i. notice; and
 - ii. an opportunity to be heard.

When seeking to enforce pursuant to the imposition of fines or monetary penalties, it is wise that an association have:

- i. a comprehensive enforcement policy that encompasses all of the various statutory and case law requirements regarding the enforcement of restrictive covenants;

- ii. a subset of the comprehensive enforcement policy which contains a clearly articulated schedule of fines or fine policy that lists all potential violations and the corresponding fine attached to said violation; and
- iii. proof that the comprehensive enforcement policy and articulated schedule of fines or fine policy has disseminated to all owners.

ii. Violation Enforcement through Filing a Lawsuit Seeking Injunctive Relief

Restrictions found in association governing documents may also be enforced through the seeking of injunctive relief. Injunctive relief is the process in which an association petitions the Superior Court to issue an order requiring an owner who is in violation of the restrictions to comply with the restrictions. Because injunctive relief requires litigation, seeking injunctive relief is usually implemented in emergency situations or as a last resort.

When an actor becomes an owner of property located within a homeowner's association, it agrees to the restrictions in the Declaration, and it is "bound to (its) performance as effectively as if (it) had executed an instrument containing them." *Heritage Heights Home Owners Ass'n v. Esser*, 115 Ariz. 330, 333, 565 P.2d 207, 210 (App. 1977). Furthermore, "enforcement of such restrictions is by means of an injunction." *Id.*

To assert a claim for injunctive relief, the association must show that "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the association and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. Mercexchange, L.L.C.*, 547 U.S. 388, 391 (2006).

iii. Exercising Self-Help

Self-help is a mechanism by which the association seeks to address a continuing violation of the restrictions by remedying the violation itself. The most common example of self-help is when an association pays a landscaper to maintain the yard of an owner who has not been maintaining the yard in violation of the restrictions. Self-help is usually available under an association's Declaration, and the costs of self-help may usually be recouped by the association. Before exercising self-help, an association should carefully review its Declaration to make sure it is allowed to do so.

C. Collecting Assessments and Other Monies Owed

The most important function of an association is the collection of assessments and other monies owed to the association. assessments are the financial lifeblood of the association and without assessments, an association would be unable to function. An association's rights and abilities to collect assessments and other monies owed are provided in both the association's Declaration and Arizona Statutes.

1. The Statutory Lien

By operation of law, associations have an automatic lien on all property within the association. Under Arizona Law,⁵⁰ the “Common Expense Lien;” includes assessments (as defined under Arizona Law⁵¹), charges for late payment of the assessments if authorized in the declaration, reasonable collection fees and costs incurred or applied by the association and reasonable attorney fees and costs that are incurred with respect to those assessments, if the attorney fees and costs are awarded by a court.

The Common Expense Lien does not include “Member Expenses” and “Unit Owner Expenses” which includes fees, charges, late charges, monetary penalties, or interest⁵² or attorney’s fees incurred in enforcing the restrictions.

The Common Expense Lien arises when “the assessment becomes due.”⁵³ This does not necessarily coincide with when the delinquency arises. If you have an annual assessment “payable in installments, the full amount of the assessment is a lien from the time the first assessment installment becomes due.”⁵⁴

2. Lien Priority

In Arizona, a Common Expense Lien is second in priority to the following liens:⁵⁵

- a. Liens and encumbrances recorded prior to the recordation date of the Declaration;
- b. Recorded first mortgages or contracts for sale;
- c. Liens for real estate taxes and other governmental assessments directly related to the property; and
- d. Property taxes.

Mechanics’ and materialmens’ liens and certain other assessment liens are exceptions from this priority scheme.⁵⁶

3. Collection of Association Assessments - Enforcement of Association Liens

When an owner in an association fails to pay the Common Expense Lien, the association has several means to effectuate collection of the Common Expense Lien. Some collection options are based on the fact, as discussed above, that the association has a lien regarding the assessments.

⁵⁰ *See* A.R.S. § 33-1202(4) (Condominiums).

⁵¹ *See* A.R.S. § 33-1802(2) (Planned Communities) and A.R.S. § 33-1202(10) (Condominiums).

⁵² *See* A.R.S. § 33-1802(5) (Planned Communities) and A.R.S. § 33-1202(26) (Condominiums).

⁵³ *See* A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).

⁵⁴ *See* A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).

⁵⁵ *See* A.R.S. § 33-1256(B) (Condominiums) and A.R.S. § 33-1807(B) (Planned Communities).

⁵⁶ *See* A.R.S. § 33-1256(C) (Condominiums) and A.R.S. § 33-1807(C) (Planned Communities).

i. Initial Collection Demand Letter

The association, or the association's managing agent, may send owners an initial collection demand letter when owners are delinquent. Most associations send an initial collection demand letter when owners are more than thirty (30) days delinquent.

Please note that a collection demand letter is subject to the provisions of the Federal Fair Debt Collections Practices Act ("FDCPA") and associations (or its agent) should familiarize itself with the requirements of the FDCPA.

In addition to sending an initial collection demand letter, an association may also impose a late fee for late payment of assessments, so long as the association's Declaration expressly provides for the charging of a late fee, pursuant to A.R.S. § 33-1803(2) (Planned Communities) and A.R.S. § 33-1202(10) (Condominiums).

ii. Subsequent Collection Demand Letters

Prior to sending an owner to a collection agency or attorney to collect delinquent amounts owed, the association shall provide the following written notice to the member at the member's address as provided to the association:⁵⁷

YOUR ACCOUNT IS DELINQUENT. IF YOU DO NOT BRING YOUR ACCOUNT CURRENT OR MAKE ARRANGEMENTS THAT ARE APPROVED BY THE ASSOCIATION TO BRING YOUR ACCOUNT CURRENT WITHIN THIRTY DAYS AFTER THE DATE OF THIS NOTICE, YOUR ACCOUNT WILL BE TURNED OVER FOR FURTHER COLLECTION PROCEEDINGS. SUCH COLLECTION PROCEEDINGS COULD INCLUDE BRINGING A FORECLOSURE ACTION AGAINST YOUR PROPERTY.

The above written notice must:

- i. be sent at least **thirty days (30) before authorizing an attorney or a collection agency** to begin collection activity on behalf of the association;
- ii. be sent by certified mail, return receipt requested, and may be included within other correspondence sent to the member regarding the member's delinquent account;
- iii. be written in boldfaced type or all capital letters; and
- iv. include the contact information for the person that the member may contact to discuss payment.

⁵⁷ *See* A.R.S. § 33-1256(K) (Condominiums) and A.R.S. § 33-1807(K) (Planned Communities).

4. Personal Money Judgments Lawsuits

If collection letters do not resolve the dispute, the association may seek to collect the debt through court action. Under general Declaration provisions, an owner is personally liable for amounts owed to the association and the association may file a lawsuit against the owner to collect the delinquency. For collection of relatively small delinquencies (less than \$10,000), many associations choose to file personal judgment lawsuits in Justice Court. Justice Court can provide a less expensive and more efficient means of obtaining a personal money judgment against an owner, as opposed to the more costly method of filing in Superior Court.

Once a judgment is obtained, an association may pursue wage garnishments and bank garnishments to collect on the judgment.

5. Foreclosure Lawsuits

Regarding Arizona Condominiums, the Common Expense Lien may be foreclosed if the owner has been delinquent in the payment of Assessments⁵⁸ for a period of one year or is delinquent in the payment of Assessments⁵⁹ only in the amount of at least \$1,200, whichever occurs first.⁶⁰

Regarding Arizona Planned Communities, the Common Expense Lien may be foreclosed if the owner has been delinquent in the payment of assessments for a period of 18 months or is delinquent in the payment of assessments only in the amount of at least \$10,000, whichever occurs first.⁶¹

Additionally, prior to initiating a foreclosure action, the association's board of directors must show that it exercised reasonable efforts to communicate with the delinquent owner and offered the delinquent owner a reasonable payment plan.⁶²

Once a judgment is obtained, the county Sheriff's office may be instructed to sell the property to satisfy the judgment to recover the delinquency. A "writ of special execution" is issued by the Court instructing the Sheriff to conduct the sale. After posting and publishing notice of the sale, the property is auctioned off to the highest bidder at the Sheriff's offices, or any other place designated in the notice. If no one bids on the property, the association will take title to the property for the amount of its bid. The association may then dispose of the property as it sees fit.

If a purchaser outbids the association at the auction, the purchaser must deliver cash or a cashier's check to the Sheriff's office within five (5) days from the sale. Upon receipt of the sale price, the Sheriff will issue payment to the association in the amount of its judgment, interest and costs incurred in connection with the sale. The association is also responsible for

⁵⁸ See A.R.S. § 33-1202(4).

⁵⁹ See A.R.S. § 33-1202(4).

⁶⁰ See A.R.S. § 33-1256(A).

⁶¹ See A.R.S. § 33-1807(A).

⁶² See A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).

payment of a commission to the Sheriff for successfully selling the property and satisfying the delinquency.

After the sale, the owner's interest is foreclosed, but he/she still has time to redeem the property. The owner has a statutory redemption period (generally, 6-months unless the property is abandoned, then 30-days) in which the owner can redeem the property and regain full title to the property by paying the total amount of the sale price, plus interest and a penalty.

Following the owner's redemption period, junior lien holders in their order of priority may also redeem the property and secure title by payment of the full redemption amount. The redemption payoff is generally provided by and handled through the Sheriff's office that conducted the sale. If the property is redeemed within the redemption period, the owner takes back all rights and interest in the property as if the foreclosure and sale never occurred; however, the association is paid in full.

If the owner or any junior lien holder fails to redeem the property within the redemption period, the purchaser (including the association if it was the successful bidder at the sale) may then request and the Sheriff must issue a "Sheriff's Deed" to the purchaser, subject to any liens that were not foreclosed through the foreclosure process or liens that may have attached during the redemption period. With a recorded Sheriff's Deed in hand, the purchaser is generally considered to hold good and marketable legal title as owner of the property.

6. Unforeseen Collections Issues

i. First Mortgage Holder Foreclosure

The first question that comes to mind concerning first mortgage holder foreclosures is "when does an association know a house is being foreclosed by a first mortgage holder?" Pursuant to law, first mortgage holders, prior to conducting a trustee sale (which is where the property will be foreclosed and sold to remedy the delinquent mortgage), must send the association a "Notice of Trustee Sale." The Notice of Trustee Sale must also be recorded in the county where the property is located. The Notice of Trustee Sale must be sent to anyone who has a recorded interest or lien (such as an association) in the property.

Once the association has received the Notice of Trustee Sale, the association should determine whether the owner is delinquent in their assessments. If the owner is delinquent in their assessments, the association may make a claim to the trustee for any excess proceeds if the property is sold at a trustee sale. Excess proceeds are monies obtained by selling a property at a trustee sale that are over and above the amount owed to the first mortgage holder. Since, in most cases, an association's lien for delinquent assessments is second in priority to that of the first mortgage holder, any excess proceeds should go to the association to satisfy any delinquent assessments and other statutorily collectible amounts owed.

In order to secure excess proceeds, the association must make a written claim to the trustee (the person who will be holding the money once the trustee sale takes place) pursuant

to A.R.S. § 33-812, requesting that the trustee release any excess proceeds gained to satisfy the owner's delinquency with the association. The letter should include:

1. The amount of the delinquency and proof of the delinquency (a customer ledger will usually suffice as proof of the delinquency);
2. A statement as to the association's lien priority; and
3. A statement showing the association is entitled to excess proceeds (reference to the appropriate statute or Declaration provision regarding the association's assessment lien should suffice).

If the trustee, after receipt of the above notice letter, fails to deliver any excess proceeds to the association, the association's right to collect attorney's fees should it have to institute legal action to collect the excess proceeds will be saved. It is because of this that the above notice letter is so important and should be sent upon receiving a Notice of Trustee Sale.

In the event that there are no excess proceeds after the trustee sale and the property has reverted to a third party, then the association's lien will be extinguished. Consequently, the association would not be entitled to collect any assessments or attorney fees incurred prior to the date of the trustee sale from the new owner. Nonetheless, the association may still pursue a money judgment in the hope that the homeowner will obtain future assets that the association could garnish in order to recover what it is owed.

ii. Bankruptcy

Another unexpected collection issue occurs when an owner declares bankruptcy and ceases paying their assessments. Upon the receipt of a Notice of Petition for Bankruptcy (typically a Chapter 7 filing or a Chapter 13 filing), an association should prepare a statement of the declaring owner's account. Once the statement has been prepared, it should be sent to the association's attorney.

At this point, the association's attorney will intervene on behalf of the Association by filing a Notice of Appearance with the Bankruptcy Court informing the Court that the attorney is representing the association. The attorney may also file a Proof of Claim with the Bankruptcy Court that substantiates the debt owed by the owner to the association.

If the owner files a Chapter 7 bankruptcy and decides to keep their home, the association may petition to lift the bankruptcy-initiated "stay" of collections enforcement and foreclose on the property should the owner not pay the delinquent assessments.

If the owner files a Chapter 13 bankruptcy, the association may petition the Court to include the association's delinquency in the payment plan created by the Bankruptcy Court.

Bankruptcy is a complicated matter. Because of this, it is important that the association rely on the advice of its attorney to aid in navigating the process.

EXHIBIT A
SAMPLE DECLARATION
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
GREENACRE COMMUNITY ASSOCIATION

Declarant, GREENACRE PARTNERS, an Arizona limited liability company, is the owner and developer of GREENACRE COMMUNITY ASSOCIATION, a planned residential development in Maricopa County, Arizona. The development will be comprised of single-family residential lots platted and recorded from time to time in the Office of the County Recorder of Maricopa County, Arizona.

It is desirable to provide uniform restrictions for all single-family residential subdivision lots of the development for the purpose of establishing:

- a. A plan for the individual ownership of real property estates consisting of a lot and the improvements contained thereon;
- b. A uniform plan for the use of the Property in all single family residential subdivision lots of the development, and the establishment of regulations to maintain quality neighborhoods;
- c. The formation of a nonprofit corporation with membership of the Lot Owners with specific powers of regulation and control affecting single-family residential lots located within the development;
- d. The ownership and management of common elements by the nonprofit corporation, GREENACRE COMMUNITY ASSOCIATION;

In order to establish the nature of the use and enjoyment thereof, GREENACRE COMMUNITY ASSOCIATION, hereby declares said premises subject to the following expressed covenants, stipulations, and restrictions as to the use and enjoyment thereof, all of which are to be construed to be restrictive covenants, running with the title to said premises and with each and every part and parcel thereof to-wit:

ARTICLE 1
DEFINITIONS

1.1 “**Annual Assessment**” means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.2 “**Architectural Committee**” means the architectural committee of the Association to be created pursuant to Section 5.11 of this Declaration and the Bylaws.

1.3 “**Architectural Committee Rules**” means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.11 of this Declaration and the Bylaws, as they may from time to time be amended or supplemented.

1.4 “**Areas of Association Responsibility**” means (i) all Common Area, including the Improvements and landscaping situated thereon, and (ii) any portion of the Improvements situated on a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association and (iii) all real property, and the improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona, Maricopa County or the City of Scottsdale has not accepted responsibility for the maintenance.

1.5 “**Articles**” means the Articles of Incorporation of the Association, as they may from time to time be amended.

1.6 “**Assessment**” means an Annual Assessment, Special Assessment or Lot Specific Assessment.

1.7 “**Association**” means Greenacre Community Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.

1.8 “**Association Lien**” means the lien created and imposed by Section 6.1 of this Declaration.

1.9 “**Association Property**” means any personal property owned or leased by the Association.

1.10 “**Association Rules**” means the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

1.11 “**Board**” means the Board of Directors of the Association.

1.12 “**Bylaws**” means the Bylaws of the Association, as amended from time to time.

1.13 “**Common Area**” means all real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest. "Common Area" shall not include any real property, improvements or personal property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriff's sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action.

1.14 “**Common Expenses**” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

- 1.15 “**Declarant**” means Saratoga Homes, LTD, an Arizona corporation, its successors and assigns.
- 1.16 “**Declaration**” means this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.
- 1.17 “**Eligible Mortgage Holder, Insurer or Governmental Guarantor**” means a First Mortgagee, insurer or governmental guarantor who has requested notice of certain matters from the Association in accordance with Article 9 of this Declaration.
- 1.18 “**Exterior Alteration**” means any construction, installation, addition alteration, repair, change, change of color, landscaping, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon.
- 1.19 “**First Mortgage**” means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.
- 1.20 “**First Mortgagee**” means the holder or beneficiary of any First Mortgage.
- 1.21 “**Improvement**” means any building, fence, wall or other structure or any swimming pool, tennis court, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.
- 1.22 “**Lessee**” means a third-party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein a "third party" is any Person who is not an Owner.
- 1.23 “**Lot**” means each parcel of real property designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.
- 1.24 “**Maintenance Standard**” means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.
- 1.25 “**Member**” means any Person who is a Member of the Association.
- 1.26 “**Owner**” means the record owner, whether one or more Persons, of legal, beneficial or equitable title to the fee simple interest of a Lot. "Owner" shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the "Owner." "Owner" shall also include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. Section 33-741, *et seq.* "Owner" shall not include purchasers under purchase contracts and receipts, escrow instructions or similar executory contracts that are intended to control the rights and

obligations of the parties to such executory contracts pending the closing of a sale or purchase transaction.

1.27 **“Person”** means a natural person, corporation, business trust, estate, trust, living trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.28 **“Plat”** means the plat recorded in Book 369, page 28, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

1.29 **“Property” or “Project”** means the real property described on the Plat.

1.30 **“Project or Governing Documents”** means this Declaration, the Articles, the Bylaws, the Association Rules, and the Architectural Committee Rules.

1.31 **“Purchaser”** means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

1.32 **“Recording”** means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and **“Recorded”** means having been so placed of public record.

1.33 **“Resident”** means each individual occupying or residing in any Residential Unit.

1.34 **“Residential Unit”** means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.35 **“Single Family”** means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.36 **“Special Assessment”** means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

1.37 **“Visible From Neighboring Property”** means, with respect to any given object, that the object is or would be visible to a person six feet tall, standing at ground level on any part of the neighboring property.

ARTICLE 2 PLAN OF DEVELOPMENT

2.1 **Property Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development and use of the Project and in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest

in any of the Property subject to this Declaration, each Person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

ARTICLE 3 USE RESTRICTIONS

3.1 **Architectural Control.** In addition to any requirements imposed by Maricopa County or the City of Scottsdale:

3.1.1 All Improvements constructed on Lots shall be of new construction, and no building or other structures shall be moved from other locations onto any Lot.

3.1.2 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.3 No Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

3.1.4 No Exterior Alteration shall be made or done without the prior written approval of the Architectural Committee.

3.1.5 Any Owner desiring approval of the Architectural Committee for any Exterior Alteration shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Exterior Alteration that the Owner desires to make or perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove, in writing, an application for approval within forty-five (45) days after receipt of the application and any supporting information, plans and specifications requested by the Architectural Committee (the application shall not be deemed received until all supporting information, plans and specifications have been received), approval will not be required and this

Section will be deemed to have been complied with by the Owner who requested approval of such plans.

3.1.6 The approval by the Architectural Committee of any Exterior Alteration pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Exterior Alteration subsequently submitted for approval.

3.1.7 Upon receipt of approval from the Architectural Committee for any Exterior Alteration, the Owner who requested such approval shall proceed to perform, construct or make the Exterior Alteration approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee, including plans deemed approved as a result of the Architectural Committee's failure to act, must be submitted to and approved in writing by the Architectural Committee. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

3.1.9 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any Exterior Alteration pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.10 The provisions of the Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

3.1.11 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.12 The Architectural Committee Rules may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation.

3.1.13 The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Committee, pay to the Association a deposit in an amount determined by the Architectural Committee to be used by the Association to remove any construction debris from a Lot that is allowed to accumulate in violation of Section 3.3 of this Declaration or to repair any damage to the Common Area. The Architectural Committee shall also have the right to determine which portion, if any, of the deposit will be nonrefundable. Any portion of the deposit that is refundable shall be refunded to the Owner by the Association upon the completion of construction of the Improvements, the removal of all

construction debris from the Lot, and the repair of any damage to the Common Area occasioned by such construction.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, incomplete building, tent, shack, garage, or temporary buildings or structures of any kind, shall be used at any time for a residence. Temporary buildings, trailers or other structures used during the construction of Exterior Alterations approved by the Architectural Committee, interior remodeling, re-roofing or other work shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of one month without the prior written approval of the Architectural Committee.

3.3 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants.

3.4 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.5 Repair of Building. No Residential Unit, building or structure on any Lot or other property shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. In the event that any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt or shall be demolished.

3.6 Mineral Exploration. No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

3.7 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

3.8 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street,

pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

3.9 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances of the City of Scottsdale, and (iii) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. 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. The leasing of a Residential Unit by the Owner thereof for periods of not less than thirty (30) consecutive days and with the consent of the Association shall not be considered a trade or business within the meaning of this Section.

3.10 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.11 Leasing of Lots. No Owner may lease or sublease his or her Lot to Lessee for any period whatsoever or modify, alter or extend the term of an existing or previously approved lease or sublease without the prior written consent of the Association. The requirements and guidelines for the approval of leases and subleases shall be set by the Board of Directors of the Association. All Owners of lots that are leased or subleased, including those that may be leased without the consent of the Association, hereby grant to the Association a power of attorney to enforce against the Lessee the provisions of the Project Documents and to enforce against the Lessee those provisions of such leases or subleases that relate to violations by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors of the Project Documents or the lease agreement (except those provisions that relate to the payment of rent.) The power of attorney granted hereby authorizes the Association to take any lawful action to enforce the Project Documents and the lease agreement, including, without limitation, bringing actions at law or in equity and to recover, from the Owner and/or the Lessee against whom any enforcement effort or action is brought, the costs

of enforcing the terms of the Project Documents and the lease or sublease with respect to violations thereof by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors. The "costs of enforcing" shall include properly levied fines and penalties, penalty late fees and interest, costs of collection (including legal fees incurred in matters where court action is not taken or where an action is taken but is resolved short of court action), attorneys' fees, court costs, property damage, etc.

3.12 Other Uses, Activities and Facilities. The Association Rules may contain restrictions, limitations, rules and regulations governing any additional uses, activities, Improvements or facilities on a Lot or within the Project that are (i) Visible From Neighboring Property, (ii) visible from any Common Area or street, or (iii) that are deemed by the Association to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents. The following are some, but not all of the uses, activities, Improvements or facilities that may be governed by the Association Rules: animals; construction and maintenance activity; antennas; trash containers and collection; clothes drying facilities; signs; flags and flagpoles; basketball, tetherball and volleyball standards; motor vehicles; parking; trucks, trailers, campers and boats; towing of vehicles; garages and driveways; rooftop air conditioners; solar energy devices; sport courts; lighting; use of Common Area; amplifiers; window treatments; garage sales; and noise. The foregoing list is not intended to be exhaustive. The Association Rules are intended to be responsive to the changing needs of the Project and the desires of the Association's Members.

3.13 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article 3, the Association Rules or the Architectural Rules if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other Owners or Lessees or the Project and is consistent with the high quality of life intended for residents of the Project.

3.14 Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

ARTICLE 4 EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Every Owner or Lessee, and any person residing with such Owner or Lessee, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.12 of this Declaration.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners or Lessees.

(iii) The right of the Association to suspend the right of an Owner or Lessee and such Owner's or Lessee's family, tenants and guests to use the Common Area if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Lessee has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right, without the specific written consent of the Association, to use the Common Area until the termination or expiration of such lease.

4.2 **Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including , but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this Easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, waterlines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed or as approved by the Board.

4.3 **Easement in Favor of Association.** The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.3.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.3.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

4.3.3 For correction of emergency conditions in one or more Lots;

4.3.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

4.3.5 For inspection of the Lots (i) in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot, or (ii) to satisfy the disclosure requirements, if any, of applicable law.

ARTICLE 5
THE ASSOCIATION; ORGANIZATION; MEMBERSHIP
AND VOTING RIGHTS

5.1 **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

5.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws.

5.3 **The Association Rules.** The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Areas of Association Responsibility, (iii) the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas, or (iv) any other subject within the jurisdiction of the Association. Except as limited herein, the Association Rules may be adopted, amended and repealed by a majority of the members of the Board. In the event that the Association Rules establish restrictions or limitations on the use and maintenance of Lots as contemplated by Section 3.14, such rules and regulations may be adopted, amended or repealed by three-fourths (3/4ths) of the members of the Board. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.4 **Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 **Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

5.6 **Identity of Members.** Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

5.7 **Classes of Members.** The Association shall have Members who shall be Owners of Lots. A Member shall be entitled to one (1) vote for each Lot owned.

5.8 **Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

5.9 **Voting By Mail.** Unless the project documents require otherwise, when directors are to be elected or any other matter is submitted to a vote of the members, such vote may be conducted by mail as provided in the Bylaws or as determined by the Board.

5.10 **Transfer of Membership.** The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

5.11 **Architectural Committee.** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The members of the Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot or voluntarily surrenders its right to appoint and remove the members of the Architectural Committee, the members of the Architectural Committee shall be appointed by the Board. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions (the "Architectural Committee Rules"). The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this

Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any request for approval submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

5.12 Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent of affirmative vote of Owners representing at least sixty-seven percent (67%) of the votes entitled to be cast by members of the Association.

5.13 Suspension of Voting Rights. If an Owner otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Project Documents, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

ARTICLE 6 COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIEN THEREFOR

6.1 Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties. The Declarant, for each Lot owned by it, and each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in enforcing the Project Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine or penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and

obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot. The Board shall not levy an Annual Assessment that is more than twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of a majority of the Members of the Association.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may, subject to the twenty percent (20%) limit set forth in Section 6.2.1 above, increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the Association's fiscal year.

6.4 **Rate of Assessment.** The amount of the Annual Assessment for each Lot other than Lots owned by the Declarant shall be the amount obtained by dividing the anticipated Common Expenses of the Association for the Assessment Period for which the Annual assessment is being levied by the total number of Lots.

6.5 **Special Assessments.** The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of sixty-seven percent (67%) of the votes entitled to be cast by Members who are voting in person, by mail or by proxy at a meeting duly called for such purpose.

6.6 **Lot Specific Assessments.** Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Governing Documents that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

6.7 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or other Area of Association Responsibility, or that the Association is not enforcing the Project Documents.

6.8 Purposes for which Association's Funds may be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project and the Owners. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and residents, maintenance of landscaping on Common Areas and public right-of-ways and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers and directors of the Association and any other purposes permitted by applicable statutes or the Project Documents.

6.9 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.10 Transfer, Refinance and Disclosure Fees. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his or her Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

6.11 Fines and Penalties. In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.

6.12 Notice of Violation, Appeal and Payment of Fines and Penalties.

6.12.1 The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents

by the Owner, his family or guests. A Notice of Violation shall contain (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner or Lessee for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

6.12.2 A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Residential Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

6.12.3 The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

6.12.4 Any fines or penalty levied pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

6.13 **Costs of Enforcement.** Any costs incurred by the Association in enforcing this Declaration or the other Project Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, reasonable attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to Section 6.1.

6.14 **Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association.**

6.14.1 Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within fifteen (15) days after the Assessment, fee, charge, fine or penalty, or the installment thereof, first became due shall bear interest from the due date at the rate of interest established from time to time by the Board. In addition, the Board of Directors may establish a late fee and interest to be charged to any Owner who has not paid any Assessment, fee, charge, fine or penalty, or any installment thereof, within fifteen (15) days after such payment was due.

6.14.2 As set forth in Section 6.1, the Association shall have a lien on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of

collecting and reasonable attorneys' fees levied against or charged to a Lot or the Owner thereof. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including late charges, interest, costs of collection, lien recording fees, lien release fees, reasonable attorneys' fees and the costs of preparing the Notice of Lien.

6.14.3 Subject to applicable statutes, the Lien created by Section 6.1 shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body.

6.14.4 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

6.14.5 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right, if any, to the use of the recreational facilities that are part of the Common Area.

6.14.6 The Board may, without notice or demand, enforce the lien established pursuant to Section 6.1.

6.14.7 The Board may, without notice or demand, institute an action at law for a money judgment to recover the amount of the delinquent Assessment together with all fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees.

6.15 **Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

ARTICLE 7 MAINTENANCE

7.1 Areas of Association Responsibility.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the (i) Common Area, and all Improvements located thereon, and (ii) all Association Property.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.2 **Lots.** Each Owner shall be responsible for maintaining his or her Lot. Each Owner shall be responsible for maintaining, repairing or replacing and all buildings, Residential Units, landscaping or other Improvements situated on his or her Lot. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot that are the responsibility of the Owner thereof shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage area may be maintained so as to be Visible From Neighboring Property or streets.

7.3 **Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, Lessee, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Association Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Association Lien.

7.4 **Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Association Lien.

7.5 **Maintenance Easement.** The rights and duties of Owners of Lots with respect to common walls shall be as follows:

7.5.1 Each Owner and Lessee shall permit the Owner of adjoining Lots, or their representatives, contractors, or employees, when reasonably required and in a reasonable manner, to enter his or her Lot for the purpose of repairing or maintaining that portion of such Owner's Residential Unit that is accessible only by entering upon such adjoining Lot.

ARTICLE 8 INSURANCE

8.1 **Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Area of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.2 Property insurance on all Area of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Area of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Directors and officers liability insurance in an amount to be determined by the Board;

8.1.5 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

8.1.6 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A “severability of interest” endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as the Association; and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

8.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

8.5 Repair and Replacement of Damaged or Destroyed Common Area. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the

Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 9 RIGHTS OF FIRST MORTGAGEES

9.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer Or Guarantor with timely written notice of the following:

9.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor;

9.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor or any other default in the performance by the Owner of any obligation under the Project Documents, which delinquency remains uncured for the period of sixty (60) days;

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

9.1.4 Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 9.2 or 9.3 of this Declaration.

9.2 Approval Required to Terminate Project. Any termination of the legal status of the Project for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

9.3 Approval Required for Amendment to Declaration, Articles or Bylaws.

9.3.1 The approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- Areas;
- (i) Voting rights;
 - (ii) Assessments, assessment liens or subordination of assessment liens;
 - (iii) Reserves for maintenance, repair and replacement of Common
- use;
- (iv) Insurance or fidelity bonds;
 - (v) Responsibility for maintenance and repairs;
 - (vi) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
 - (vii) Boundaries of any Lot;
 - (viii) Reallocation of interests in the Common Areas or the rights to their
 - (ix) Convertibility of Lots into Common Areas or of Common Areas into Lots;
 - (x) Leasing of Lots;
 - (xi) Imposition of any restrictions on an Owner's right to sell or transfer his Lot;
 - (xii) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
 - (xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
 - (xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;
 - (xv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors.

9.3.2 Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

9.4 First Mortgagee's Right of Inspection of Records. Any First Mortgagee will, upon written request, be entitled to (i) inspect the books and records of the Association during normal business hours, (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.5 Limitation on Partition and Subdivision. No Lot shall be partitioned or subdivided without the prior written approval of the holder of any first Mortgage on such Lot.

9.6 Prior Written Approval of First Mortgagees. Unless at least two-thirds (2/3) of the Eligible Mortgage Holders (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

9.6.1 Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection;

9.6.2 Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

9.6.3 Change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Area;

9.6.4 Fail to maintain fire and extended coverage on insurance common area on current replacement cost basis in an amount of at least 100 percent of insurable value;

9.6.5 Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

9.7 No Priority over First Mortgagees. No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

9.8 Failure of First Mortgagees to Respond. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

9.9 Conflicting Provisions. In the event of any conflict or inconsistency between the provision of this Article and any other provision of the Project Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provisions of the Project Documents with respect to the number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Section 9.2, 9.3 and 9.6 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors shall prevail; provided, however, that so long as there is a Class B membership in the Association, the Declarant, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles of the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant.

ARTICLE 10 GENERAL PROVISIONS

10.1 Enforcement. The Association or any Owner shall have the right to enforce Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the non-prevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

10.2 Method of Termination. This Declaration shall continue in full force and effect unless terminated by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes of in the Association. If the necessary votes and consents 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 or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

10.3 Amendments.

10.3.1 This Declaration may be amended at any time by the written approval or the affirmative vote of Owners of not less than two-thirds (2/3rds) of the Lots.

10.3.2 Notwithstanding the requirements of Section 9.3.1, the Board may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant or the Board.

10.3.3 Any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the county Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

10.4 **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

10.5 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

10.6 **Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

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

10.8 **Laws, Ordinances and Regulations.**

10.8.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

10.8.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

10.9 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, successors and assignees.

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

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

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

10.13 Condemnations of Common Area. If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining common Area to the extent land is available for such construction,

unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds may either be disbursed by the Association to the Owners with an equal share being disbursed to each Lot or retain such funds as additional operating or capital reserves.

IN WITNESS, the Declarant/Developer has executed this Declaration as of the _____ day of _____, 2024.

**GREENACRE PARTNERS, L.L.C.,
an Arizona Limited Liability Company**

By: _____

Its: _____

EXHIBIT B

SAMPLE ARTICLES OF INCORPORATION
ARTICLES OF INCORPORATION
OF
GREENACRE COMMUNITY ASSOCIATION

Pursuant to Title 10, Chapters 24-40 of the Arizona Revised Statutes, the undersigned hereby adopt the following Articles of Incorporation.

ARTICLE I - NAME

The name of the corporation shall be **GREENACRE COMMUNITY ASSOCIATION** (hereinafter referred to as the "Association").

ARTICLE II - NONPROFIT CORPORATION

The Association is organized as a nonprofit Association pursuant to Title 10, Chapters 24-40, of the Arizona Revised Statutes. The Association shall have no stock, and no dividends or pecuniary profits shall be declared or paid to its members, directors or officers. All income and earnings of the Association shall be used to further the purposes and objectives of the Association. Nothing contained herein, however, shall prohibit payments by the Association to members, directors or officers as reasonable compensation or reimbursement for services rendered to the Association.

ARTICLE III - PRINCIPAL PLACE OF BUSINESS

The Association's principal place of business is located at 4523 E. Broadway Road, Phoenix, AZ 85040, but it may establish other places of business and other offices at such other places as the Board of Directors may from time to time determine.

ARTICLE IV - PURPOSE, POWERS AND DUTIES

The primary business and purpose of the Association is to serve as an "association" as that term is defined and used in the Planned Communities Act (Title 33, Chapter 16 of the Arizona Revised Statutes, A.R.S. § 33-1801 *et seq.* hereafter, the Act) and as the "Association" as that term is defined and used in the Declaration of Covenants, Conditions, Restrictions and Easements for Greenacre Community Association recorded at 2024-XXXXXXXXXX, records of Maricopa County, Arizona (the "Declaration"). In furtherance of said purpose, the Association shall have the powers and shall perform the duties and obligations granted to and imposed upon it by the Declaration, the Bylaws and the Act. In addition, subject to the provisions of the Declaration, the Association shall have and may exercise any and all of the powers, rights and privileges now or hereafter granted to nonprofit Associations by Title 10, Chapters 24-40, of the Arizona Revised Statutes, as the same may be amended or revised.

ARTICLE V - MEMBERSHIP AND VOTING RIGHTS

The Corporation shall have members. The membership of the Association shall consist exclusively of all of the owners of Lots. The property, voting and other rights and privileges of members, and their liability for assessments and other charges, shall be as set forth in the Declaration, the Bylaws and the Act.

ARTICLE VI - BOARD OF DIRECTORS

The control and management of the affairs of the Association shall be vested in a Board of Directors, members of which shall be considered as the Board of Directors under the Declaration, consisting of no less than three (3) Directors and no more than five (5) Directors. The names and addresses of the initial Members are as follows:

The Bylaws of the Association shall prescribe the terms of office and manner of election of directors, and the number of directors, which shall be no less than the number of Directors required by the Declaration.

ARTICLE VII - OFFICERS

The affairs of the Association shall be administered by officers elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members of the Association, or at other meeting called for such purpose. The officers shall consist of a President, Vice-President, Secretary, Treasurer and other officers as required, each of whom shall serve at the pleasure of the Board of Directors.

ARTICLE VIII - INCORPORATORS

The name and address of the incorporator is:

ARTICLE IX - NO PERSONAL LIABILITY

The directors, officers and members of the Association shall not be individually liable for the Association's debts or other liabilities. The private property of such individuals shall be exempt from any corporate debts or liabilities. A director of the Association shall not be personally liable to the Association or its members, if any, for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Association or its members, if any, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under the Arizona nonprofit corporation act as it may be amended from time to time, or (iv) for any transaction from which the director derived any improper personal benefit. If the Arizona Revised Statutes are hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Association shall be eliminated or limited to the fullest extent permitted by the Arizona Revised Statutes, as so amended. Any repeal or modification of this Article shall not adversely affect any right or protection of a director of the Association existing at the time of such repeal or modification.

ARTICLE X - INDEMNIFICATION

The Association shall indemnify any past or present Director, officer, committee member, employee or agent against expenses, including without limitation, attorneys' fees, judgments, fines and amounts incurred while acting within the scope of his or her authority as a Director, officer, committee member, employee or agent of the Association; provided that the board of Directors shall determine in good faith that such did not act, fail to act, or refuse to act, willfully or with gross negligence or with fraudulent or criminal intent with regard to the matters involved in this action.

ARTICLE XI - DISSOLUTION

No person shall possess any property right in or to the property or assets of the Association. Upon termination, the Association may be dissolved as provided in the Bylaws. Upon dissolution, all assets remaining after payment of any outstanding liabilities shall be distributed as provided in the Act.

ARTICLE XII - FISCAL YEAR END

The Association shall have its fiscal year end on the last day of December.

ARTICLE XIII - AMENDMENTS

These Articles of Incorporation may be amended by obtaining the approval of the members representing at least 51% of the total votes of the Association.

ARTICLE XIV - STATUTORY AGENT

This Association hereby appoints Augustus H. Shaw IV, as its statutory agent. All notices and processes, including service of summons, may be served upon said statutory agent and, when so served, shall be lawful, personal service upon this Association. The Board of Directors may, at any time, appoint another agent for such purpose, and filing of such other appointment shall revoke this or any other previous appointment of such agent.

IN WITNESS, we, have executed these Articles of Incorporation this ____ day of _____, 2006.

Incorporator

CONSENT OF STATUTORY AGENT

The undersigned hereby certifies that consent is given to act as statutory agent for this Association.

EXHIBIT C
SAMPLE BYLAWS

BYLAWS
OF
GREENACRE COMMUNITY ASSOCIATION

ADOPTED _____, 2024

WHEREAS, Greenacre Community Association (the "Association") was incorporated as a nonprofit corporation in the State of Arizona on or about _____, 2024;

WHEREAS, Arizona Revised Statutes § 10-3101, *et seq.* vests the authority to adopt initial bylaws in the Board of Directors; and

WHEREAS, at a meeting of the Board of Directors duly called and held on _____, 2024, a majority of the Directors present voted in favor of adopting these Bylaws as set forth herein.

NOW THEREFORE, the Bylaws of the Association are hereby adopted in their entirety as follows:

ARTICLE I
NAME AND LOCATION OF ASSOCIATION

Section 1.1 Names. The name of the Association is GREENACRE COMMUNITY ASSOCIATION.

Section 1.2 Principal Office. The principal office of the Association in the State of Arizona is currently located at 565 W. Chandler Blvd, Ste 210, Chandler AZ, 85225. The Association may change the location of its principal office as the Board of Directors may determine or as the affairs of the Association may require.

ARTICLE II
REFERENCE TO DECLARATION

Section 2.1 References to Declaration. Reference is made to the certain Declaration of Covenants, Conditions, Restrictions and Easements for Greenacre Community Association recorded on _____, 2024 as instrument No. _____ in the Official Records of Maricopa County, Arizona, (the "Declaration"). Unless otherwise defined in these Bylaws, all capitalized words and phrases shall have the meanings set forth in the Declaration.

ARTICLE III PURPOSE

Section 3.1 Purposes. The primary purpose of the Association is to serve as the governing body for the Owners of Lots and to fulfill such obligations and exercise such rights as are given by statute and the Association's Governing Documents, as they may hereafter be amended.

ARTICLE IV MEMBERSHIP

Section 4.1 Qualifications. Membership in the Association shall be limited to Owners of Lots.

Section 4.2 Voting Rights. Subject to the provisions of Section 4.3, the Owner of a Lot shall be entitled to one (1) vote on each matter submitted to a vote of the Members. The vote attributable to each Lot must be cast as a whole; fractional votes shall not be allowed. In the event that a Lot is owned by two (2) or more Persons, the joint or common owners shall designate to the Association in writing one of their number who shall have the right to cast votes with respect to such Lot. If multiple Persons own a Lot and are unable to agree upon how their vote shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed that he was acting with the authority and consent of all other owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event that more than one (1) vote is cast with respect to particular Lot, all such votes shall be deemed void. In the event that an Owner owns more than one (1) Lot, such Member shall be entitled, subject to the provisions of Section 4.3, to one (1) vote for each Lot owned.

Section 4.3 Good Standing. If a Member otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Association's Governing Documents, the Bylaws or the Rules and Regulations of the Association, the Board of Directors may, in its sole discretion, certify that such Member is not in good standing and such Member's right to vote shall be suspended until the delinquency, breach, or violation is paid in full, cured, or corrected.

Section 4.4 Transfer of Membership. Membership in the Association is inextricably and irrevocably connected with ownership of a Lot and may not be transferred independently of such ownership.

ARTICLE V MEETINGS OF MEMBERS

Section 5.1 Annual Meeting. An annual meeting of the Members of the Association shall be held at least once every twelve (12) months at a date and time determined by the Board of Directors for the purpose of electing or announcing the results of the election of Directors and

transacting such other business as may properly come before the meeting. The annual meeting shall be conducted pursuant to the provisions of Arizona Revised Statutes (A.R.S.) §33-1812.

Section 5.2 Special Meetings. Special meetings of the Members may be called by the President, the Board of Directors, or by the written request signed by Members having at least one-fourth (1/4th) of the total authorized votes in the Association. Any special meeting of the Members shall be conducted pursuant to the provisions of Arizona Revised Statutes (A.R.S.) §33-1812.

Section 5.3 Record Date. For any meeting of the Members, the Board of Directors may fix a date not more than fifty (50) nor less than ten (10) days before the date of such meeting, as a record date for the determination of the Members of record entitled to vote at such meeting. If a record date has not been fixed in advance of a meeting as provided herein, the time of commencement of the meeting shall be deemed the record date.

Section 5.4 Place of Meeting. Meetings of the Members shall be held in Arizona, at a suitable place designated by the Board of Directors.

Section 5.5 Notice of Meetings. Written notice stating the place, day and hour of the annual meeting of Members or a special meeting of Members shall be hand-delivered or delivered by first-class U.S. Mail to all Members, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the Secretary. The notice of the meeting shall be deemed to be delivered when left with a person of suitable age and discretion at the address that appears on the records of the Association or when deposited, postage prepaid, in the United States Mail and addressed to the Member at the address that appears on the records of the Association. In the case of special meetings, the purpose for which the special meeting is called shall be stated in the notice and no business shall be transacted at such special meeting except as stated in the notice.

Section 5.6 Quorum. Those Owners present in person or by absentee ballot pursuant to Arizona Revised Statutes (A.R.S.) §33-1812 at a properly noticed meeting of the Association holding not less than ten percent (10%) of the total votes of the Association shall constitute a quorum at all meetings of the Association.

Section 5.7 Manner of Acting. A majority of the votes entitled to be cast on a matter to be voted upon by the Members present at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by statute, the Declaration or these Bylaws.

Section 5.8 Minutes. Minutes shall be taken at all meeting of Members. Copies of the minutes shall be available for inspection at the office of the Association by Members and Directors at all reasonable times.

Section 5.9 Non-cumulative Voting. All voting shall be done on a non-cumulative basis.

ARTICLE VI

BOARD OF DIRECTORS

Section 6.1 Powers and Duties. The affairs of the Association shall be managed by its Board of Directors. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things that are not required by the Declaration, statute or these Bylaws to be exercised or done by the Members. In addition to the powers and duties granted and imposed by statute and the Governing Documents, the powers and duties of the Board of Directors shall include, but are not limited to, the following:

- (A) Open bank accounts on behalf of the Association and designate the signatories thereon;
- (B) To accept such properties, improvements, rights, and interests as may be conveyed, leased, assigned, or transferred to the Association;
- (C) To own, maintain and otherwise manage all of the Common Area and all facilities, improvements, and landscaping thereon; to pay all taxes and assessments, if any, which may properly be levied against the Common Area; to repair, rehabilitate, and restore the Common Area; and to insure the Common Area against such risks as the Board of Directors shall determine in accordance with the Governing Documents;
- (D) To own, maintain, manage, lease, sell or otherwise dispose of any personal and real property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriff's sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action and all facilities, structures, buildings, fixtures, landscaping and other improvements located thereon; to pay all taxes and assessments, if any, which may properly be levied against such property; to repair, rehabilitate, and restore such property; and to insure such property against such risks as the Board of Directors shall determine;
- (E) To purchase, lease, acquire, own, maintain, manage, sell or otherwise dispose of Association Property; to pay all taxes and assessments, if any, which may properly be levied against Association Property; and to insure Association Property against such risks as the Board of Directors shall determine;
- (F) To manage, maintain, repair and replace the lawn and Association-planted trees located on those portions of Lots lying between the front of the Residential Unit and the adjacent street;
- (G) To do all things necessary to carry out and enforce the terms and provisions of the Governing Documents and to do all things and acts, including the payment of all maintenance, operating and other costs, which in the sole discretion of its Board of Directors shall be deemed to be in the best interest of the Members of the Association or for the peace, comfort, safety, or general welfare of the Members of the Association, all in accordance with the Governing Documents;

- (H) To enter into agreements with third parties authorizing such parties to carry on any activities which might legally be carried on by the Association and delegated by the Association to third parties;
- (I) To engage the services of a manager or managing agent who shall manage and operate the Property for all of the Members upon such terms, for such compensation and with such authority as the Board of Directors may approve;
- (J) To appoint committees of the Board of Directors and to delegate to such committees the authority to carry out certain duties of the Board of Directors, to the extent permitted by statute and the Governing Documents law;
- (K) To estimate the amount of the annual budget; to provide the manner and time of assessing and collecting from the owners the Assessments provided for in the Governing Documents;
- (L) To promulgate such rules and regulations pertaining to the use and occupancy of the Property and the personal conduct of the Members and their family members, guests, lessees and invitees thereon as may be deemed proper and which are consistent with the Declaration;
- (M) To enforce, by suit or otherwise, the terms and provisions of the Governing Documents;
- (N) To establish and maintain working capital, reserve and contingency accounts in an amount to be determined by the Board of Directors;
- (O) To lend or invest it's working capital and reserves with or without security;
- (P) To fix and collect fees, rates, rentals and other charges for the use of Common Areas, for the use of other property owned by the Association, and for services rendered by the Association;
- (Q) To obtain, for the benefit of all of the Property, all water, sewerage, gas and electric services and refuse collections, and to grant easements when necessary for utilities, sewer facilities and CATV over the Property;
- (R) To enter into agreements with the owners of property not within the Project whereby such owners shall contribute to the payment of construction, maintenance and reconstruction expenses, taxes, insurance and other charges attributable to portions of the Common Areas which may directly or indirectly benefit such Parcels;
- (S) Levy and collect Assessments as provided in the Declaration;

- (T) To establish, levy, collect and enforce by any lawful means a schedule of fines, penalties, transfer fees, refinance fees, administrative charges, late charges, interest, and costs of collection;
- (U) To do all other acts and things required by applicable law or statute or authorized in the Declaration but not explicitly set out above;
- (V) In general to do and perform such acts and things and to transact such business in connection with the foregoing objects and purposes as may be necessary or appropriate.

Section 6.2 Number and Qualifications of Directors. Prior to the Transition Date, the number of Directors of the Association shall consist of three (3) Directors, all of whom shall be appointed and serve at the pleasure of the Developer. Subsequent to the Transition Date, the number of Directors of the Association shall be not less than three (3) nor more than five (5) as determined by the Board of Directors. If the number of Directors is reduced, all Directors whose terms have not yet expired and who are in good standing shall be allowed to serve the balance of their terms. All Directors must be Members in good standing of the Association in accordance with the provisions of Section 4.3. If an Owner is a corporation, partnership or trust, an officer, partner, trustee or beneficiary of such owner may serve as a Director. If a Director shall fail to meet the qualifications of good standing or Membership at any time during his term, he or she will thereupon cease to be a Director and his or her place on the Board shall be deemed vacant.

Section 6.3 Terms. Directors shall be elected to and shall serve staggered two-year terms as follows: One-half of the number of Directors (or as close to one-half as is possible if there are an uneven number of Directors) shall be elected at each annual meeting, or each year if voting is conducted by mail, for two-year terms. All elections and appointments of Directors under these Bylaws shall be made in a manner to preserve the staggering of terms contemplated hereby.

Section 6.4 Regular Meetings. A regular annual meeting of the Board of Directors shall be held without other notice than this bylaw, immediately after, and at the same place as, the annual meeting of Members. The Board of Directors may provide by resolution the time and place for additional regular meetings of the Board.

Section 6.5 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any convenient place and time as the place and time for holding any special meeting of the Board of Directors called by them.

Section 6.6 Teleconference Meetings. Meetings of the Board of Directors may be held by conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation at such meeting shall constitute presence in person at the meeting.

Section 6.7 Notice. Notice of any special meeting of the Board of Directors shall be given to Directors at least three (3) days prior thereto by written notice delivered personally or sent by mail or facsimile to each Director at his address or facsimile number as shown on the records of the Association. If mailed, such notice shall be deemed to be delivered when deposited, postage prepaid, in the United States Mail in a sealed envelope so addressed. If notice is given by facsimile, such notice shall be deemed to be delivered when the notice is transmitted to a telecopier to which the sender has reason to believe the Director has access. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by statute or by these Bylaws.

Section 6.8 Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors; but if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 6.9 Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless a greater number is required by law or by the Declaration, the Articles of Incorporation or these Bylaws.

Section 6.10 Attendance at Meetings. If any Director fails to attend three (3) or more successive meetings of the Board, including special meetings of which such Director has been given notice as provided in Section 6.7, or misses four (4) or more meetings out of six (6) successive meetings of the Board, including special meetings of which such Director has been given notice as provided in Section 6.7, such Director may, upon the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present, be removed as a Director.

Section 6.11 Removal. Any single Director or all of the Directors may be removed pursuant to Arizona Revised Statutes (A.R.S.) § 33-1813. If a single Director or all of the Directors are removed pursuant to Arizona Revised Statutes (A.R.S.) § 33-1813, a successor may then and there be elected to fill the vacancy thereby created by a majority of the Members in attendance at the meeting. A Director so elected shall be elected for the full unexpired term of the Director removed. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting prior to the vote for removal.

Section 6.12 Vacancies. Except as provided in Section 6.11, any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum, at the next regular or special meeting of the Board. A Director appointed to fill a vacancy shall be appointed for the full unexpired term of his predecessor in office.

Section 6.13 Compensation. Directors shall not receive any compensation for their services as such. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

ARTICLE VII OFFICERS AND EXECUTIVE DIRECTOR OR MANAGING AGENT

Section 7.1 Officers. The officers of the Association shall be a President, one (1) or more Vice Presidents (the number thereof to be determined by the Board of Directors), a Secretary, a Treasurer and such other officers as may be elected in accordance with the provisions of this Article. The Board of Directors may elect or appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority to perform the duties prescribed, from time to time, by the Board of Directors. All officers of the Association must be Members in good standing of the Association. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 7.2 Election and Term of Office. The officers of the Association shall be elected annually by the Board of Directors at the regular annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and qualified.

Section 7.3 Removal or Disqualification. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Association would be served thereby. Any officer who ceases to be a Member of the Association or who ceases to be in good standing shall be automatically removed from office.

Section 7.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 7.5 President. The President shall be the principal executive officer of the Association and shall, in general, supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of the Members and of the Board of Directors. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board of Directors, any deeds, leases, mortgages, bonds, contracts, or other instruments that the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by the Declaration, these Bylaws or by statute to some other officer or agent of the Association.

Section 7.6 Vice President. In the absence of the President or in the event of the President's inability or refusal to act, the Vice President (or in the event there be more than one (1)

Vice President, the Vice Presidents in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be delegated or assigned by the President or by the Board of Directors.

Section 7.7 Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these Bylaws; and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be delegated or assigned by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give, at the Association's expense, a bond for the faithful discharge of his/her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 7.8 Secretary. The Secretary shall keep the minutes of the meetings of the Members and of the Board of Directors in one (1) or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the Association records; keep a register of the post-office addresses of each Member which shall be furnished to the Secretary by such Member; and, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be delegated or assigned by the President or by the Board of Directors.

Section 7.9 Assistant Treasurers and Secretaries. The Assistant Treasurers and Assistant Secretaries, in general, shall perform such duties as shall be assigned to them by the Treasurer or the Secretary or by the President or Board of Directors. If required by the Board of Directors, the Assistant Treasurers shall give, at the Association's expense, bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

Section 7.10 Compensation. No officer shall receive any compensation from the corporation for acting as such. However, any officer may be reimbursed for his or her actual expenses incurred in the performance of his or her duties. Nothing contained herein shall be construed to preclude an officer from serving the corporation in any other capacity, and receiving compensation therefor.

Section 7.11 Managing Agent. The Board of Directors may hire a Managing Agent at a compensation established by the Board of Directors. The Managing Agent may either be an employee of the Association, an independent professional management company, or an independent contractor. The Managing Agent shall perform such duties and services, as the Board of Directors shall authorize. The Board of Directors may, but is not obligated to, delegate to the Managing Agent all of the powers granted to the Board of Directors or the officers of the Association by these Bylaws; provided, however, that the following powers may not be delegated to the Managing Agent:

- (A) To adopt the annual budget, any amendment thereto or to levy Assessments;
- (B) To adopt, repeal or amend Association Rules;
- (C) To designate signatories on Association bank accounts;
- (D) To borrow or lend money on behalf of the Association;

ARTICLE VIII COMMITTEES

Section 8.1 Committees of Directors. The Board of Directors shall establish an Architectural Committee. The Board of Directors may, by resolution adopted by a majority of the Directors in office, designate and appoint other standing or *ad hoc* committees, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board of Directors in the management of the Association, except that no such committee shall have the authority of the Board of Directors, in reference to amending, altering or repealing these Bylaws; electing, appointing or removing any Member of any such committee or any Director or officer of the Association; amending the Articles of Incorporation; authorizing the sale, lease, exchange or mortgage of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of the assets of the Association; or amending, altering or repealing any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by the Declaration or by law.

ARTICLE IX NEGOTIABLE INSTRUMENTS AND SECURITIES

Section 9.1 Signatures on Checks, Etc. All checks, drafts, orders for payment of money, and negotiable instruments shall be signed by an officer or officers, employee or employees, or the Managing Agent of the Association as the Board of Directors may from time to time, by standing resolution or special order, prescribe.

Section 9.2 Signatures on Certificates and Securities. Endorsements or transfers of bonds or other securities will be signed by the president or any vice president and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of the Association unless the Board of Directors prescribes otherwise.

Section 9.3 Securities. An officer or officers of the Association will from time to time be designated by the Board of Directors to have power to control and direct the disposition of any bonds or other securities or property of the Association deposited in the custody of any trust company, bank, or custodian.

ARTICLE X

FISCAL YEAR

Section 10.1 Fiscal Year. The fiscal year of the corporation shall be from the first day of January through the last day of the succeeding December.

ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices required or permitted to be sent to the Board of Directors will be sent by first-class mail, postage prepaid, in care of the manager or managing agent, or if there is no manager or managing agent, to the office of the Association as set forth herein, or to such other address as the Board may, from time to time, designate. All notices required or permitted to be sent to any Member will be sent first-class U.S. mail, postage prepaid, to such address as the Member may have designated in writing to the Board of Directors. All notices will be deemed to have been given when mailed, except notices of change of address which will be deemed to have been given when received.

Section 11.2 Waiver. No restriction, condition, obligation, or provision contained in these Bylaws will be deemed to have been abrogated or waived by reason of any failure to enforce it, irrespective of the number of violations and failures to enforce that may occur.

Section 11.3 Invalidity. If any provision or provisions of these Bylaws is or are declared invalid, the invalidity will in no way impair or affect the validity, enforceability, or effect of the remaining provisions of these Bylaws.

Section 11.4 Captions. Captions are inserted in these bylaws for convenience and reference only, and will not be taken in any way to limit or describe the scope of these Bylaws or any provision thereof.

ARTICLE XII CONFLICTS

Section 12.1 Conflicts. In case of a conflict between these Bylaws and the Articles of Incorporation, the Articles shall control. In case of a conflict with these Bylaws and the Declaration, the Declaration shall control. If any provision of these Bylaws is less restrictive than the Declaration or the Articles of Incorporation when dealing with the same subject, the more restrictive provisions of the Declaration and Articles of Incorporation shall be applicable in the same manner as if included in the provisions of these Bylaws.

ARTICLE XIII DISSOLUTION

Section 13.1 Dissolution. If there are Members entitled to vote on dissolution, the Board of Directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of those Members, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the

purposes, of such meeting is to consider the advisability of dissolving the corporation shall be given to each Member entitled to vote at such meeting of Members. A resolution to dissolve the corporation may be adopted only by act of the Members. If there are no Members, or no Members entitled to vote on dissolution, the dissolution of the corporation may be authorized by act of the Board of Directors.

IN WITNESS, these Bylaws of the Greenacre Community Association are adopted as set forth above.

GREENACRE COMMUNITY ASSOCIATION, INC
an Arizona non-profit corporation

By: _____

Its: President