

**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SUNFLOWER**

Effective February 12, 2008

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## **TABLE OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Subject Matter</u></b>
"A"	Land Initially Submitted
"B"	Land Subject to Annexation
"C"	Legal Description of Subject Parcels
"D"	Use Restrictions
"E"	Rules of Arbitration

Note - Exhibits can be viewed or copies obtained from the Front Desk Personnel at the Village Center.

**SECOND AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**SUNFLOWER**

This Declaration amends and restates that certain Declaration of Covenants, Conditions and Restrictions dated August 21, 1998, executed by Del Webb's Sunflower of Tucson, Inc., an Arizona corporation, and recorded on September 14, 1998 at Docket 10880, Page 812 in the Office of the County Recorder for Pima County, Arizona.

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNFLOWER ("Declaration") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Sunflower Community Association, Inc., an Arizona nonprofit corporation. ("Association")

Whereas, a Declaration of Covenants, Conditions and Restrictions for Sunflower was recorded on the 14<sup>th</sup> day of September 1998 At Docket 10880, Page 812 in the Office of the County Recorder for Pima County, Arizona; and

Whereas, Article 17, Section 17.2 (b) of such Declaration provides that it may be amended with the approval of the vote of 67% of the Unit Owners provided that the amendment is signed by the President and Secretary of Sunflower, certifying that such amendment was approved by the requisite percentage of Owners; and

Whereas, the Owners of not less than 67% of the Lots desire to amend and restate the Declaration of Covenants, Conditions and Restrictions for Sunflower,

NOW THEREFORE, all of the property described as Lots 1 through 967 and all Common Areas of Sunflower, a subdivision of Pima County, Arizona, as shown on the plat recorded Book 314, Page 429 of Maps and Plats, Office of the Pima County Recorder, shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. These easements, covenants, restrictions and conditions shall run with title to any Lot within the Property, shall bind all parties having or acquiring any right, title, or interest in the Property and shall inure to the benefit of each such Owner.

The Declaration of Covenants, Conditions and Restrictions for Sunflower, which was recorded in the Office of the Pima County Recorder on September 14, 1998 in Docket 10880 at Page 812 et. seq. is superseded in its entirety by this Amended and Restated Declaration and such previously recorded Declaration will no longer be in effect as of the date of recording of this Amended and Restated Declaration. All other Declarations for Sunflower are also superseded in their entirety by this Amended and Restated Declaration of Covenants, Conditions and Restrictions.

**Article I**  
**DEFINITIONS**

The terms in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

**1.1. "Activity Card(s)":** Those certain cards (or other access/identification device or system approved and implemented by the Board) which are issued by the Association in accordance with the terms and conditions set forth in Section 2.2 and which confer upon the holder rights of access to and use of recreational facilities and other Common Areas within the Properties (subject to the payment of admission fees or other use fees established by the Board from time to time).

**1.2. "Age-Qualified Occupant":** Any person (a) 55 years of age or older who occupies a Dwelling Unit at least sixty (60) days within a calendar year; or, (b) 50 years of age or older who owns and occupies a Dwelling Unit and was the original purchaser of the Dwelling Unit from the Former Declarant and occupies the Dwelling Unit at least sixty (60) days within a calendar year, or (c) 50 to 54 years of age (inclusive) who occupies a Dwelling Unit at least sixty (60) days within a calendar year and is in compliance with Section 2.3.

**1.3. "Area of Common Responsibility":** The Common Area, together with those areas, if any, which the Association does not own but which by the terms of Section 5.1 or other provisions of this Declaration, any Supplemental Declaration, or other applicable covenants, or by contract become the responsibility of the Association.

**1.4. "Architectural Review Committee" or "ARC":** The committee established by the Board to review all plans and applications for the construction and modification of improvements on the Properties and to administer and enforce the architectural controls described in Article XI.

**1.5. "Articles":** The Articles of Incorporation of Sunflower Community Association, Inc., as filed with the Arizona Corporation Commission.

**1.6. "Association":** Sunflower Community Association, Inc., an Arizona nonprofit corporation, its successors or assigns.

**1.7. "Base Assessment":** Assessments levied on all Lots subject to assessment to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 10.1 and 10.2.

**1.8. "Benefited Assessment":** An assessment levied against a particular Lot or Lots for expenses incurred or to be incurred by the Association for the purposes described in Section 10.5.

**1.9. "Board of Directors" or "Board":** The body responsible for administration of the Association, selected as provided in the By-Laws.

**1.10. "By-Laws":** The By-Laws of Sunflower Community Association, Inc., as they may be amended from time to time.

**1.11. "Common Area":** All real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including easements held by the Association for those purposes. The term may include, without limitation, recreational facilities, entry features, signage, landscaped medians, rights-of-way, lakes, ponds, and walking trails, if any.



**1.12. "Common Expenses":** The actual and estimated expenses incurred or anticipated to be incurred by the Association, including, without limitation (a) expenses incurred for the general benefit of all Owners and Occupants of Lots, and (b) expenses for Board approved capital expenditures and any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles.

**1.13. "Community-Wide Standard":** The standard of conduct, maintenance, or other activity required within the Properties. Such standard may contain both objective and subjective elements. The objective elements of the Community-Wide Standard shall be determined by the Board, subject to any specific requirements set forth in the Design Guidelines. The Community-Wide Standard may evolve as development progresses and as the needs and demands of the Sunflower Community change. The Community-Wide Standard shall be the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties at the subject point in time, as determined exclusively by the Board, or by the ARC with the approval of the Board.

To the extent that the Master Declaration imposes a higher or more stringent standard of conduct, maintenance or other activity, then the Community-Wide Standard shall conform thereto.

**1.14. "Covenant to Share Costs":** Any declaration of easements and/or Covenant to Share Costs executed by Former Declarant or the Association and recorded in the Office of the County Recorder which creates easements and/or use rights for the benefit of the Association and/or the present and future owners of real property subject to such Covenant to Share Costs, and/or which obligates the Association and such owners to share the costs of maintaining certain property described therein.

**1.15. "Design Guidelines":** The architectural, design, development, landscaping, and other guidelines, standards, controls, and procedures, including but not limited to, application and plan review procedures, adopted pursuant to Article XI and applicable to the Properties.

**1.16. "Dwelling Unit":** Any building or structure situated upon a Lot which is intended solely for use and occupancy as a residence for a single family. Any detached building for use for residential or dwelling purposes, in addition to the primary Dwelling Unit, is not allowed.

**1.17. "First Mortgage":** The senior mortgage which, by reason of its position, has priority over all junior encumbrances. The holder of the first mortgage has priority to payment on default.

**1.18. "Former Declarant":** Del Webb Home Construction, Inc., an Arizona corporation, or any successor, successor-in-title, or assign of Del Webb Home Construction, Inc., who has taken title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or resale in the ordinary course of business and who was designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

**1.19. "Governing Documents":** A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, the Use Restrictions, and any other rules or regulations enacted by the Association with respect to the Properties, as each may be amended from time to time.

**1.20. "Lot":** A portion of the Properties, whether improved or unimproved (other than Common Area and property dedicated to the public), which may be independently owned and conveyed and which is intended to be developed, used, and occupied as a residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements,

including any Dwelling Unit, thereon. The term shall include single-family detached houses on separately platted lots.

**1.21. "Master Association":** Continental Ranch Community Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

**1.22. "Master Declaration":** That Restated and Amended Declaration of Covenants, Conditions and Restrictions for Continental Ranch recorded on March 31, 1994, at Docket 9761, Page 630, et. seq., and re-recorded on April 25, 1994 at Docket 9778, Page 2382, et seq., as amended by that Declaration of Scrivener's Error in Restated and Amended Declaration of Covenants, Conditions and Restrictions for Continental Ranch dated July 18, 1994, and recorded on July 22, 1994 at Docket 9840, Page 2384, et. seq., as further amended by that Amendments to Declaration of Covenants, Conditions and Restrictions for Continental Ranch dated October 5, 1994, and recorded November 8, 1994 in Docket 9915, Page 1857, et seq., as further amended by that Second Amendment to Declaration of Covenants, Conditions and Restrictions for Continental Ranch dated April 15, 1997, and recorded June 16, 1997 in Docket 10567, Pages 296-302, inclusive (each of the foregoing references to recording information relates to the Office of the Recorder for Pima County, Arizona), as amended or supplemented from time to time.

**1.23. "Master Plans":** The plans for the development of the Properties as set forth in that certain Specific Plan for Continental Ranch adopted by the Town of Marana on April 5, 1988, as Marana Town Ordinance No. 88.09, as modified by Marana Town Ordinance No. 92.11 adopted on July 7, 1992, Marana Town Ordinance No. 96.08 adopted on February 20, 1996, and Marana agreements entered into in connection therewith, to the extent such Specific Plan pertains to the Properties, as the same may be amended, updated, or supplemented from time to time. The Master Plans encompass the property described in Exhibit "A" and a portion of the property described in Exhibit "B." The Master Plans may also include subsequent plans approved by the Town of Marana for the development of all or a portion of the property described in Exhibit "B."

**1.24. "Member":** Only Owners shall be Members of the Association, as further described in Section 3.2. Members shall have one vote for each Lot in which they hold the interest required for membership under Section 3.2, provided there shall be only one vote per Lot.

**1.25. "Mortgage":** A mortgage, a Deed of Trust, a deed to secure debt, or any other form of security deed.

**1.26. "Mortgagee":** A beneficiary or holder of a Mortgage.

**1.27. "Occupant":** A person who occupies any Dwelling Unit for at least sixty (60) days in any calendar year.

**1.28. "Occupy," "Occupies," or "Occupancy":** Such terms, or any derivative thereof, and whether or not capitalized, shall mean staying overnight in a particular Dwelling Unit for at least sixty (60) days in any calendar year.

**1.29. "Office of the County Recorder":** The Office of the County Recorder of Pima County, Arizona.

**1.30. "Owner":** Cumulatively, all Persons who hold the record title to any Lot. The term "Owner" shall not include Persons holding an interest merely as security for the performance of an obligation, in which case the equitable owner will be considered the Owner.

**1.31. "Person":** A natural person, a corporation, a partnership, a trustee, or any other legal entity.

**1.32. "Plans":** The architectural and land use plans and specifications required to be submitted with applications for approval of proposed work under Article XI.

**1.33. "Properties":** The real property described in Exhibit "A", together with such additional property as is subjected to this Declaration in accordance with Article IX.

**1.34. "Qualified Occupant":** Any of the following Persons occupying a Dwelling Unit:

(a) any Age-Qualified Occupant, as defined in Section 1.2;

(b) any Person 19 years of age or older occupying a Dwelling Unit with an Age-Qualified Occupant; and

(c) any Person 19 years of age or older who occupied a Dwelling Unit with an Age-Qualified Occupant and who continues, without interruption, to occupy the same Dwelling Unit after termination of the Age-Qualified Occupant's occupancy thereof, so long as the occupancy by such person shall not cause the Covered Property to fail to qualify for the exemption for Housing for Older Persons under the Fair Housing Act, as more specifically provided herein, and set forth in A.R.S. Section 41-1491.04.

**1.35. "Special Assessment":** Assessments levied against all Owners to cover unanticipated expenses or expenses in excess of those budgeted, as described in Section 10.4.

**1.36. "Sunflower":** The Properties, as defined above, together with such other property as may be developed in accordance with the Master Plans.

**1.37. "Supplemental Declaration":** An amendment or supplement to this Declaration which, among other things, may subject additional property to this Declaration, identify Common Area and/or impose, expressly or by reference, additional restrictions and obligations on the portion of the Properties described therein.

**1.38. "Use Restrictions":** The rules and use restrictions attached as Exhibit "D" and incorporated by reference, as they may be modified, canceled, limited, or expanded under Article XII.

## **Article II** **PROPERTY RIGHTS**

**2.1. Common Area.** Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) The Governing Documents;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt rules, regulations, and policies regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to Owners, Occupants of Dwelling Units and/or Activity Card holders and their respective guests, and rules limiting the number of Owners, Occupants, Activity Card holders and guests who may use the Common Area;

(d) The right of the Board to suspend the right of an Owner, Occupant, Activity Card holder or any other Person to use recreational facilities within the Common Area pursuant to Section 4.2;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to governmental entities pursuant to Section 4.4;

(f) The right of the Board to permit entry upon the Common Area, or to grant licenses permitting the use of the Common Area, by third parties for purposes deemed, in the discretion of the Board, to benefit the Properties, the Owners, and/or the Association;

(g) The right of the Board to impose membership requirements and charge membership, admission, or other fees for the use of any recreational facility situated upon the Common Area;

(h) The right of the Board to permit use of any recreational facilities situated upon the Common Area by Persons other than Owners, Occupants, Activity Card holders and their respective guests upon payment of use fees established by the Board;

(i) The right of the Board to create, enter agreements with, grant easements to, and transfer portions of the Common Area to tax-exempt organizations under Section 4.11;

(j) The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(k) The right of the Association to rent, lease, or make available without charge for any purpose (including, without limitation, public meetings of governmental authorities and employee meetings of the Association) any portion of any clubhouse and other recreational facilities within the Common Area on a short-term basis to any Person approved by the Association for the exclusive use of such Person and such Person's family, guests and/or invitees; and

(l) The requirement that access to and use of recreational facilities within the Common Area shall be subject to the presentation of a valid Activity Card issued by the Association.

## **2.2. Activity Cards.**

(a) Issuance by the Board. One Activity Card shall be allocated to each Qualified Occupant of a Lot, up to a maximum of two Activity Cards per Lot. No Activity Cards shall be allocated to any Lot which is not occupied by a Qualified Occupant. The Board shall determine entitlement to Activity Cards from time to time, but no less frequently than annually. If the Lot continues to be occupied by a Qualified Occupant and all applicable assessments and other charges pertaining to the Lot have been paid, the Activity Card(s) allocated to such Lot shall be renewed annually without charge. The Board may establish policies, limits, and charges with regard to the issuance of additional Activity Cards for additional Qualified Occupants and guest privilege cards.

(b) Assignment of Rights. Except as may be expressly provided in a Covenant to Share Costs, the right to an Activity Card is based upon Occupancy of a Lot. If, and so long as, a Lot is occupied solely by Persons other than the Owner, pursuant to a lease or otherwise, then (i) the Owner shall not be entitled to receive an Activity Card, and (ii) the right of any Occupant to receive an Activity Card shall depend on his or her status as a Qualified Occupant. Any Owner who leases or otherwise transfers occupancy of his or her Lot shall provide the Association with immediate written

notice thereof and shall surrender to the Association his or her previously issued Activity Card. Activity Cards shall be surrendered by any holder who ceases to occupy a Lot, or at any time upon written notification from the Association that the holder no longer is entitled to hold an Activity Card.

**2.3. Age Restriction.** Sunflower is intended to provide housing primarily for Persons 55 years of age or older. The Properties shall be operated as an age restricted community in compliance with all applicable State and Federal Laws, including the Fair Housing Amendments Act of 1988. That Act requires that at least eighty (80%) percent of the Dwelling Units must be Occupied by a Person who is at least 55 years of age or older in order to maintain the Housing for Older Persons status and be exempt from familial discrimination. No Person under 19 years of age shall stay overnight in any Dwelling Unit for more than 90 days in any twelve (12) month consecutive period.

In furtherance of the Act, the Association requires not less than ninety (90%) percent of the Dwelling Units to be Occupied by a Person at least 55 years of age or older.

The Association shall permit up to ten (10%) percent of the Dwelling Units to not require at least one Person 55 years of age or older and, instead, may be occupied by at least one Person 50 to 54 years of age (inclusive).

Each Dwelling Unit, if occupied, shall be occupied by at least one Age-Qualified Occupant; provided, once a Dwelling Unit is occupied by an Age-Qualified Occupant, other Qualified Occupants of that Dwelling Unit may continue to occupy that Dwelling Unit, regardless of the termination of the Age-Qualified Occupant's occupancy, if at least ninety (90%) percent of the occupied Dwelling Units within the Properties are occupied by at least one Person 55 years of age or older. In any event, at all times, at least ninety (90%) percent of the occupied Dwelling Units within the Properties shall be occupied by at least one Person 55 years of age or older.

At least once every two years and/or more often at the discretion of the Board, the Board shall verify the age of the residents on the Lots by reliable surveys, affidavits and documentary evidence such as birth certificates, driver licenses or passports. However, the Owners have the primary responsibility of ensuring compliance with the Housing for Older Persons exemption in the Fair Housing Act. It is the duty of each Owner to comply with these age restrictions and to provide appropriate notifications to the Association. Every Owner, by taking title to a Lot within the Covered Property, acknowledges that the pattern of resales of Lots can be difficult to control or predict and that compliance with these age restrictions depends upon the cooperation of all the Owners as a whole.

The Board may establish policies and procedures from time to time as necessary to maintain its status as an age restricted community under State and Federal Law. The Board shall have the power and authority to enforce this Section 2.3 by any legal or equitable means available, as the Board deems appropriate.

### **Article III**

#### **ASSOCIATION FUNCTION, MEMBERSHIP, AND VOTING RIGHTS**

**3.1. Function of Association.** The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for compliance with and enforcement of this Declaration and such reasonable rules regulating use of the Properties as are adopted in accordance with the Governing Documents. The Association also shall be responsible for administering, monitoring compliance with, and enforcing the Design Guidelines. The responsibilities of the Association may be delegated to committees or the Association may engage outside Persons to monitor and enforce this Declaration (including, without limitation, the Use Restrictions) and the

Design Guidelines in accordance with policies established by the Board. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles, and Arizona Law.

**3.2. Membership.** Every Owner shall be a Member of the Association; provided, there shall be only one membership per Lot. If a Lot is owned by more than one Person, all Persons comprising the Owner shall share the privileges of membership, subject to (i) reasonable Board regulation (ii) the limitations set forth in, and such reasonable fees as may be established under, Article II, and (iii) the restrictions on voting set forth in Section 3.3 and in the By-Laws. All Persons comprising a single Owner shall be jointly and severally obligated to perform the responsibilities of such Owner. The membership rights of an Owner which is a corporation, partnership, or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual having apparent authority or who is designated from time to time by the Owner in a notarized instrument provided to the Secretary of the Association.

**3.3. Voting.**

(a) Members shall be all Owners. Members shall have one vote for each Lot in which they hold the interest required for membership under Section 3.2, provided there shall be only one vote per Lot.

(b) Exercise of Voting Rights. Members may vote as provided in the By-Laws and pursuant to Arizona Law. If there is more than one Person comprising the Owner of a particular Lot, the vote for such Lot shall be exercised as all Persons comprising the Owner determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such notice to the Association, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

**Article IV**  
**RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

**4.1. Personal Property and Real Property for Common Use.** The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Such property shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed, including but not limited to, restrictions governing the use or maintenance of such property.

**4.2. Enforcement.** The Board may impose sanctions for violation of this Declaration, the By-Laws, or any rule or regulation, after notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(a) imposing monetary fines (in the event that any Occupant, guest, tenant or invitee of a Lot violates any provision of any of the Governing Documents and a fine is imposed, the fine shall first be assessed against the Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(b) suspending a Member's right to vote;

(c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association; and

(e) levying Benefited Assessments to cover costs incurred or to be incurred in bringing a Lot into compliance in accordance with Section 10.5(b).

In addition, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance(s) of the Town of Marana or the County of Pima, Arizona), or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, or by enforcement of the lien against the Owner's Lot by judicial or non-judicial foreclosure as provided in Section 10.8 below, without the necessity of compliance with the notice and hearing procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of any of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The decision to take or not take enforcement action with respect to any violations of any covenant, restriction, or rule set forth in any of the Governing Documents shall, in each case, be in the discretion of the Board, in the exercise of its business judgment. Without limiting the generality of the Board's discretion, if the Board reasonably determines that a covenant, restriction, or rule is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action, the Board shall not be obligated to take such action. Any such determination shall not be construed to be a waiver of the right of the Association to enforce such provision at a later time or under other circumstances, or to stop the Association from enforcing any other covenant, restriction, or rule.

Notwithstanding the above, any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration and to recover its attorneys' fees and costs incurred in connection with such proceeding if it prevails. An Owner shall not take such action without first providing the Association written notice and a reasonable opportunity to take such action on its own.

**4.3. Implied Rights; Board Authority.** The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

**4.4. Dedication of Common Area.** The Association, in the exercise of the Board's business judgment, may dedicate or grant easements over portions of the Common Area to any local, state, or federal governmental entity or any utility company. This right shall not be construed as a limitation upon the right of the Board to permit entry upon the Common Area or to grant licenses permitting the use of the Common Area by third parties for purposes deemed, in the discretion of the Board, to benefit the Properties.

**4.5. Assumption of Risk.** The Association may, but shall not be obligated to, sponsor certain activities or provide facilities designed to promote the health, safety, and welfare of Owners and Occupants. Notwithstanding anything contained herein or in any of the Governing Documents, neither the Association, the members of the Board, the officers of the Association, nor the management of the Association shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or Occupant of any Lot or any tenant, guest or invitee of any Owner or Occupant or for any property of any such Persons. Each Owner and Occupant of a Lot and each tenant, guest and invitee of any Owner or Occupant shall assume all risks associated with the use and enjoyment of the Properties, including all Common Area and all recreational facilities, if any.

Neither the Association, the members of the Board, the officers of the Association, nor the Association's management shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations, or water wells and water pipelines operated by the Marana Water District and/or Marana Irrigation District, adjacent to, near, over, or on the Properties. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or Occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of malfunction of utility lines or utility sub-stations, or water wells and water pipelines operated by the Marana Water District and/or Marana Irrigation District, and acknowledges that neither the Association, the members of the Board, the officers of the Association, nor the Association's management have made any representations or warranties, nor has any Owner or Occupant, or any tenant, guest, or invitee of any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines, utility sub-stations, water wells or water pipelines.

No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the members of the Board, the officers of the Association, or the management of the Association to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Properties (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the Board, and the Association's management and their respective directors, officers, committee and Board members, employees, agents, contractors, subcontractors, successors, and assigns, arising from or connected with any matter for which the liability has been disclaimed.

**4.6. Disclaimer Regarding Security.** The Association may maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be; provided, however, the Association shall not be obligated to initiate, maintain or support such activities.

Neither the Association, its officers, the Board, nor the Association's management shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association, its officers, the Board, nor the Association's management shall be held liable for any loss or damage for failure to provide adequate security or for the ineffectiveness of any security measures undertaken.

All Owners and Occupants of any Lot, and all tenants, guests, and invitees of any Owner or Occupant, acknowledge that neither the Association, its officers, the Board, the Association's management nor the Architectural Review Committee represent or warrant that any patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm



system, or other security system designated by or installed according to guidelines established by the Former Declarant or the Architectural Review Committee may not be compromised or circumvented; nor that any patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security systems will in all cases provide the detection or protection for which the system is designed or intended.

All Owners and Occupants of any Lot and all tenants, guests, and invitees of any Owner or Occupant assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its officers, the Board and committees, and the Association's management have made no representations or warranties, nor has any Owner, Occupant, or any tenant, guest, or invitee of any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to any patrolling of the Properties, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Properties.

**4.7. Recycling Programs.** The Board may establish a recycling program and recycling center within the Properties, and in such event all Occupants of Dwelling Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

**4.8. Provision of Services.** The Association may provide services and facilities for the Members of the Association, Occupants and their respective guests, tenants and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, but not limitation, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection and utilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.

**4.9. Change of Use of Common Area.** The Board may change the use of any portion of the Common Area and construct, reconstruct, or change the buildings and other improvements thereon in any manner necessary to accommodate the new use of the Common Area. Any new use shall be for the benefit of the Owners and not inconsistent with the then effective Master Plans. Any change in use of the Common Area shall not be subject to approval by any Owner.

**4.10. View Impairment.** The Association does not guarantee or represent that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. The Association shall not be obligated to prune or thin trees or other landscaping except as set forth in Article V. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

**4.11. Relationship with Tax-Exempt Organizations.** The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations, including,

but not limited to, organizations that provide facilities and services designed to meet the physical and social needs of older persons, for the benefit of the Properties, the Association, its Members and Occupants. The Association may contribute money, real or personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and shall be included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, as may be amended from time to time.

**4.12. Relations with Adjacent Properties.** Adjacent to or in the vicinity of the Properties are properties which have been or, in the future, may be developed as independent commercial and/or residential areas (including, but not limited to, rental apartments, life care facilities and retail or other business areas). The Association may enter into a Covenant to Share Costs with all or any of the owners of such adjacent or nearby commercial and/or residential areas which allocates access, use of Common Area and fees/assessments therefore, maintenance responsibilities, expenses, and other matters between the Association and such property owners. Unless annexed in accordance with Article IX, the owners of adjacent or nearby properties shall not be entitled to vote on Association matters, and shall not be subject to the assessments or other conditions or restrictions set forth in this Declaration.

**4.13. Compliance with Development Agreements.** The development and operation of Sunflower is or may be subject to various development and/or maintenance agreements, including, but not limited to, the Master Plans and any agreement for maintenance of the drainage channel adjacent to Sunflower (collectively, the "Development Agreements"), as amended or may be amended from time to time. The Association shall comply with all terms and conditions of the Development Agreements, as applicable, and shall accept responsibility for and shall comply with any obligations of the Former Declarant under the Development Agreements which are assigned to it by the Former Declarant.

**4.14. Marana Water District and Marana Irrigation District.** Certain easement rights for access, maintenance and repair have been granted by Former Declarant by separate agreement (the "Easement Agreements") to Marana Water District and/or Marana Irrigation District over, on and across portions of the Common Area, and the Common Area has been conveyed to the Association subject to such easement rights. The Association shall comply with all terms and conditions of the Easement Agreements, as applicable, and shall accept responsibility for and shall comply with any obligations under the Easement Agreements.

**4.15. Member Approval.** Subject to the rights of the Association pursuant to Sections 4.4, 4.9 and 4.11 hereof, the Association may not mortgage or convey all or any part of the Common Area without the approval of at least two-thirds (2/3) of the total Members eligible to vote.

## **Article V** **MAINTENANCE**

**5.1. Association's Responsibility.** The Association shall maintain (to, at a minimum, the standard of care required pursuant to Section 11.1.3 of the Master Declaration) and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all Common Area;
- (b) all landscaping and other flora, parks, signage, structures, parking areas, and improvements, including any bike and pedestrian pathways and trails, situated upon the Common Area;

(c) all water service facilities and drainage facilities within or upon the Common Area, including lakes, ponds, channels and other water features;

(d) any sidewalks within or adjacent to Sunflower that are not the responsibility of any Owner or any local government entity;

(e) walls and fences constructed by the Former Declarant or the Association which serve as either perimeter walls for the Properties or walls which separate any Lot from Common Area, if and only if located entirely within the Common Area;

(f) landscaping, irrigation systems, and signage within public streets and rights-of-way within or abutting the Properties to the extent maintenance by any local government is not consistent with the Community-Wide Standard, and any streetlights that are not included in a streetlight improvement district;

(g) landscaping and other flora within any public utility easements and scenic easements within the Common Area (subject to the terms of any easement agreement relating thereto); and

(h) any additional property as may be included within the Area of Common Responsibility by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, any plat of any portion of the Properties, any Development Agreement, any Easement Agreement or any contract or agreement for maintenance entered into by the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

**5.2. Owner's Responsibility.** Each Owner shall maintain and repair his or her Lot, Private Use Easement area (as defined in Section 13.10 below), Dwelling Unit, and all other structures, parking areas, landscaping, walls and fences (including without limitation walls and fences constructed by Former Declarant or the Association between such Owner's Lot and any Common Area unless located entirely within the Common Area (other than walls enclosing Private Use Easement area), and between such Owner's Lot and any public street or other property not subject to this Declaration whether or not located entirely within the Lot). Each Owner shall maintain and repair other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, the Design Guidelines and the Use Restrictions, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or assigned by Former Declarant or the Association to a third party, pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot and/or such property not subject to this Declaration. To the extent that responsibility for the maintenance and repair of sidewalks, if any, within or adjacent to Sunflower is not assumed by a local government entity, each Owner shall be responsible for maintaining and repairing any sidewalk adjacent to any portion of his or her Lot in accordance with the Community-Wide Standard.

In addition to any other enforcement rights, if an Owner fails properly to perform any maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 10.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

**5.3. Standard of Performance.** Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, painting, plant replacement, weeding, and trimming, as the Board may determine to be necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

Portions of the Properties are environmentally sensitive and/or may provide greater aesthetic value than other portions of the Properties. A higher Community-Wide Standard may be established for such areas and additional maintenance may be required for such areas to reflect the nature of such property.

Notwithstanding anything to the contrary contained herein, neither the Association nor any Owner shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities, except as otherwise specifically provided with respect to Private Use Easement areas.

**5.4. Party Structures.** Each wall and fence built by the Former Declarant as part of the original construction and each wall and fence built by an Owner or the Association after original construction:

(a) which any part is built upon or straddling the boundary line between two adjoining Lots or between a Lot and the Common Area; or

(b) which is constructed within five feet of the boundary line between adjoining Lots, between a Lot and the Common Area, between a Lot and any public street or other property not subject to this Declaration, or between the Common Area and any public street or other property not subject to this Declaration, has no windows or doors and is intended to serve as a privacy wall; or

(c) which is located within the Area of Common Responsibility between a Lot and Sunflower Park Drive, and which establishes the boundary of a Private Use Easement (as defined in Section 13.10 below) reserved by the Former Declarant for the Benefit of the Lot Owner; or

(d) which, in the reasonable determination of the Board, otherwise serves and/or separates two adjoining Lots, regardless of whether constructed wholly within the boundaries of one Lot,

shall constitute a party wall or party fence (herein referred to as a "Party Structure"). Each Owner acknowledges that portions of the Properties may contain party structures, and consents to the use and construction of such party structures. To the extent not inconsistent with the terms hereof, the general rules of law regarding common or party wall and fences shall be applied thereto.

The Owner of any Lot served by a Party Structure shall own that portion of the Party Structure lying within the boundaries of such Owner's Lot and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the Party Structure lying within the boundaries of the property adjoining his or her Lot (provided, the exercise of such easement rights shall not unreasonably interfere with the use and enjoyment of the Party Structure by the adjoining Owner(s)).

Each Owner shall be responsible for maintaining property insurance, as more particularly provided in Section 6.3, providing coverage for that portion of any Party Structure lying within the boundaries of such Owner's Lot or Private Use Easement area and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss.

Irrespective of the actual ownership of a Party Structure determined in accordance with the immediately preceding paragraph, the responsibility for the repair and maintenance of a Party Structure between Lots and the reasonable cost thereof shall be shared equally by the adjoining Lot Owners. To the extent damage to a Party Structure from fire, water, soil settlement, or other casualty is not repaired out of the proceeds of insurance, any affected Owner may restore it. If other Owners thereafter benefit from the Party Structure, they shall contribute to the restoration cost in equal shares without prejudice to any Owner's right to larger contributions from other users under any rule of law. Any Owner's right to contribution from another Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

The responsibility for the repair and maintenance of a Party Structure described in subsection 5.4(c) above and the reasonable cost thereof shall be shared equally by the Benefited Lot Owner and the Association; provided, however, each Owner shall be responsible for painting and making cosmetic repairs to the portion of the Party Structure facing his or her Lot and all costs associated therewith, and the Association shall be responsible for painting and making cosmetic repairs to the portion of a Party Structure described in subsection 5.4(c) above facing Sunflower Park Drive and all costs associated therewith. To the extent damage to a Party Structure from fire, water, soil settlement, or other casualty is not repaired out of the proceeds of insurance, the Association with respect to any Party Structure described in subsection 5.4(c) may restore it. The Association's right to contribution from an Owner with respect to any Party Structure described in subsection 5.4(c) above under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Any damage to a Party Structure resulting solely from the act or negligent act of any Owner or its licensee, tenant, invitee or guest shall be repaired at the sole cost of such Owner. Any damage to a Party Structure resulting solely from the act or negligent act of the Association or its licensee, invitee or guest shall be repaired at the sole cost of the Association.

Any disputes between Owners with respect to maintenance or repairs of Party Structures shall be resolved in accordance with the procedures set forth in Article XV.

No Owner may remove a Party Structure, make structural or design changes to a Party Structure, or build on, extend or otherwise attach any improvement to a Party Structure, without first complying with the requirements set forth in Article XI and gaining the approval of all Owners of affected Lots. No Owner shall cause or permit a Party Structure to be penetrated in any manner whatsoever, or cause or permit the structural integrity of a Party Structure to be impaired, without first complying with the requirements set forth in Article XI and gaining the written approval of all Owners of affected Lots.

With respect to Party Structures between Lots and Common Area, between Lots and any public street, and between Lots and other property not subject to this Declaration, the Association shall be responsible for all maintenance and repair thereof, subject to the provisions of Section 10.5(b), except that an Owner shall be responsible for painting and making cosmetic repairs to the portion of the Party Structure facing his or her Lot. The Association shall have an easement over any affected Lot to perform its maintenance responsibilities hereunder.

With respect to any Party Structure between Common Area and any public street or other property which is not subject to this Declaration, unless otherwise agreed upon with the owner of such property, the Association shall be solely responsible for maintaining and repairing such Party Structures. The Association shall be entitled to delegate and assign responsibility for maintenance and repair of all or any portion of a Party Structure facing property which is not subject to this Declaration by written agreement with the owner of such property.

The costs incurred by the Association in maintaining and repairing Party Structures for which it is responsible pursuant to this Section shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from any Owner deemed to have caused the condition in need of repair pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

Additional recorded covenants, conditions and restrictions applicable to attached Dwelling Units may establish other and/or additional rights, responsibilities and obligations with respect to Party Structures and other improvements separating the interiors of such attached Dwelling Units or otherwise located upon or straddling the boundary line between the adjacent Lots upon which such attached Dwelling Units are constructed, which may supplement, modify or supersede the provisions of this Section 5.4. In addition, the rights of the Owners of attached Dwelling Units with regard to such Party Structures and other improvements may be governed by plats showing the boundaries of each of the attached Dwelling Units.

## **Article VI** **INSURANCE AND CASUALTY LOSSES**

**6.1. Association Insurance.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types and amounts of insurance, if available at a reasonable cost, or if not reasonably available, the most nearly equivalent coverages as are reasonably available.

(a) Blanket property insurance covering risks of physical loss on an "all-risk" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair, and/or replacement in the event of a casualty. If such coverage is not available at a reasonable cost, then "broad form named perils" coverage may be substituted. Such insurance shall include coverage for flood and earth movement to the extent that such insurance is reasonably available. The Association shall not be obligated to provide property insurance coverage for the contents of any Dwelling Unit. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf and including coverage for owned and non-owned automobile liability. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least \$3,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost, and such additional coverage and higher limits would be obtained by a reasonably prudent person, the Association shall obtain the same. Notwithstanding the above, if the required limits are not available at a reasonable cost, lower limits, as determined in the Board's business judgment, may be obtained;

(c) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(d) Directors and officers liability insurance or equivalent association liability insurance at limits determined in the Board's business judgment;

(e) Commercial crime insurance, including employee fidelity insurance, in an amount determined in the business judgment of the Board; provided, the amount of any employee fidelity insurance shall not be less than one-sixth of the annual Base Assessments on all Lots plus reserves on hand. Such commercial crime insurance shall cover funds held by the Association's management, unless such management's insurance insures the Association against crimes committed by or against such management. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(f) Such additional insurance as the Board, in its business judgment, determines advisable, which may include, without limitation, employee benefits liability insurance, boiler and machinery insurance, and building ordinance insurance.

**6.2. Association Policy Requirements.** Prior to the renewal of any insurance policy and at least annually, the Association shall arrange for a review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the Pima County, Arizona area.

Premiums for all insurance on the Area of Common Responsibility shall be a Common Expense and shall be included in the Base Assessment.

The policies may contain a reasonable deductible as determined by the Board and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard, that the loss is the result of the negligence or willful conduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with Section 10.5.

(a) All insurance coverage shall be written by insurance companies licensed to do business in the State of Arizona and having a rating of A- or better in the financial category as established by A.M. Best's Insurance Reports. The Board may make exceptions to this requirement in the event that coverage is not reasonably available from such a company or if the Board, in its business judgment, elects to obtain insurance through a similarly reputable, but not rated company.

(b) All insurance coverage obtained under Section 6.1(a) shall:

(i) Be written with a company authorized to do business in the State of Arizona which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board requires;

(ii) Be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members;

(iii) Not be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees;

(iv) Include an agreed amount endorsement if the policy contains a co-insurance clause; and

(v) Contain replacement cost coverage.

(c) In addition, the Board shall secure, if reasonably available and as applicable, insurance policies providing the following:

(i) A waiver of subrogation as to any claims against the Association, the Association's Board, officers, employees, and its manager and the Owners;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement preventing the Association's insurance carrier from invoking its "other insurance" clause to obtain any contribution from any insurance maintained by individual Owners;

(iv) An endorsement requiring at least 30 days prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) A cross liability provision;

(vi) A provision vesting the Board with exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss; and

(vii) A provision listing the Lot Owners as additional insureds under the policy.

**6.3. Owner's Insurance.** By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full insurable replacement cost on all improvements on any Lot owned and on any appurtenant Private Use Easement area, and on all other improvements whose repair and replacement are the responsibility of such Owner pursuant hereto, less a reasonable deductible, unless the Association carries such insurance.

Each Owner further covenants and agrees that in the event of damage to or destruction of the Dwelling Unit, any other structures on or comprising his or her Lot or Private Use Easement area, or any other improvements whose repair and replacement are the responsibility of such Owner, he or she shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. The Owner shall pay any costs which are not covered by insurance proceeds. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes and/or necessary to bring the property into compliance with the Community-Wide Standard.

With respect to a Private Use Easement area, the Owner of the Benefited Lot shall carry the insurance referenced above even if the Association carries insurance thereon.



#### **6.4. Damage and Destruction.**

(a) Immediately after damage to or destruction of all or any part of the Properties which is covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least 75% of the total Members eligible to vote decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended for not more than 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

(c) If it is determined in the manner described above that the damage to or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association, as applicable, in a neat, attractive, and landscaped condition consistent with the Community-Wide Standard.

**6.5. Disbursement of Proceeds.** Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association, as appropriate, and placed in a capital improvement account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

**6.6. Repair and Reconstruction.** If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Benefited Assessments against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1.

### **Article VII NO PARTITION**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

### **Article VIII CONDEMNATION**

Whenever any part of the Common Area shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner shall be entitled to notice thereof. The Board may convey Common Area under threat of condemnation only if approved in writing by at least two-thirds (2/3) of the total Members eligible to vote.

The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within 60 days after such taking, two-thirds (2/3) of the total Members eligible to vote shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 6.5 and 6.6 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

## **Article IX** **ANNEXATION OF PROPERTY**

**Annexation With Approval of Membership.** The Association, at any time, may subject any real property to the provisions of this Declaration with the consent of the owner of such property, and the affirmative vote of at least two-thirds (2/3) of the total Members eligible to vote.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the County Recorder describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

## **Article X** **ASSESSMENTS**

**10.1. Creation of Assessments.** The Association may levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 10.4; and (c) Benefited Assessments as described in Section 10.5. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Association, late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon such Lot against which the assessment is levied until paid, as more particularly provided in Section 10.8, and shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the personal obligation for delinquent assessments, interest, late charges, costs and fees shall not pass to the successor in title to the Lot unless expressly assumed by such successor, and no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, the Base Assessment for each Lot shall be due and payable for each fiscal year of the Association, in advance, in semi-annual installments on April 1 and October 1 of each and every year. The Base Assessment for the year in which the Owner first obtains title to the Lot ("closing date") shall be prorated as of the closing date and the balance of the semi-annual installment for the 6 month period in which the closing date occurs shall be collected at the close of escrow. If any Owner is delinquent in paying any assessments or other charges levied on his/her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon written request from an Owner, Mortgagee, or other Person designated by the Owner, furnish a statement complying with applicable law which sets forth the amount of any unpaid assessments against the subject Lot. Such statement shall be binding upon the Association, the Board, and the Owners, and shall be furnished within such period as may be required by applicable law, or in none, within thirty days of the Association's receipt of the request. If the Association fails to provide such statement within such time period, any lien for unpaid assessments then due shall not be affected except as otherwise provided by applicable law in effect on the date the request is received by the Association. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Lot or Dwelling Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it or for inconvenience or discomfort arising from repairs or improvements or other action taken by it.

**10.2. Computation of Base Assessment.** Each year, a budget shall be prepared covering the Common Expenses estimated to be incurred during the coming year. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.3.

The Base Assessment shall be levied equally against all Lots subject to assessment. The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider sources of funds available to the Association other than assessments.

Subsequent to a meeting of the Board at which the budget is approved and not less than 30 days prior to the beginning of the fiscal year, the Board shall notify the Members (a) of the amount of the Base Assessment for the following year, and (b) that the budget is available for examination by Members at the business office of the Association or at another suitable location within Sunflower. The Board's notice obligations under this Section shall be satisfied by providing notice in any manner which is reasonably designed to provide notice to the Members. By way of example, the Board may post written notice in one or more prominent places within Sunflower and/or publish such information in any newsletter or other publication with community-wide distribution (provided, there shall be no obligation to produce such a publication). If any Member requests a copy of the budget, the Association shall provide one copy to the Member without charge. Such copy shall be delivered personally or by first-class United States Mail within 10 days of such request. The Association may charge a fee for additional copies of the budget, which fee shall not exceed the cost of reproduction and delivery.

The budget shall become effective unless disapproved at a special Members meeting by the vote of at least a majority of the Members present. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members requesting that such a special meeting be held, as provided in the By-Laws. Such petition must be presented to the Board within 10 days of posting or publishing of notice of the availability of the budget for examination or, if notice is otherwise provided, within 10 days of delivery of the notice (as defined in the By-Laws with respect to notice of meetings). If the proposed budget is disapproved, or the Board fails for any reason to adopt the budget for any year, then until such time as a budget shall have been adopted, the budget in effect for the immediately preceding year shall continue for the current year.

**10.3. Capital Expenditures Budget and Reserve Funds.** On an annual basis, capital expenditures budgets shall be prepared by the Association for general purposes, which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. Such capital expenditures budgets may also anticipate making additional capital improvements and purchasing additional capital assets. Base Assessments shall include capital expenditure contributions in amounts sufficient to meet these projected needs, which contributions shall be held in a reserve fund for such purposes. The capital expenditures budgets shall be made reasonably available for examination by the Members in the manner provided for the Common Expense budget discussed in Section 10.2 above.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended.

**10.4. Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted subject to the limitations set forth in Section 10.6. Such Special Assessment may be levied against the entire membership, if for Common Expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**10.5. Benefited Assessments.** The Board may levy Benefited Assessments against particular Lots for expenses incurred or to be incurred by the Association, as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or Occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, caretaker service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Association in connection with providing same; and

(b) to cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws, the Design Guidelines, or rules of the Association, or costs incurred as consequence of the conduct of the Owner or Occupants of the Lot, their licensees, tenants, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Benefited Assessment under this subsection (b).

**10.6. Limitation on Increases of Assessments.** Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations or to reimburse the Association pursuant to Section 10.5, the Board may not impose a Base Assessment, or

Benefited Assessment that is more than 15% greater than the subject type of assessment for the immediately preceding fiscal year, nor impose a Special Assessment which in the aggregate exceeds 5% of the budgeted Common Expenses for the current fiscal year, without a vote approving such increase by a majority of the Members who own the Lots which are subject to the applicable assessment. The foregoing 15% limitation applies only to increases in assessments, and does not limit the initial amount of any such assessment imposed in accordance herewith.

For purposes of this Section, the term "Base Assessment" shall be deemed to include the amount assessed against each Lot.

An emergency situation is any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible where a threat to personal safety on the Properties is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing and distributing the pro forma budget pursuant to Section 10.2. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Notice of such resolution shall be provided to the Members along with the notice of such assessment.

**10.7. Date of Commencement of Assessments.** Subject to Section 10.1, the obligation to pay the assessments provided for herein shall commence as to any Lot on the close of escrow date. This assessment will be prorated from the close of escrow date to the next assessment due date as determined by the Board.

**10.8. Lien for Assessments.** All assessments and other charges of the Association authorized in this Article or elsewhere in this Declaration shall constitute a lien against the Lot against which they are levied from the time the first installment of such assessments or charges becomes delinquent until paid. The lien shall also secure payment of interest, late charges and costs of collection (including attorneys' fees, lien fees and administrative costs). Such lien shall be superior to all other liens, except those deemed by Arizona Law to be superior. The lien created by this Article shall have priority over any lien for assessments asserted by any other community or property owners association other than the Master Association (which shall have equal priority) except as otherwise required by Arizona Law. The Association may enforce such lien, when any assessment or other charge is delinquent, by suit, judgment, and foreclosure (subject to the limitations, if any, of Arizona Law).

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure; (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The lien for assessments provided for herein shall be subordinated to the lien of any First Mortgage. The sale or transfer of any Lot shall not affect the assessment lien or the personal liability

of the transferor for unpaid assessments due as of the date of the sale or transfer, or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the First Mortgage or any proceeding in lieu thereof shall extinguish the lien for such assessments as to payments which were due prior to such foreclosure. The subsequent Owner of the foreclosed Lot shall not be personally liable for assessments on such Lot which accrued prior to such acquisition of title.

**10.9. Failure to Assess.** Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

**10.10. Exempt Property.** The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) all Common Area;
- (b) all property dedicated to and accepted by any governmental authority or public utility.

**10.11. Master Association Assessments.** All assessments, other charges of the Association, interest, late charges and costs levied against a Lot pursuant to this Declaration shall be in addition to any Assessments and Special Use Fees (as those terms are defined in the Master Declaration) levied or imposed by the Master Association under the Master Declaration, including without limitation as described in Section 3.1.5 and Section 8.3.1.7 of the Master Declaration. The Association is required by Section 9.3.3 of the Master Declaration to collect such Master Declaration Assessments from Owners of Lots and remit same to the Master Association, and the amount thereof may, at the discretion of the Board, be included in the assessments levied hereunder by the Association against each Lot, in which event the Association shall have all rights and remedies provided in this Declaration (including without limitation lien rights) against an Owner who is delinquent in the payment of such amount and against such Owner's Lot. In addition to and not in lieu of the Association's rights and remedies, the Master Association retains all rights and remedies provided in the Master Declaration (including without limitation lien rights) against an Owner who is delinquent in the payment of such Master Declaration Assessments and Special Use Fees and against such Owner's Lot.

**10.12. Community Improvement Fee (CIF).** Upon the transfer by conveyance of fee title to a Dwelling Unit within Sunflower, a CIF fee will be due and payable to the Association through escrow from the purchaser. The following exemptions shall apply:

- (a) A current Owner purchasing a replacement home, not an additional Dwelling Unit, shall not be subject to the CIF.
- (b) If the home transfer is in connection with the death of the Owner and the new titleholder is a family member (parent, spouse, sibling or child) of the Owner, then no CIF will be due.
- (c) Transfers or conveyances for only nominal consideration to the existing Owner's family member(s) or to a trust made by an Owner for his or her benefit

or for the benefit of his or her family member(s) or other heirs shall not be subject to the CIF.

The CIF shall be 100% of the annual assessment for the most recent fiscal year of the Association.

CIF funds collected shall be reserved in a separate account and may be expended only for community improvement project(s).

A Board resolution shall describe the project(s), its estimated cost and the manner in which all necessary funds are to be provided. CIF funds may be used for a particular community project(s) only after the project(s) has been approved by a majority vote of the Members (as defined in Section 1.24 and further defined in Section 3.2) voting, subject to a quorum. Votes may be cast by absentee ballot or in person. Votes shall be cast in accordance with the By-Laws and pursuant to Arizona Law.

## **Article XI**

### **ARCHITECTURAL AND DESIGN STANDARDS**

**11.1. General.** No improvements (including staking, clearing, excavation, grading and other site work), exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Lot, Dwelling Unit, other structure or the Common Area (e.g., fences, signs, banners, antennae, clotheslines, playground equipment, lighting, pools, temporary structures, and artificial vegetation, planting or removal of landscaping materials, or installation or removal of an irrigation system shall take place except in compliance with this Article, this Declaration, the Use Restrictions, and the Design Guidelines and with the approval of the Architectural Review Committee ("ARC") under Section 11.2. All Lots are also subject to the design and architectural controls, restrictions and standards set forth in Section 4 of the Master Declaration and in the Guidelines established by the Master Declaration; however, the Association and the ARC have been or will be vested (subject to revocation for cause), pursuant to Section 4.1.3 of the Master Declaration, with all architectural and design approval and enforcement rights with respect to the Properties which were created by the Master Declaration, and any Owner obtaining approval of the appropriate ARC thereby shall be deemed to have obtained also the approval of the ARC under the Master Declaration.

Any Owner may remodel, paint or redecorate the interior of structures, including the Dwelling Unit, on his or her Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to this Article and approval as set forth below. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

This Article shall apply to any and all improvements to the Common Area by or on behalf of the Association.

#### **11.2. Architectural and Design Review.**

Architectural Review Committee: Modifications. The Board shall establish the ARC, which shall consist of an uneven number of Persons no less than three (3). Members of the ARC shall be appointed and shall serve at the discretion of the Board.

The ARC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures or on or to Lots containing Dwelling Units (including, without limitation, the

initial landscaping on a Lot), the adjacent open space, and Common Area, provided, however, that all actions of the ARC are subject to the review and approval of the Board upon any aggrieved Owner's appeal.

The Board may create and appoint such subcommittees of the ARC as deemed appropriate. Such subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and shall be governed by such procedures as may be established by the ARC or the Board. Any action of any ARC subcommittee shall be subject to the review and approval of the ARC and may be appealed by an aggrieved Owner to the ARC. Notwithstanding the above, the ARC shall not be obligated to review all actions of any subcommittees and the failure to take action in any instance shall not be a waiver of the right of the ARC to act in the future.

An appeal of an ARC action by an Owner to the Board, and an appeal of an ARC subcommittee action by an Owner to the ARC, must be filed by delivering a written request for appeal to the Board or the ARC, as applicable, within 10 days after the date on which notice was delivered to an Owner of the action taken on its application.

For purposes of this Article, "ARC" shall refer to either the ARC, or any subcommittee of the ARC, as appropriate under the circumstances. The ARC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

**11.3. Guidelines and Procedures.** The ARC shall have the authority to supplement and amend the Design Guidelines, with the consent and approval of the Board.

The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon location, unique characteristics, intended use, the Master Plans, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern in considering applications hereunder. The Design Guidelines shall not be the exclusive basis for decisions of the ARC and compliance with the Design Guidelines shall not guarantee approval of any application.

Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines. The Design Guidelines may be amended to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the ARC unless the Reviewing Body ARC has granted a variance in writing pursuant to Section 11.6. So long as the ARC has acted in good faith, and subject to the review and approval rights of, and appeal to, the Board or ARC, as applicable, the ARC's findings and conclusions with respect to appropriateness of, applicability of, or compliance with the Design Guidelines and this Declaration shall be final.



The Association shall make the Design Guidelines available to Owners which shall conduct their activities in accordance with such Design Guidelines.

**11.4. Submission of Plans and Specifications.**

(a) Prior to commencing any activity within the scope of Section 11.1, an Owner shall submit an application for approval of the proposed work to the ARC. Such application shall be in the form required by the ARC and shall include such information as required under the Design Guidelines, such as Plans showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefore, and other features of proposed construction, as applicable. The Design Guidelines shall set forth the procedure and any additional information for submission of the Plans. Before the Owner may begin the proposed activity, the application must be approved by the ARC in accordance with the procedures described below.

(b) In reviewing each submission, the ARC may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The ARC may require relocation of native plants within the construction site, the installation of an irrigation system for the landscaping, or the inclusion of natural plant life on the Lot as a condition of approval of any submission.

Approval by the ARC shall not constitute approval of or waiver of approvals or review required by the Town of Marana, Arizona, or any other governmental agency or entity having jurisdiction over architectural or construction matters. The ARC shall not require permits or other approvals by local government entities other than those issued by such entities in the usual course of business.

The ARC shall, within the period specified in the Design Guidelines, advise the party submitting the Plans, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by the ARC to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines, the reasons for such finding, and suggestions, if appropriate, for the curing of such objections. In the event the ARC fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval and suggestions for curing the objections of the committee of the Plans, approval shall be deemed to have been given. Notice (for purposes of this Section 11.4(b) only) shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

(c) The ARC, as part of the Plan approval, may require that construction in accordance with approved Plans be commenced within a specified time period. In such event, if construction does not commence in a timely manner, then such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the ARC for reconsideration. If construction is not completed on a project for which Plans have been approved within the period, if any, set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

**11.5. No Waiver of Future Approvals.** Each Owner acknowledges that the members of the ARC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be

deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

**11.6. Variance.** The ARC may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. The terms of any governmental approval, or the terms of any financing, or the inability to obtain governmental approval or financing, shall not be considered a hardship warranting a variance. The granting or denial of variances is subject to appeal to the Board.

**11.7. Limitation of Liability.** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Association, its officers, the Board, the ARC, any subcommittee of the ARC, the Association's management nor any member of the foregoing, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, its officers, the Board, the ARC, any subcommittee of the ARC, the Association's management, nor any member of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the ARC and its members (including subcommittees) shall be defended and indemnified by the Association as provided by the By-Laws.

**11.8. Enforcement.** Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Association, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the Association or restore the property, Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association or its designees shall be authorized, after an opportunity for the Owner to be heard in accordance with the By-Laws, to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the Benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline set forth in the approval, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work, and all costs, together with interest at the rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the Benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, tenant or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, tenant or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, the Association, its respective officers, or directors shall not be held liable to any Person for exercising the rights granted by this paragraph.

The Association shall be responsible for enforcement of this Article XI. The Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewing Body.

## **Article XII** **USE RESTRICTIONS**

### **12.1. Plan of Development; Tract Declaration.**

(a) General Plan. The Former Declarant established a general plan of development for the Properties in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within Sunflower. The Properties are subject to the land development, architectural, and design provisions described in Article XI, the other provisions of this Declaration governing individual conduct, and uses of or actions upon the Properties, and the guidelines, rules, and restrictions promulgated pursuant to this Article, including the initial Use Restrictions attached hereto as Exhibit "D," as each may be amended from time to time, all of which establish affirmative and negative covenants, easements, and restrictions on the Properties.

(b) Tract Declaration. The Master Declaration contemplates that Tract Declarations for Parcels located within Continental Ranch would be executed and recorded periodically as Continental Ranch develops and Land Use Classifications for such Parcels are determined. This subsection (b) shall constitute a Tract Declaration for all purposes of the Master Declaration.

Pursuant to Section 13.2 of the Master Declaration, those portions of the Properties described as Parcels 31, 32, 35 and 41S of Continental Ranch were withdrawn by the Former Declarant, as the successor by mesne assignments to the "declarant's rights" thereunder and as the holder of legal title to such Parcels, from the following Tract Declarations: Tract Declaration Continental Ranch Parcel 31 dated March 3, 1988 and recorded on March 3, 1988 in Docket 8235, page 2244; Tract Declaration Continental Ranch Parcel 32 dated March 3, 1988 and recorded on March 3, 1988 in Docket 8235, page 2251; Tract Declaration Continental Ranch Parcel 35 dated March 3, 1988 and recorded on March 3, 1988 in Docket 8235, page 2258; and Tract Declaration Continental Ranch Parcel 41S dated March 3, 1988 and recorded on March 3, 1988 in Docket 8235, page 2272 (collectively, the "Existing Tract Declarations"). From and after the date of recording of this Declaration, such Parcels shall not be subject to any covenant, condition or other term of the Existing Tract Declarations.

Pursuant to Section 5.1 of the Master Declaration, the Former Declarant, as holder of legal title to all such Parcels, declared that Parcels 30, 31, 32, 33, 34, 34A, 35, 41 (North) and 41 (South) of Continental Ranch, as more particularly described on Exhibit "C" attached hereto and incorporated herein (collectively, the "Subject Parcels"), shall have the Land Use Classification of, and shall be developed and used solely for, Single Family Residential Use and/or Cluster Residential Use, together with related amenities and Common Areas. The Subject Parcels are further designated as Age Restricted Parcels (as that term is defined in the Second Amendment to the Master Declaration described in Section 1.22 above) which are restricted in use to provide housing primarily for persons 55 years of age or older, in compliance with applicable state and Federal laws.

This Tract Declaration shall be automatically supplemented by any recorded plat on any portion of the Subject Parcels, such that the number of designated Memberships in the Master Association for such portion of the Subject Parcels shall equal the number of Lots shown on such plat, and the common tracts shown on such plat shall constitute Limited Common Areas, and Exempt Property which is not subject to assessment, for all purposes of the Master Declaration.

This Tract Declaration shall be considered an integral part of the Master Declaration and shall be construed with the Master Declaration as if the provisions hereof were set forth therein. This Tract Declaration shall run with the Subject Parcels and be enforceable in accordance with and as a part of the Master Declaration.

(c) Applicability. Except as otherwise expressly provided herein, all provisions of this Declaration and any rules shall apply to all Owners, Occupants, tenants, guests and invitees of any Lot. Any lease on any Lot shall provide that the Lessee and all Occupants of the leased Lot shall be bound by the terms of the Governing Documents.

## **12.2. Authority to Promulgate Use Restrictions and Rules.**

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may amend the Use Restrictions and may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions then in effect. Notice of any such proposed action shall be posted in a prominent place within the Properties or published in the Association's newsletter, if any, at least five business days prior to the Board meeting at which such action is to be considered.

Any such action shall become effective after compliance with subsection (c) of this Section unless disapproved at a meeting by at least two-thirds (2/3) of the total Members present. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt, prior to the expiration of the 60 day period described in subsection (c) of this Section, of a petition of the Members as required for special meetings in the By-Laws. If a meeting to consider disapproval is requested by the Members prior to the effective date of such action, the action may not become effective until after such meeting is held.

(b) Alternatively, the Members, at a meeting duly called for such purpose, may amend the Use Restrictions or adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and previously adopted rules by a vote of at least two-thirds (2/3) of the total Members present.

(c) At least 60 days prior to the effective date of any action under subsections (a) or (b) of this Section, a copy of the amendment or rule, specifying the effective date, shall be posted in a prominent place within the Properties or published in the Association's newsletter, if any. The Association shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Members to modify, repeal, or expand the Declaration (with the exception of Exhibit "D"), the By-Laws, the Articles or the Design Guidelines. Such documents may be amended only as provided therein.

(e) The provisions of and procedures set forth in this Section 12.2 are not intended to, and do not, apply to, govern or control the right of the Board to adopt rules, regulations and policies regulating the use and enjoyment of the Common Area pursuant to Section 2.1(c).

**12.3. Owners' Acknowledgement.** All Owners are subject to the Use Restrictions provided for herein and in the Master Declaration and are given notice that (a) their ability to use their privately owned property is limited thereby and (b) the Board and/or the Members may amend the Use Restrictions or adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions in accordance with Sections 12.2 and 16.2. To the extent that any Use Restrictions now

or hereafter in effect under this Declaration is inconsistent or conflicts with any Use Restriction then in effect under the Master Declaration, the Use Restriction which is more limiting, more restrictive, or sets a higher or more stringent standard shall govern and control.

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

**12.4. Rights of Owners.** Except as may be specifically set forth in the initial Use Restrictions attached hereto as Exhibit "D", neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Similar Treatment. Similarly situated Owners and Occupants shall be treated similarly.

(b) Speech. The rights of Owners and Occupants to display on their Lot political signs and political symbols of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods on individually owned property shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating signs and symbols which are visible from outside the Lot and in accordance with Arizona Law.

(c) Religious and Holiday Displays. The rights of Owners and Occupants to display religious and holiday signs, symbols, and decorations on their Lots and the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Lot.

(d) Household Composition. No rule shall interfere with the freedom of Occupants of Dwelling Units to determine the composition of their households, within the limitations imposed by Section 2.3, except that the Association shall have the power to limit the total number of Occupants permitted in each Dwelling Unit on the basis of the size and facilities of the Dwelling Unit and its fair share use of the Common Area.

(e) Activities Within Dwelling Units. No rule shall interfere with the activities carried on within the confines of Dwelling Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of Occupants of other Dwelling Units, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Dwelling Unit, or that create an unreasonable source of annoyance.

(f) Pets. The Association may adopt reasonable rules designed to minimize damage and disturbance to other Owners and Occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Lot and fair share use of the Common Area; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties in compliance with the rules in effect prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed, or keep animals or poultry of any kind for commercial or business purposes.

(g) Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of financial burdens among various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Area, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(h) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Properties shall apply prospectively only and shall not require the removal of any property which was being kept on the Properties prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law.

The limitations in this Section 12.4 shall apply only to rules; they shall not apply to amendments to this Declaration adopted in accordance with Section 16.2.

**12.5 Rentals and Leases.** Any agreement for the rental/lease of a Dwelling Unit must be in writing and must be expressly subject to this Declaration, By-Laws, Rules and Regulations, Use Restrictions and Design Guidelines. A copy of any such agreement shall be filed at the Association office. Any violation of these documents by the tenant shall be a default under the lease or rental agreement. An Owner (as defined in Section 1.30) of a Dwelling Unit shall notify the Association regarding the existence of all rentals/leases and shall sign the Rental Policy form available at the Association office. Failure to notify the Association of a rental/lease shall be subject to a penalty as set by the Board. The Lot Owner (as defined in Section 1.30) shall remain liable for compliance with the Declaration, By-Laws, Rules and Regulations, Use Restrictions and Design Guidelines and shall be responsible for any violations thereof by his/her tenant or the tenant's family and guests. All rentals and leases must comply with the Association's Age Restrictions.

The aggregate number of Dwelling Units to be utilized as rentals/leases at any given time shall not exceed five (5%) percent of the total number of Dwelling Units.

Beginning on the date this Declaration is recorded, regardless of the number of Dwelling Units owned by an Owner (as defined in Section 1.30), the Association shall permit not more than two Dwelling Units owned by an Owner (as defined in Section 1.30) to be rented/leased at any given time.

With respect to any Owner (as defined in Section 1.30) who owns more than two Dwelling Units prior to the date this Declaration is recorded:

- a. The total number of Dwelling Units owned by that Owner (as defined in Section 1.30) prior to the date this Declaration is recorded shall be permitted to continue to be rented/leased so long as legal ownership has not changed.
- b. The number of Dwelling Units permitted to be rented/leased by an Owner (as defined in Section 1.30) shall be reduced upon each sale, transfer, or exchange, but to not less than two Dwelling Units.

### **Article XIII** **EASEMENTS**

**13.1. Easements of Encroachment.** The Association reserves unto itself, so long as it owns any property described in Exhibits "A" or "B", perpetual, non-exclusive easements of encroachment,

and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with this Declaration) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of the Association.

**13.2. Easements for Utilities, Etc.** The Association reserves unto itself, so long as it owns any property described in Exhibits "A" or "B" a perpetual non-exclusive easement for the purpose of access and maintenance upon, across, over, and under all of the Properties to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, meter boxes, telephone, gas, and electricity. The Association may assign these rights to any local utility supplier, cable company, security company or other company providing a service or utility to Sunflower, subject to the limitations herein.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Dwelling Unit on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement.

The Association specifically grants to the local utility suppliers easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Dwelling Unit on any Lot, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board.

The exercise of this easement by any party other than the Association shall be subject to prior notice to the Association, which shall be permitted to coordinate and supervise access to the Properties by the grantee of the easement. The exercise of the easement also shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or Occupant.

**13.3. Easements to Serve Additional Property.** The Association hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, a perpetual, non-exclusive easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Association agrees that it and its assigns shall be responsible for any damage caused to the Common Area for construction of roads and for connecting and installing utilities on such property.

**13.4. Easements for Overspray.** The Properties immediately adjacent to any landscaped areas within the Area of Common Responsibility are hereby burdened with a perpetual, non-exclusive easement for overspray of water and materials used in connection with fertilization and irrigation of such areas. Under no circumstances shall the Association be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

**13.5. Easements for Cross-Drainage.** Every Lot and Common Area shall be burdened with perpetual, non-exclusive easements for natural drainage of storm water runoff from other portions

of the Properties; provided, no Person shall alter the natural drainage on any Lot or any Private Use Easement area to change materially the amount or direction of flow for the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property and the Board.

**13.6. Right of Entry.** The Association shall have the right, but not the obligation, and a perpetual, non-exclusive easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot and Dwelling Unit, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board officers, or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry into a Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Lot or Dwelling Unit to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities.

**13.7. Easements for Maintenance and Enforcement.** Authorized agents of the Association shall have the right, and a perpetual, non-exclusive easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot or Dwelling Unit to (a) perform its maintenance responsibilities under Article V, and (b) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, By-laws, Design Guidelines, Use Restrictions and rules. Except in emergencies, entry into a Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owner's property, and any damage arising out of the exercise of this easement by the Association shall be repaired by the Association at its expense.

The Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates this Declaration, any Supplemental Declaration, the By-Laws, the Design Guidelines, the Use Restrictions, or the rules. All costs incurred, including reasonable attorneys' fees, together with interest thereon shall be assessed against the violator and the Lot as a Benefited Assessment.

**13.8. Rights to Surface Water, Groundwater, Storm Water Runoff, Effluent, and Water Stored Underground.** The Association hereby reserves for itself and its designees all rights to surface water, groundwater, storm water runoff, effluent, and water stored in any underground storage facilities located or produced within, or appurtenant to, the Properties. Each Owner agrees, by acceptance of a deed to a Lot, that the Association shall retain all such rights. Such rights shall include a perpetual, non-exclusive easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. Neither the Association nor any Owner shall be deemed by this reservation to abandon any right to water which is appurtenant to or which may be exercised in connection with the Properties.

**13.9. Easements for Water Retention.** The Association and their designees shall have a perpetual, non-exclusive access easement over and across any of the Properties abutting the Area of Common Responsibility to construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water and remove trash and other debris therefrom. Nothing herein shall be construed to make the Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

**13.10. Private Use Easements.** In addition to the general easements provided for in this Declaration, the Former Declarant hereby reserves for the benefit of the Owners of the Benefited Lots



(defined below) a perpetual, exclusive easement of use and enjoyment as a private yard area (Private Use Easement) over the Burdened Common Area (defined below). The actual dimensions of the Private Use Easement area on each Benefited Lot shall be determined by the actual location of the wall as installed by the Former Declarant to enclose the rear and/or side yard of such Lot. The easements described in this Section 13.10 shall be appurtenant to the Lot for the benefit of which they are reserved, and shall be perpetual.

The term "Benefited Lot" means any Lot contiguous to Common Area adjoining Sunflower Park Drive if the wall enclosing the rear and/or side yard of such Lot was installed by the Former Declarant in the Common Area.

The term "Burdened Common Area" means any Common Area located inside the wall installed by the Former Declarant to enclose the rear and/or side yard of any Benefited Lot.

Each Private Use Easement area may be used for all normal and customary uses of a private yard, including without limitation for landscaping (including an irrigation system), drainage, recreation (including pools, spas and other water features), and garden use, by the Owner, residents, and the guests of the Owner and residents, of the Benefited Lot, subject to the restrictions and limitations set forth herein and to all municipal, county or other governmental requirements and ordinances, including setback restrictions, and further subject to any required approvals of the ARC. Except for improvements originally constructed upon the Private Use Easement area by the Former Declarant, no landscaping, wall, fence or other structure or improvement of any kind shall be constructed or installed within, upon or adjacent to any Private Use Easement area without the prior written approval of the ARC. The Private Use Easement area and every part thereof, including the side of party walls facing the Private Use Easement area and the drainage system established as part of the original grading and original construction upon the Benefited Lot, shall be repaired, replaced and maintained by the Owner of the Benefited Lot continuously in a neat and orderly condition consistent with the Community-Wide Standard and Section 5.2 hereof.

Private Use Easements shall not be extinguished, in whole or in part, by merger, foreclosure or otherwise. The creation and existence of the Private Use Easements provided for herein are not intended to shift responsibility for or affect the basis of valuation for ad valorem real property taxes, and such taxes shall be paid for each Private Use Easement area by the Association.

#### **Article XIV** **MASTER PLANNED COMMUNITY**

**Master Planned Community.** Any Person that acquires any interest in the Properties acknowledges awareness that Sunflower is part of a Master Planned Community, the development of which is likely to extend over many years and recognizes that protesting or otherwise objecting to (a) lawful zoning or changes in zoning or to uses of, or changes in density of, the Properties that are consistent with the Declaration (other than within said Owner's or other Person's property), or (b) changes in any conceptual or master plan for the Properties, including, but not limited to, the Master Plans (other than within said Owner's or other Person's property) is not in the collective best interest of the Owners.

#### **Article XV** **DISPUTE RESOLUTION**

**15.1. Agreement to Avoid Litigation.** All Persons subject to this Declaration (other than the Association), and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes

involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that the claims, grievances, or disputes described in Section 15.2 ("Claims") shall be resolved using the procedures set forth in Section 15.3 in lieu of filing suit in any court.

**15.2. Claims.** All claims, grievances, disputes, actions and suits between or among Bound Parties arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents, shall be subject to the provisions of Section 15.3.

Notwithstanding the above, the following shall not be Claims and shall not be subject to the provisions of Section 15.3;

(a) any claim, grievance, dispute, action or suit in which the Association, or their respective employees, agents officers or directors, is a party;

(b) any claim, grievance, dispute, action or suit between Owners if the grounds therefore would constitute a cause of action independent of the Governing Documents;

(c) any claim, grievance, dispute, action or suit in which any indispensable party is not a Bound Party;

(d) any action or suit which otherwise would be barred by any applicable statute of limitations; and

(e) any claim, grievance, dispute, action, cause of action or suit asserted by an Owner or Occupant to challenge the actions of the Association, the Board, the ARC, any subcommittee of the ARC, any covenants committee, or any other committee with respect to any review, processing, approval or disapproval in connection with, or any exercise of review or veto power pursuant to, or the application or enforcement of, any of the provisions of Article XI or Article XII.

With the consent of all parties thereto, any claim, grievance, dispute, action or suit described in subsections (a) through (e) above may be submitted to the alternative dispute resolution procedures set forth in Section 15.3.

**15.3. Mandatory Procedures.**

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) Claimant's proposed remedy; and

(iv) That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(ii) If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 45 additional days to submit the Claim to mediation under the auspices of the Community Associations Institute or, if such service is not locally available through the Community Associations Institute or if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Pima County, Arizona area.

(iii) If Claimant does not submit the Claim to mediation within 45 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 45 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Within five days after the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

(i) If the parties do not agree in writing to a settlement of the Claim within 15 days after the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "E" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii) This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Arizona. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Arizona.

**15.4. Allocation of Costs of Resolving Claims.**

(a) Each Party shall bear its own costs in connection with negotiation and mediation, including any attorneys' fees incurred, and all Parties shall share equally all charges of the mediator(s).

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's attorney's fees and costs (including expert witness fees) incurred in the arbitration to the Award, such costs to be borne equally by all Respondents against whom the Award is imposed. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its attorney's fees and costs (including expert witness fees) incurred in the arbitration.

**15.5. Enforcement of Resolution.** After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties in equal amounts) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

## **Article XVI** **GENERAL PROVISIONS**

**16.1. Term.** This Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of 30 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of ten years, unless an instrument in writing agreeing to terminate this Declaration is signed by two-thirds (2/3) of the total Members eligible to vote and has been recorded within the year preceding such extension.

### **16.2. Amendment.**

(a) By Board. The Board may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing.

(b) By Owners. Except as provided in Section 16.2(a), this Declaration may be amended only by the affirmative vote of at least two-thirds (2/3) of the total Members eligible to vote; provided, however, that the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Members may vote as provided in the By-Laws and pursuant to Arizona Law.

(c) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Office of the County Recorder unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no

event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

**16.3. Severability.** Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

**16.4. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rules against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**16.5. Use of the Word "Sunflower".** No Person shall use the word "Sunflower" or any derivative, or any other term which the Association may select as the name of this development or any component thereof, in any printed or promotional material without the Association's prior written consent. However, Owners may use the word "Sunflower" in printed or promotional matter solely to specify that particular property is located within the Properties.

**16.6. Compliance.** Every Owner and Occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available hereunder, at law or in equity, by the Association, or, in a proper case, by any aggrieved Lot Owner(s).

**16.7. Notice of Sale or Transfer of Title.** Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

**16.8. Attorneys' Fees.** Except as otherwise provided in Article XVI, in the event of an action instituted to enforce any of the provisions contained in the Governing Documents the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgement, reasonable attorneys' fees and costs, including administrative and lien fee, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefited Assessment with respect to the Lot(s) involved in the action.

**16.9. Notices.** The requirements with respect to the giving of notices under this Declaration shall be governed by the By-Laws.

**16.10. Master Association.** Sunflower is part of a Master Planned Community known as Continental Ranch and is subject to the terms and conditions of the Master Declaration and the Articles of Incorporation, Bylaws, Review Committee Guidelines, and Association Rules of the Master Association and any Tract Declarations affecting the Properties as such documents may from time to time be amended (collectively, the "Master Association Documents"). The Owners, Occupants, and other Persons subject to this Declaration must comply with the Master Declaration and the other

Master Association Documents, as well as comply with all covenants, conditions and restrictions set forth in this Declaration and the other Governing Documents. The Governing Documents are subject and subordinate to, and the Association and all Members are subject to, the Master Association Document. All assessments and amounts payable to the Master Association pursuant to the Master Association Documents shall be in addition to any assessments or other amounts due to the Association pursuant to this Declaration, and shall be collected by the Association and remitted to the Master Association as provided in Section 10.11 above. Each Owner subject to this Declaration and the Association acknowledge and agree that the Master Association shall not be responsible for the maintenance of the Area of Common Responsibility within the Properties, but the Master Association may enforce the maintenance obligations of Owners pursuant to Section 11.5 of the Master Declaration. Pursuant to Section 3.1.6 of the Master Declaration, the Common Areas within the Properties shall not be used by any Person subject to the Master Declaration who does not own a Lot within the Properties unless expressly permitted otherwise by this Declaration or by rules and regulations duly adopted by the Board. All Owners and other Persons subject to this Declaration acknowledge and agree that, in consideration of the reduced rate of Assessments imposed upon Owners of Lots within the Properties, Owners, Occupants and their guests entitled to use the Master Association Common Areas shall pay Special Use Fees therefore which are greater than the Special Use Fees, if any, charged to other owners and occupants in Continental Ranch residing outside of the Properties. Any action that requires the consent of the Master Association shall be deemed approved or consented to if approved in writing by the Board of Directors of the Master Association.

**IN WITNESS WHEREOF**, the undersigned certify that this Amended and Restated Declaration was approved by the requisite number of votes of the Members.

**CERTIFICATION**

At a duly noticed vote by mail in 2007 and 2008 with the polls closing on or about January 4, 2008, the undersigned President and Secretary of the Sunflower Community Association hereby certify that this Amended and Restated Declaration was approved by the membership by a vote that exceeded 648 of the Member votes.

By \_\_\_\_\_  
Larry Ott, President

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF PIMA )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2008, by Larry Ott, the President of Sunflower Community Association, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

By \_\_\_\_\_  
Dennis Casey, Secretary

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF PIMA        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2008, by Dennis Casey, the Secretary of the Sunflower Community Association, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**CONSENT OF MASTER ASSOCIATION**

The undersigned President of the Continental Ranch Community Association (“Master Association”) certifies that the Master Association consents to this Amended and Restated Declaration.

By \_\_\_\_\_  
President

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF PIMA        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2008, by the President of Continental Ranch Community Association, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

\_\_\_\_\_Notary Public

My Commission Expires:

\_\_\_\_\_

EXHIBIT "A"

Land Initially Submitted

A portion of the Northeast One-Quarter (NE 1/4) of Section 20, and the Northwest One-Quarter (NW 1/4) of Section 21, Township 12 South, Range 12 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Northwest corner of Section 21;

THENCE N 89°33'12" E, along the North line of said Northwest One-Quarter (NW 1/4), a distance of 150.00 feet to the POINT OF BEGINNING;

THENCE continue N 89°33'12" E, along said North line, a distance of 1,169.75 feet, to the Northwest corner of the parcel recorded in Docket 8237 at Page 221;

THENCE S 00°35'48" E, along the West line thereof, a distance of 100.00 feet;

THENCE N 89°33'12" E, along the South line thereof and projected extension of said line, a distance of 123.31 feet;

THENCE S 00°01'59" E, a distance of 193.23 feet, to a point on the arc of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve, to the right, having a radius of 6,555.00 feet and a central angle of 07°16'31" for an arc distance of 832.35 feet to a non-tangent line;

THENCE N 83°56'24" W, a distance of 105.02 feet, to a point on the arc of a non-tangent curve concave to the west, a radial line of said curve through said point having a bearing of S 82°44'19" E;

THENCE northerly along the arc of said curve to the left, having a radius of 6450.00 feet and a radial angle of 00°23'59" for an arc distance of 45.00 feet to a non-tangent line;

THENCE N 88°49'48" W, a distance of 50.25 feet;

THENCE S 89°33'12" W, a distance of 439.30 feet, to a point of curvature of a tangent curve concave to the North;

THENCE Westerly along the arc of said curve, to the right, having a radius of 311.00 feet and a central angle of 31°23'12" for an arc distance of 170.37 feet to a point on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of S 60°32'21" E;



THENCE Southwesterly along the arc of said curve, to the right, having a radius of 840.00 feet and a central angle of  $54^{\circ}19'57''$  for an arc distance of 796.56 feet to a point of reverse curvature of a tangent curve concave to the Southeast;

THENCE Southwesterly and Southerly along the arc of said curve, to the left, having a radius of 25.00 feet and a central angle of  $94^{\circ}25'49''$  for an arc distance of 41.20 feet to a point of reverse curvature of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve, to the right, having a radius of 1,250.00 feet and a central angle of  $18^{\circ}51'46''$  for an arc distance of 411.52 feet to a point of reverse curvature of a tangent curve concave to the Northeast;

THENCE Southerly and Southeasterly along the arc of said curve, to the left, having a radius of 25.00 feet and a central angle of  $95^{\circ}38'33''$  for an arc distance of 41.73 feet to a point of cusp of a tangent curve concave to the South, on the Northerly right-of-way line of TWIN PEAKS ROAD as recorded in Docket 9496 at Page 562;

THENCE Westerly along the arc of said curve, to the left, having a radius of 2,675.00 feet and a central angle of  $03^{\circ}12'45''$  for an arc distance of 149.99 feet to a point of cusp of a tangent curve concave to the Northwest;

THENCE Northeasterly along the arc of said curve and said right-of-way line, to the left, having a radius of 25.00 feet and a central angle of  $80^{\circ}10'19''$  for an arc distance of 34.98 feet to a point of compound curvature of a tangent curve concave to the West;

THENCE Northerly along the arc of said curve, to the left, having a radius of 1,150.00 feet and a central angle of  $21^{\circ}01'27''$  for an arc distance of 421.98 feet to a point of compound curvature of a tangent curve concave to the Southwest;

THENCE Northwesterly along the arc of said curve, to the left, having a radius of 25.00 feet and a central angle of  $77^{\circ}53'42''$  for an arc distance of 33.99 feet to a point of tangency;

THENCE N  $89^{\circ}43'14''$  W, a distance of 55.39 feet, to a point of curvature of a tangent curve concave to the South;

THENCE Westerly along the arc of said curve, to the left, having a radius of 860.00 feet and a central angle of  $15^{\circ}21'24''$  for an arc distance of 230.50 feet to a point of tangency;

THENCE S  $74^{\circ}55'22''$  W, a distance of 5.28 feet;

THENCE N  $06^{\circ}01'07''$  W, a distance of 79.00 feet;

THENCE N 00°34'55" W, a distance of 2.02 feet, to a point on the arc of a non-tangent curve concave to the South, a radial line of said curve through said point having a bearing of N 14°36'36" W;

THENCE Easterly along the arc of said curve, to the right, having a radius of 940.00 feet and a central angle of 14°53'22" for an arc distance of 244.28 feet to a point of tangency;

THENCE S 89°43'14" E, a distance of 109.62 feet, to a point of curvature of a tangent curve concave to the North;

THENCE Easterly along the arc of said curve, to the left, having a radius of 760.00 feet and a central angle of 34°36'26" for an arc distance of 458.05 feet to a point on the arc of a non-tangent curve concave to the Southwest, a radial line of said curve through said point having a bearing of N 71°05'07" E;

THENCE Northwesterly along the arc of said curve, to the left, having a radius of 400.00 feet and a central angle of 22°31'16" for an arc distance of 157.23 feet to a point of tangency;

THENCE N 41°26'09" W, a distance of 468.11 feet, to a point on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of S 41°26'09" E;

THENCE Northeasterly along the arc of said curve, to the left, having a radius of 600.00 feet and a central angle of 49°08'45" for an arc distance of 514.65 feet to a point of tangency;

THENCE N 00°34'53" W, a distance of 288.30 feet, to the POINT OF BEGINNING.

Containing 35.86 acres, more or less.

Prepared by:

THE WLB GROUP, INC.

*Douglas E. Schneider*  
Douglas E. Schneider, RLS  
DES:tal



142231 000001

EXHIBIT "B"

Land Subject to Annexation

That portion of the West One-Half (W 1/2) of Section 16, the Northeast One-Quarter (NE 1/4) of Section 20, and the Northwest One-Quarter (NW 1/4) of Section 21, Township 12 South, Range 12 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

BEGINNING at the Southwest corner of Section 16;

THENCE N 00°38'47" W, along the West line of said Section, a distance of 2,641.14 feet, to the West One-Quarter (W 1/4) corner of said Section;

THENCE N 00°32'03" W, along the West line of said section, a distance of 6.57 feet, to a point on the Southerly right-of-way of COACHLINE BOULEVARD;

THENCE S 64°28'15" E, along said right-of-way line, 147.98 feet to a point of curvature of a tangent curve concave to the Southwest;

THENCE Southeasterly along the arc of said curve, to the right, having a radius of 2,355.00 feet and a central angle of 64°26'16" for an arc distance of 2,648.55 feet to a point of tangency;

THENCE S 00°01'59" E, 448.80 feet, to a point on the line common to Sections 16 and 21;

THENCE S 89°33'12" W, along said line, 1,294.05 feet;

THENCE S 00°34'53" E, 288.30 feet to a point of curvature of a tangent curve concave to the Northwest;

THENCE Southwesterly along the arc of said curve, to the right, having a radius of 600.00 feet and a central angle of 49°08'45" for an arc distance of 514.65 feet to a non-tangent line;

THENCE S 41°26'09" E, 468.11 feet to a point of curvature of a tangent curve concave to the Southwest;

THENCE Southeastery along the arc of said curve, to the right, having a radius of 400.00 feet and a central angle of  $22^{\circ}31'16''$  for an arc distance of 157.23 feet to a point on the arc of a non-tangent curve concave to the North, a radial line of said curve through said point having a bearing of  $S\ 34^{\circ}19'40''\ E$ ;

THENCE Westarly along the arc of said curve, to the right, having a radius of 760.00 feet and a central angle of  $34^{\circ}36'26''$  for an arc distance of 459.05 feet to a point of tangency;

THENCE  $N\ 89^{\circ}43'14''\ W$ , 109.62 feet to a point of curvature of a tangent curve concave to the South;

THENCE Westarly along the arc of said curve, to the left, having a radius of 940.00 feet and a central angle of  $14^{\circ}53'22''$  for an arc distance of 244.28 feet to a non-tangent line;

THENCE  $S\ 00^{\circ}34'55''\ E$ , 2.02 feet;

THENCE  $S\ 06^{\circ}01'07''\ E$ , 79.00 feet;

THENCE  $N\ 74^{\circ}55'22''\ E$ , 5.28 feet to a point of curvature of a tangent curve concave to the South;

THENCE Easterly along the arc of said curve, to the right, having a radius of 860.00 feet and a central angle of  $15^{\circ}21'24''$  for an arc distance of 230.50 feet to a point of tangency;

THENCE  $S\ 89^{\circ}43'14''\ E$ , a distance of 55.38 feet, to a point of curvature of a tangent curve concave to the Southwest;

THENCE Southeastery along the arc of said curve, to the right, having a radius of 25.00 feet and a central angle of  $77^{\circ}53'42''$  for an arc distance of 33.99 feet to a point of compound curvature of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve, to the right, having a radius of 1,150.00 feet and a central angle of  $21^{\circ}01'27''$  for an arc distance of 421.98 feet to a point of compound curvature of a tangent curve concave to the Northwest;

THENCE Southwesterly along the arc of said curve, to the right, having a radius of 25.00 feet and a central angle of  $80^{\circ}10'19''$  for an arc distance of 34.98 feet to a point of reverse curvature of a tangent curve concave to the South, to a point on the North right-of-way line of TWIN PEAKS ROAD;

THENCE Westerly along the arc of said curve, to the left, having a radius of 2,675.00 feet and a central angle of  $25^{\circ}04'35''$  for an arc distance of 1,217.44 feet to a point of tangency;

THENCE S  $63^{\circ}17'40''$  W, 1,060.25 feet to a point of curvature of a tangent curve concave to the North;

THENCE Westerly and Northwesterly along the arc of said curve, to the right, having a radius of 50.00 feet and a central angle of  $91^{\circ}08'29''$  for an arc distance of 79.54 feet to a point of tangency to a point on the Easterly right-of-way line of SILVERBELL ROAD;

The following 8 courses are along said right-of-way line of said SILVERBELL ROAD:

1. THENCE N  $25^{\circ}33'51''$  W, 95.99 feet to a point of curvature of a tangent curve concave to the Southwest;
2. THENCE Northwesterly along the arc of said curve, to the left, having a radius of 1,400.00 feet and a central angle of  $06^{\circ}27'15''$  for an arc distance of 157.71 feet to a point on the arc of a non-tangent curve concave to the East, a radial line of said curve through said point having a bearing of S  $80^{\circ}14'55''$  W;
3. THENCE Northerly along the arc of said curve, to the right, having a radius of 1,250.00 feet and a central angle of  $22^{\circ}34'10''$  for an arc distance of 496.33 feet to a point of tangency;
4. THENCE N  $12^{\circ}49'05''$  E, 178.11 feet;
5. THENCE N  $77^{\circ}10'55''$  W, 10.00 feet;
6. THENCE N  $12^{\circ}49'05''$  E, 755.73 feet to a point of curvature of a tangent curve concave to the West;
7. THENCE Northerly along the arc of said curve, to the left, having a radius of 880.00 feet and a central angle of  $24^{\circ}28'30''$  for an arc distance of 375.91 feet to a point of tangency;

8. THENCE N 11°39'25" W, 549.94 feet, to a point on the South right-of-way line of LINDA VISTA BOULEVARD;

THENCE N 89°27'35" E, 2,216.83 feet;

THENCE N 00°32'25" W, 75.00 feet, on the section line common to Sections 17 and 20;

THENCE N 89°27'35" E, along said line, 125.00 feet to the POINT OF BEGINNING.

Except any portion lying within Well site 20-A, recorded in Docket 8237, Page 212 of Records;

And also Except any portion lying within Well site 16-L, recorded in Book 314 of said Deed at Page 429 of Records.

TOGETHER WITH

That portion of the Northeast One-Quarter (NE 1/4) of Section 20 and the Northwest One-Quarter (NW 1/4) of Section 21, Township 12 South, Range 12 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Northwest corner of the Northwest One-Quarter (NW 1/4) of said Section 21;

THENCE N 89°33'12" E, a distance of 1,444.05 feet;

THENCE S 00°01'59" E, a distance of 293.23 feet, to a point of curvature of a tangent-curve concave to the West;

THENCE Southerly along the arc of said curve, to the right, having a radius of 8555.00 feet and a central angle of 07°16'31" for an arc distance of 832.35 feet to the POINT OF BEGINNING;

THENCE continue Southerly along the arc of said curve, to the right, having a radius of 6,555.00 feet and a central angle of 00°15'08" for an arc distance of 28.85 feet to a point of tangency;



THENCE Southerly along the arc of said curve, to the right, having a radius of 6,450.00 feet and a central angle of 00°23'59" for an arc distance of 45.00 feet to a non-tangent line;

THENCE S 83°56'24" E, 105.02 feet to the POINT OF BEGINNING.

Except any area lying within Well site 21-D.

Containing 207.11 acres more or less.

Prepared by:

THE WLB GROUP, INC.

*Douglas E. Schneider*

Douglas E. Schneider, R.L.S.  
DES:tal



And all real property lying and being within two (2) miles from any portion of any boundary line outlining the Properties, as the Properties may change from time to time.





PARCEL 31:

That portion of Sections 20 and 21, Township 12 South, Range 12 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Northeast corner of Section 20;

THENCE South 89 degrees 27 minutes 35 seconds West, along the North line of Section 20, a distance of 125.00 feet to the East right of way of Linda Vista Boulevard, as recorded in Book 13 of Road Maps, at Page 37, Pima County Recorder's Office;

THENCE South 00 degrees 32 minutes 25 seconds East, along the said East right of way a distance of 75.00 feet;

THENCE South 89 degrees 27 minutes 35 seconds West, along the said South right of way a distance of 324.95 feet;

THENCE South 00 degrees 34 minutes 55 seconds East, 813.98 feet to the POINT OF BEGINNING;

THENCE South 89 degrees 25 minutes 06 seconds West, 9.37 feet;

THENCE South 00 degrees 34 minutes 55 seconds East, 500.00 feet;

THENCE South 06 degrees 01 minutes 07 seconds East 525.74 feet to a point on the arc of a non-tangent curve concave to the South, a radial line of said curve through said point having a bearing of North 06 degrees 01 minutes 07 seconds West;

THENCE Easterly along the arc of said curve, to the right, having a radius of 2,675.00 feet and a central angle of 13 degrees 30 minutes 47 seconds for an arc distance of 630.89 feet to a point of tangency;

THENCE South 82 degrees 30 minutes 20 seconds East, 113.44 feet;

THENCE North 00 degrees 48 minutes 50 seconds East, 574.68 feet to a point of curvature of a tangent curve concave to the West;

THENCE Northerly along the arc of said curve, to the left, having a radius of 400.00 feet and a central angle of 42 degrees 14 minutes 59 seconds for an arc distance of 294.96 feet to a point of tangency;

THENCE North 41 degrees 26 minutes 09 seconds West, a distance of 468.11 feet to a point on the arc of a non-tangent curve concave to the North, a radial line of said curve through said point having a bearing of South 41 degrees 36 minutes 09 seconds East;

THENCE Westerly along the arc of said curve, to the right, having a radius of 600.00 feet and a central angle of 40 degrees 51 minutes 14 seconds for an arc distance of 427.82 feet to the POINT OF BEGINNING;

EXCEPT WELL SITE 20-A

The South 100.00 feet of the East 100.00 feet of the Northeast one-quarter of the Northeast one-quarter of Section 20.

PARCEL 32:

That portion of Section 20, Township 12, Range 12, East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows;

COMMENCING at the Northeast corner of Section 20;

THENCE South 89 degrees 27 minutes 35 seconds West, along the North line of Section 20 a distance of 125.00 feet to the East right of way of Linda Vista Boulevard as recorded in Book 13 of Road Maps at Page 7, Pima County Recorder's Office;

THENCE South 00 degrees 32 minutes 25 seconds East, along the said East right of way a distance of 75.00 feet;

THENCE South 89 degrees 27 minutes 35 seconds West, along the South right of way a distance of 324.95 feet;

THENCE South 00 degrees 34 minutes 55 seconds East, 813.98 feet;

THENCE South 89 degrees 25 minutes 6 seconds West, 9.37 feet to the POINT OF BEGINNING:

THENCE South 00 degrees 34 minutes 55 seconds East, 500 feet;

THENCE South 6 degrees 1 minute 7 seconds East, 525.74 feet to a point on the arc of a non-tangent curve concave to the South, a radial line of said curve through said point having a bearing of North 6 degrees 1 minutes 7 seconds West;

THENCE Westerly along the arc of said curve, to the left, having a radius of 2,675.00 feet and a central angle of 20 degrees 41 minutes 13 seconds for an arc distance of 965.82 feet to a point of tangency;

THENCE South 63 degrees 17 minutes 40 seconds West, 280.00 feet;

Exhibit "C"  
Page 3 of 11

THENCE North 26 degrees 42 minutes 19 seconds West, 109.46 feet to a point of curvature of a tangent curve concave to the East;

THENCE Northerly along the arc of said curve, to the right, having a radius of 600.00 feet and a central angle of 38 degrees 47 minutes 17 seconds for an arc distance of 406.19 feet to a point of tangency;

THENCE North 12 degrees 4 minutes 57 seconds East, a distance of 456.54 feet to a point of curvature of a tangent curve concave to the Southeast;

THENCE Northeasterly along the arc of said curve, to the right, having a radius of 600.00 feet and a central angle of 77 degrees 20 minutes 8 seconds for an arc distance of 809.86 feet to a point of tangency;

THENCE North 89 degrees 25 minutes 6 seconds East, a distance of 535.37 feet to the POINT OF BEGINNING.

**PARCEL 33:**

That portion of Section 20, Township 12 South, Range 12 East, G11a and Salt River Base and Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Northwest corner of the Northeast One-Quarter of the said Section 20;

THENCE North 89 degrees 27 minutes 35 seconds East, along the North line of the said Section 20, a distance of 292.36 feet to the Easterly right of way line of the existing Silverbell Road;

THENCE along the said Easterly right of way line the following courses and distances;

South 11 degrees 39 minutes 25 seconds East, 626.38 feet to a point of curvature of a tangent curve concave to the West;

Southerly along the arc of said curve, to the right, having a radius of 880.00 feet and a central angle of 24 degrees 28 minutes 30 seconds for an arc distance of 375.91 feet to a point of tangency;

South 12 degrees 49 minutes 5 seconds West, 590.22 feet to the POINT OF BEGINNING;

South 12 degrees 49 minutes 5 seconds West, 165.51 feet to the North line of that parcel of land recorded in Docket 7534 at Page 1015, Pima County Recorder's Office, Pima County, Arizona;

THENCE along the Easterly line of the said parcel of land the following courses and distances;

South 77 degrees 10 minutes 55 seconds East, 10.00 feet;

South 12 degrees 49 minutes 5 seconds West, 178.11 feet to a point of curvature of a tangent curve concave to the East;

Southerly along the arc of said curve, to the left, having a radius of 1,260.00 feet and a central angle of 22 degrees 34 minutes 11 seconds for an arc distance of 496.33 feet to a point on the arc of a non-tangent curve concave to the Southwest, a radial line of said curve through said point having a bearing of North 57 degrees 58 minutes 54 seconds East, said point being on the Easterly right of way line of the realigned Silverbell Road;

THENCE Southeasterly along the said Easterly right of way line, along the arc of said curve, to the right, having a radius of 1,400.00 feet and a central angle of 6 degrees 27 minutes 15 seconds for an arc distance of 157.70 feet to a point of tangency;

THENCE South 25 degrees 33 minutes 51 seconds East, along the said Easterly right of way line, a distance of 96.99 feet to a point of curvature of a tangent curve concave to the North;

THENCE Southeasterly and Easterly, along the arc of said curve, to the left, having a radius of 50.00 feet and a central angle of 91 degrees 8 minutes 29 seconds for an arc distance of 79.54 feet to a point of tangency, said point being on the Northwesterly right of way line of the realigned Twin Peaks Road;

THENCE North 63 degrees 17 minutes 40 seconds East, along the said Northwesterly right of way line, a distance of 780.25 feet;

THENCE North 26 degrees 42 minutes 19 seconds West, 109.46 feet to a point of curvature of a tangent curve concave to the East;

THENCE Northerly along the arc of said curve, to the right, having a radius of 600.00 feet and a central angle of 38 degrees 47 minutes 17 seconds for an arc distance of 406.19 feet to a point of tangency;

THENCE North 12 degrees 4 minutes 57 seconds East, 456.54 feet to a point of curvature of a tangent curve concave to the East;

THENCE Northerly along the arc of said curve, to the right, having a radius of 600.00 feet and a central angle of 13 degrees 47 minutes 17 seconds for an arc distance of 144.39 feet to a point of cusp of a tangent curve concave to the Northwest;

THENCE Southwesterly along the arc of said curve, to the right, having a radius of 300.00 feet and a central angle of 76 degrees 12 minutes 42 seconds for an arc distance of 899.04 feet to a point of tangency;

THENCE North 77 degrees 55 minutes 02 seconds West, 350.32 feet to a point on the arc of a non-tangent curve concave to the Southeast, a radial line of said curve through said point having a bearing of North 26 degrees 51 minutes 35 seconds West;

THENCE Southwesterly along the arc of said curve, to the left, having a radius of 225.00 feet and a central angle of 41 degrees 58 minutes 24 seconds for an arc distance of 164.83 feet to a point of reverse curvature of a tangent curve concave to the Northwest;

THENCE Southwesterly along the arc of said curve, to the right, having a radius of 1,545.00 feet and a central angle of 5 degrees 38 minutes 4 seconds for an arc distance of 151.94 feet to the POINT OF BEGINNING.

#### PARCEL 34

That portion of the Northeast One-Quarter of Section 20 and the Northwest One-Quarter of Section 21, Township 12 South, Range 12 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows;

BEGINNING at the Northwest corner of the said Section 21;

THENCE North 89 degrees 33 minutes 12 seconds East, along the North line of the said Section 21, a distance of 150.00 feet to the centerline of Drainageway No. 2;

THENCE along the said centerline the following courses and distances;

South 00 degrees 34 minutes 53 seconds East, 288.30 feet to a point of curvature of a tangent curve concave to the Northwest;

Southwesterly along the arc of said curve, to the right, having a radius of 600.00 feet and a central angle of 90 degrees 00 minutes 00 seconds for an arc distance of 942.48 feet to a point of tangency;

South 89 degrees 25 minutes 6 seconds West, 544.74 feet to a point of curvature of a tangent curve concave to the South;

Westerly along the arc of said curve, to the left, having a radius of 600.00 feet and a central angle of 37 degrees 46 minutes 14 seconds for an arc distance of 395.53 feet to a non-tangent line;

THENCE North 38 degrees 21 minutes 7 seconds West, 100.00 feet;

THENCE South 89 degrees 27 minutes 35 seconds West, 809.71 feet to a point on the arc of a non-tangent curve concave to the West, a radial line of said curve through said point having a bearing of South 80 degrees 35 minutes 26 seconds East, said point being on the East right of way line of the existing Silverbell Road;

THENCE Northerly along the said East right of way line, along the arc of said curve, to the left, having a radius of 880.00 feet and a central angle of 21 degrees 03 minutes 59 seconds for an arc distance of 323.56 feet to a point of tangency;

THENCE North 11 degrees 39 minutes 25 seconds West, along the said East right of way line, a distance of 549.94 feet to the South right of way line of Linda Vista Boulevard as recorded in Book 13 of Road Maps at Page 37, Pima County Recorder's Office, Pima County, Arizona;

THENCE North 89 degrees 27 minutes 35 seconds East, 2,216.83 feet;

THENCE North 00 degrees 32 minutes 25 seconds West, 75.00 feet to the North line of the said Section 20;

THENCE North 89 degrees 27 minutes 35 seconds East, along the said North line, a distance of 125.00 feet to the POINT OF BEGINNING.

#### PARCEL 34A

That portion of the Northeast One-Quarter of Section 20, Township 12 South, Range 12 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows;

COMMENCING at the Northwest corner of the said Northeast One-Quarter;

THENCE North 89 degrees 27 minutes 35 seconds East, along the North line of the said Section 20, a distance of 292.36 feet to the prolongation of the East right of way line of the existing Silverbell Road;

THENCE South 11 degrees 39 minutes 25 seconds East, along the said East right of way line, a distance of 626.38 feet to a point of curvature of a tangent curve concave to the West;

THENCE Southerly along the said East right of way line, along the arc of said curve, to the right, having a radius of 880.00 feet and a central angle of 21 degrees 3 minutes 59 seconds for an arc distance of 323.56 feet to the POINT OF BEGINNING;

THENCE Southerly along the said East right of way line, along the arc of said curve, to the right, having a radius of 880.00 feet and a central angle of 3 degrees 24 minutes 31 seconds for an arc distance of 52.35 feet to a point of tangency;

THENCE South 12 degrees 49 minutes 5 seconds West, along the said East right of way line, a distance of 590.22 feet to a point on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of South 63 degrees 11 minutes 55 seconds East;

THENCE Northeasterly along the arc of said curve, to the left, having a radius of 1,545.00 feet and a central angle of 5 degrees 38 minutes 4 seconds for an arc distance of 151.94 feet to a point of reverse curvature of a tangent curve concave to the Southeast;

THENCE Northeasterly along the arc of said curve, to the right, having a radius of 225.00 feet and a central angle of 41 degrees 58 minutes 24 seconds for an arc distance of 164.83 feet to a non-tangent line, said line being the centerline of Drainageway No. 2;

THENCE along the said centerline the following courses and distances;

South 77 degrees 55 minutes 2 seconds East, 350.32 feet to a point of curvature of a tangent curve concave to the Northwest;

Northeasterly along the arc of said curve, to the left, having a radius of 300.00 feet and a central angle of 76 degrees 12 minutes 42 seconds for an arc distance of 399.04 feet to a point of reverse curvature of a tangent curve concave to the Southeast;

Northeasterly along the arc of said curve, to the right, having a radius of 600.00 feet and a central angle of 25 degrees 46 minutes 38 seconds for an arc distance of 269.94 feet to a non-tangent line;

THENCE North 38 degrees 21 minutes 7 seconds West, 100.00 feet;

THENCE South 89 degrees 27 minutes 35 seconds West, 809.71 feet to the POINT OF BEGINNING.

#### PARCEL 35

That portion of Sections 20 and 21, Township 12 South, Range 12 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows;

COMMENCING at the Northwest corner of Section 21;

THENCE North 89 degrees 33 minutes 12 seconds East, along the North Hen of Section 21, a distance of 150.00 feet to the POINT OF BEGINNING;

THENCE North 89 degrees 33 minutes 12 seconds East, 1,294.05 feet;



THENCE South 00 degrees 1 minute 59 seconds East, 293.23 feet to a point of curvature of a tangent curve, concave to the West;

THENCE Southerly, along the arc of said curve, to the right, having a radius of 6,555.00 feet and a central angle of 7 degrees 31 minutes 39 seconds for an arc distance of 861.20 feet to a point of tangency;

THENCE South 7 degrees 29 minutes 40 seconds West, 161.42 feet;

THENCE North 85 degrees 16 minutes 33 seconds West, 1,037.29 feet to a point on the arc of a non-tangent curve, concave to the Southwest, a radial line of said curve through said point having a bearing of North 69 degrees 00 minutes 5 seconds East;

THENCE Northwesterly, along the arc of said curve, to the left, having a radius of 400.00 feet and a central angle of 20 degrees 26 minutes 14 seconds for an arc distance of 142.68 feet to a point of tangency;

THENCE North 41 degrees 26 minutes 9 seconds West, a distance of 468.11 feet to a point on the arc of a non-tangent curve, concave to the Northwest, a radial line of said curve through said point having a bearing of South 41 degrees 26 minutes 9 seconds East;

THENCE Northeasterly, along the arc of said curve, to the left, having a radius of 600.00 feet and a central angle of 49 degrees 08 minutes 45 seconds for an arc distance of 514.65 feet to a point of tangency;

THENCE North 00 degrees 34 minutes 53 seconds West, a distance of 288.30 feet to the POINT OF BEGINNING.

EXCEPT well site 21-C1.

The North 100.00 feet of the West 100.00 feet of the Northeast One-Quarter of the Northwest One-Quarter of said Section 21.

THENCE Northwesterly along said right-of-way line, along the arc of said curve, to the left, having a radius of 10,830.00 feet and a central angle of 003 degrees 04 minutes 17 seconds for an arc distance of 550.56 feet to the POINT OF BEGINNING;

THENCE South 58 degrees 55 minutes 03 seconds West, 921.65 feet;

THENCE South 89 degrees 33 minutes 12 seconds West, 30.00 feet to a point on the arc of a non-tangent curve, concave to the west, a radial line of said curve through said point having a bearing of North 85 degrees 05 minutes 27 seconds East, said point being on the East right-of-way line of the realigned Coachline Boulevard;

THENCE Northerly along said right-of-way, along the arc of said curve, to the left, having a radius of 2,445.00 feet and a central angle of 021 degrees 43 minutes 04 seconds for an arc distance of 926.76 feet to a non-tangent line at "C"

Page 9 of 11

THENCE North 53 degrees 54 minutes 09 seconds East, 367.56 feet to a point of curvature of a tangent curve, concave to the Northwest;

THENCE Northeasterly along the arc of said curve, to the left, having a radius of 918.44 feet and a central angle of 018 degrees 55 minutes 27 seconds for an arc distance of 303.35 feet to a point on the arc of a non-tangent curve, concave to the Southwest, a radial line of said curve through said point having a bearing of North 53 degrees 58 minutes 23 seconds East, said point being on the realigned West channel right-of-way line of the Santa Cruz River;

THENCE Southeasterly along said right-of-way line, along the arc of said curve, to the right, having a radius of 12,965.00 feet and a central angle of 002 degrees 05 minutes 54 seconds for an arc distance of 474.80 feet to a point of compound curvature of a tangent curve, concave to the Southwest;

THENCE Southeasterly along said right-of-way line, along the arc of said curve, to the right, having a radius of 10,830.00 feet and a central angle of 002 degrees 50 minutes 46 seconds for an arc distance of 537.97 feet to the POINT OF BEGINNING.

#### PARCEL 41 (NORTH)

That portion of Section 16, Township 12 South, Range 12 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows:

BEGINNING at the Southwest corner of the said Section 16;

THENCE North 00 degrees 38 minutes 47 seconds West, along the West line of the said Section 16, a distance of 2,641.14 feet to the West quarter corner;

THENCE North 00 degrees 32 minutes 03 seconds West, along the said West line, a distance of 6.57 feet to the Southwest right-of-way line of Coachline Boulevard;

THENCE South 64 degrees 28 minutes 15 seconds East, along the said right-of-way line, a distance of 147.98 feet to a point of curvature of a tangent curve, concave to the Southwest;

THENCE Southerly along the arc of said curve, to the right, having a radius of 2,355.00 feet and a central angle of 38 degrees 12 minutes 34 seconds, for an arc distance of 1,570.51 feet to a non-tangent line;

THENCE South 53 degrees 54 minutes 09 seconds West, 1,000.55 feet to a point of curvature of a tangent curve, concave to the Southwest;

THENCE Southwesterly along the arc of said curve, to the left, having a radius of 600.00 feet and a central angle of 54 degrees 29 minutes 04 seconds, for an arc distance of 570.65 feet to a point of tangency;

THENCE South 00 degrees 34 minutes 53 seconds East, 419.16 feet, to the South line of said Section 16;

Exhibit "C"  
Page 10 of 11

THENCE South 89 degrees 33 minutes 12 seconds West, along the said South line, a distance of 150.00 feet to the POINT OF BEGINNING;

EXCEPT the East 100.00 feet of the West 125.00 feet of the South 100.00 feet of the Northwest quarter of the Southwest quarter.

PARCEL 41 (SOUTH)

That portion of Section 16, Township 12 South, Range 12 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows:

Commencing at the Southwest corner of said Section 16;

Thence North 89 degrees 33 minutes 12 seconds East, along the South line of said Section 16, a distance of 150.00 feet to the Point of Beginning;

Thence North 00 degrees 34 minutes 53 seconds West, 419.16 feet to a point of curvature of a tangent curve, concave to the Southeast;

Thence Northeasterly along the arc of said curve, to the right, having a radius of 600.00 feet and a central angle of 054 degrees 29 minutes 04 seconds for an arc distance of 570.55 feet to a point of tangency;

Thence North 53 degrees 54 minutes 09 seconds East, 1,000.55 feet to a point on the arc of a non-tangent curve concave to the West, a radial line of said curve, through said point having a bearing of North 63 degrees 44 minutes 19 seconds East, said point being on the Southwest right-of-way line of the realigned Coachline Boulevard;

a radius of 2,355.00 feet and a central angle of 025 degrees 13 minutes 41 seconds for an arc distance of 1,078.04 feet to a point of tangency;

Thence South 00 degrees 01 minutes 59 seconds East, along said right-of-way line, a distance of 448.80 feet to the South line of said Section 16;

Thence South 89 degrees 33 minutes 12 seconds West along said South line, a distance of 1,294.05 feet to the Point of Beginning;

14-00000-1  
BLANKS

F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: MRB  
DEPUTY RECORDER  
1562 PE-1



DOCKET: 13884  
PAGE: 1350  
NO. OF PAGES: 9  
SEQUENCE: 20101680327  
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WHEN RECORDED MAIL TO:  
MONROE McDONOUGH GOLDSCHMIDT & MOLLA, PLLC  
4578 North First Avenue, Suite 160  
Tucson, Arizona 85718

=====

**AMENDMENT TO EXHIBIT "D" OF THE  
SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR SUNFLOWER**

**DO NOT REMOVE**

THIS IS PART OF THE OFFICIAL DOCUMENT

14000004 0400000

**AMENDMENT TO EXHIBIT "D" OF THE  
SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR SUNFLOWER**

WHEREAS, the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sunflower (the "Declaration") was recorded on February 12, 2008, in Docket 13241 at page 164 *et seq.*, office of the Pima County Recorder; and

WHEREAS, Section 12.2 of the Declaration provides that the Board of Directors of Sunflower Community Association (the "Board") may amend the Use Restrictions set forth in Exhibit "D" of the Declaration, subject to the requirements therein; and

WHEREAS, the Board adopted a revised version of Exhibit "D," which is attached hereto and incorporated herein by this reference; posted the revised Exhibit "D" in a prominent place with Sunflower at least five business days prior to the Board meeting at which the Board's adoption was to be considered; and at least 60 days prior to the effective date of the revised Exhibit "D," posted the document in a prominent place within Sunflower; and

WHEREAS, the Board of Directors of the Continental Ranch Community Association approved the revised version of Exhibit "D," at its meeting on July 21, 2010.

NOW, THEREFORE, this Amendment to Exhibit "D" of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sunflower is being recorded at the office of the Pima County Recorder in accordance with Section 16.2 of the Declaration.

Dated this 30 day of August, 2010.

SUNFLOWER COMMUNITY ASSOCIATION, an Arizona  
non-profit corporation

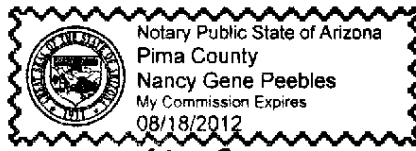
By: Susan Page President

ATTEST:

Carol L. Chaloupka  
Secretary

14000001 01001011

STATE OF ARIZONA )  
 ) ss:  
County of Pima )



ACKNOWLEDGED before me this 30 day of August, 2010, by Susan Page, as President of Sunflower Community Association, an Arizona non-profit corporation.

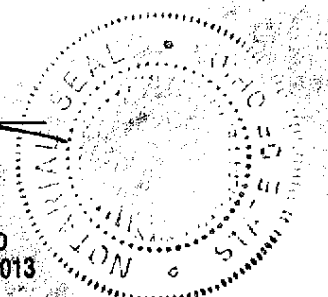
Nancy Gene Peebles  
Notary Public

OHIO  
STATE OF ARIZONA )  
 ) ss:  
County of ~~Pima~~ Stark )

ACKNOWLEDGED before me this 28 day of August, 2010, by Carol Lynn Chaloupka, as Secretary of Sunflower Community Association, an Arizona non-profit corporation.

Clarissa C. Anthony  
Notary Public

CLARISSA C. ANTHONY  
Notary Public, State of Ohio  
My Commission Expires 09-18-2013



14000004 4000001

## Exhibit "D"

### Use Restrictions

Revised May 1, 2013

(1) General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Association consistent with this Declaration and any Supplemental Declaration), subject to applicable laws. Any Supplemental Declaration may impose stricter standards than those contained in this Declaration and the Association shall have standing and the power to enforce such standards.

(2) Prohibited Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by the Board:

(a) Posting of signs of any kind, including posters, circulars, campaign signs, political signs, and billboards, except those required by law and except as permitted by the Design Guidelines or the Declaration, on any Lot, Common Area, or right-of-way;

(b) Subdivision of a Lot into two or more Lots after a subdivision plat including such Lot has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Lot;

(c) Construction, installation and/or use of dog runs and animal pens;

(d) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;

(e) Occupancy of a Dwelling Unit by more than two persons per bedroom in the Dwelling Unit;

(f) Capturing, trapping or killing wildlife within the Properties, except (i) in circumstances posing an imminent threat to the safety of persons or pets using the Properties; or (ii) when authorized and supervised by the Board in accordance with a game management program;

(g) Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Properties or which result in unreasonable levels of sound or light pollution. The Board shall, in its sole discretion, determine whether any exterior lighting is excessive;

1. Pickleball, in an open venue, with regulation balls and paddles, not on the Sunflower association list of approved equipment

(h) Disposal of any oil, gas, or lubricants, and the storage or disposal of other hazardous materials (as may be determined by the Board's reasonable discretion and as defined by applicable law) anywhere within the Properties;

(i) Discharge of firearms or explosives within the Properties. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size;

(j) Parking of any vehicle (including, but not limited to, any car, truck, motorcycle, boat,

or trailer) containing or displaying a “for sale” sign, or other indication of being “for sale” in any driveway or other portion of any Lot, or on any street or any portion of the Common Area; and

(k) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or Occupant residing in a Dwelling Unit may conduct business activities within the Dwelling 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 Dwelling Unit;
- (ii) the business activity conforms to all zoning requirements for the Lot;
- (iii) the business activity does not involve any person conducting such business who does not reside within the Properties, or regular visitation of the Lot or Dwelling Unit by clients, customers, suppliers or other business invitees, or door-to-door solicitation of residents of the Properties; and
- (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of the residents of the Properties, as may be determined in the sole discretion of the Board.

The terms “business” and “trade,” as used in this provision, shall be construed to have their 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 to or does generate a profit; or (c) a license is required therefore.

The Board of Directors may approve an exception to the prohibition for garage sales upon receiving an application for a waiver for an estate sale of decedent’s property conducted within a reasonable time after the death of the Owner(s) by individuals who inherited through a will or by the terms of a Trust. In addition, a moving sale waiver may be approved by the Board upon evidence that a move is imminent. Applications must state the date(s) and time duration of the sale. Both types of sales are permitted for duration of no longer than two days for no longer than eight (8) hours each day. A reasonable start and stop time is required. Only two directional signs are permitted on the common area. The rule for open house signs apply.

The leasing of a Dwelling Unit for single-family residential purposes shall not be considered a business or trade within the meaning of this subsection. “Leasing” for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Dwelling Units may be leased only in their entirety. No fraction or portion may be leased. There shall be no subleasing of Dwelling Units or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing, and shall specifically provide:

(aa) That the failure of the lessee to comply with the terms and conditions of the Governing Documents or the Master Association Documents constitutes a material default of the lease which may result in termination of the lease and eviction of the tenant from the Lot, and



(bb) That if the lessee violates the Governing Documents or the Master Association Documents, the lessee shall be deemed in default of the Lease and the Owner shall be entitled to reenter and retake possession of the premises pursuant to the provisions of the Arizona Residential Landlord and Tenant Act, A.R.S. Sections 33-1301 et seq.

All leases which do not contain these provisions shall be deemed null and void at the option of the Association or the Master Association and the Association or the Master Association may require the Owner to immediately evict the lessee, or submit a lease which contains the required provisions. No transient tenants may be accommodated in a Dwelling Unit, and all leases shall be for an initial term of no less than 30 days.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board and to the Master Association by the Lot Owner at least 15 days prior to the execution of the lease. The lease must provide that it is subject in all respects to, and the Owner must make available to the lessee copies of, the Governing Documents and the Master Association Documents. All provisions of the Governing Documents and of the Master Association Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Dwelling Unit. The Board may adopt reasonable rules regulating leasing and subleasing by Owners.

(3) Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Except as may otherwise be provided in the Design Guidelines, exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, telephone, or other electric currents, power, or signals of any kind, unless completely contained within the Lot so as not to be visible or discernable by any Person, whose eyes are six feet above the ground level and who is standing at ground level on any portion of the Properties (hereafter, "Visible From Neighboring Property") or otherwise approved pursuant to Article XI; provided the Association shall have the right, but not the obligation, to erect or install and maintain such apparatus, even if "Visible From Neighboring Property," for the benefit of all or a portion of the Properties;

(b) Walls or fences of any kind on any Lot except as approved in accordance with Article XI;

(c) Open garage doors. Garage doors shall remain closed at all times except when entering and exiting the garage, and excepting reasonable hours when a resident is working in or around the garage;

(d) Clotheslines, or other outside facilities for drying or airing clothes;

(e) Detached garages;

(f) Excessive exterior lighting on any Lot, including lighting which causes unreasonable glare, unless necessary for public safety purposes on, or lighting of, Common Area. The Board shall in its sole discretion determine whether any exterior lighting is excessive;

(g) Tents, shacks, or temporary structures on any Lot except as approved in accordance with Article XI or as may be authorized by the Board during initial construction or repair

within the Properties. Temporary structures used during the construction or repair of a Dwelling Unit or other improvements shall be removed immediately after the completion of construction or repair;

(h) Temporary or permanent storage buildings or sheds, whether prefabricated, metal or of any other construction whatsoever, which are "Visible from Neighboring Property." No furniture, fixtures, firewood, appliances, machinery, equipment, or other goods or chattels which are not in active use shall be stored in any building or any Lot or Common Area in such a manner as to be "Visible from Neighboring Property;" provided, however, this restriction shall not apply to the property of the Association, (to the extent approved by the Board). Notwithstanding the foregoing, an Owner may be permitted to construct or place a gazebo, pergola, or similar structure within the rear yard of a Lot if permitted by and in conformance with the Design Guidelines and all applicable zoning ordinances and otherwise approved pursuant to Article XI;

(i) Outdoor playground equipment (except within any Common Area); and

(j) Lawn art, topiary and/or designs in landscaping softscape or hardscape that appear unnatural or cause a distraction or are otherwise limited or prohibited by the Design Guidelines (e.g. words, initials, or images). All landscaping shall be maintained in accordance with the Community-Wide Standard.

(4) Rules Regarding Pets. Raising, breeding, or keeping of animals, insects, or poultry of any kind is prohibited in the Properties except in accordance with the following:

(a) Subject to any more restrictive conditions imposed by the Master Association, Occupants of Dwelling Units may keep a total of three cats and/or dogs and a reasonable number of other usual and common household pets on a Lot;

(b) Pets shall be confined to the Lot or kept on a leash at all times;

(c) Owners of pets shall be responsible for the immediate removal and disposal of all solid animal waste of such owners' pets; all Persons walking pets shall carry animal waste bags, and a hand-held shovel, or other devices designed for removing solid animal waste;

(d) No pet shall be allowed to make objectionable noises or an unreasonable amount of noise (as determined in the reasonable discretion of the Board);

(e) Pets which are permitted to roam free, make objectionable or excessive noise, leave waste in the Properties, endanger the health or safety of Occupants of other Dwelling Units, or constitute a nuisance or inconvenience to Occupants of other Dwelling Units shall be removed upon request of the Board. If the pet owner fails to honor the request, the Board may remove the pet; and

(f) Occupants of Dwelling Units may keep a reasonable number of bird feeders on their Lots so long as such feeders do not create a nuisance to neighboring Lots and subject to any other limitations established by the Board.

This Section (4) shall not apply to prohibit the Association from permitting, tolerating, or encouraging use of the Properties, including bodies of water within the Properties, by animals, birds or other wildlife.

(5) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive, or detrimental to any other portion of the Properties.

Woodpiles or other materials shall be stored in a manner so as not to be “Visible from Neighboring Property” and so as not to be attractive to native rodents, snakes, and other animals and to minimize the potential danger from fires. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Properties. Without limiting the generality of any of the foregoing provisions, the Board shall be permitted to establish and enforce reasonable restrictions and guidelines with respect to:

(a) Noise levels originating from a Lot and with respect to the placement and use of noisemaking apparatus on any Lot, as determined in the discretion of the Board.

(b) No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Properties, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

(c) No odors shall be permitted to arise or emit from any Lot, which are offensive or detrimental to any neighboring property, as determined in the discretion of the Board.

Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction consistent with the Community-Wide Standard. During construction periods, trash and debris shall not be permitted to accumulate and shall be removed or placed in appropriate trash containers on a daily basis. Supplies or brick, block, lumber and other building materials shall be piled only in such areas as may be approved in accordance with Article XI. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved in accordance with Article XI, which may also require screening of the storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.

(6) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or Common Area except in covered containers of a type, size and style which are approved in accordance with Article XI and the Design Guidelines. In no event shall such containers be “Visible from Neighboring Property” except to be available for collection and then only for the shortest time reasonably necessary for such collection (in no event earlier than 5:00 p.m. the day prior to collection or later than the evening of the day of collection). All rubbish, trash, or garbage shall be removed from the Lots and Common Area and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(7) Trucks, Trailers, Recreational Vehicles, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding three-quarter (3/4) ton, recreational vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot, Common Area, or on any street within the Properties; provided, however, that the provisions of this subsection shall not apply to cleaning, loading or unloading and short-term parking which shall be permitted for a cumulative period not to exceed 48 hours in any seven (7) day period. The provisions of this subsection shall not apply to: (a) pickup trucks of three-quarter (3/4) ton or less capacity with camper shells not exceeding seven feet in height measured from ground level and mini-motor homes and/or passenger vans not exceeding seven feet in height and eighteen feet in length, which are used on a regular and recurring basis for basic transportation. None of the vehicles described above, or any other vehicle, may be used as a living area or otherwise occupied while located on the Properties.

(8) Motor Vehicles. No automobile, motorcycle, motorbike, or other motor vehicle shall be constructed, reconstructed, or repaired upon any Lot, Common Area or street within the Properties, and no inoperable vehicle may be stored or parked on any Lot so as to be "Visible From Neighboring Property;" provided, however, that the provisions of this subsection shall not apply to emergency vehicle repairs. The provisions of this subsection shall not apply to motor vehicles and equipment owned or operated by the Association and parked in designated maintenance areas.

(9) Parking. It is the intent of the Association to restrict on-street parking as much as possible. Vehicles of all Occupants of Dwelling Units and of their guests are to be kept in garages, and residential driveways, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot provided, however, this subsection shall not be construed to permit the parking in the above described areas of any vehicle whose parking within the Properties is otherwise prohibited or the parking of any inoperable vehicle.

(10) Diseases and Insects. Owners shall not permit anything or condition to exist upon any Lot which is likely to induce, breed, or harbor infectious plant diseases or noxious insects.

(11) Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian pathway, or other area from ground level to a height of eight feet without prior approval in accordance with Article XI.

(12) Swimming Pools. In addition to any requirements set forth by the Board or in the Design Guidelines, no swimming pool, spa, pond, or other man-made body of water may be constructed, installed, or maintained on any Lot in violation of any applicable local government pool ordinances, including, but not limited to, protective enclosure criteria. This shall include compliance with any requirements as to the construction and maintenance of walls or fences.

Approved 6.2.10  
Revised 5.1.2013

EXHIBIT "E"

Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice").

2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: all the Claimants shall agree upon one Party Appointed Arbitrator, and all the Respondents shall agree upon one Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one neutral arbitrator ("Neutral") so that the total arbitration panel ("Panel") has three arbitrators.

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Properties, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.

5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine any relevant legal issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

10. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator.

11. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

12. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

13. There will be no posthearing briefs.

14. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

15. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

16. Each Party agrees to accept as legal-delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

Exhibit "E"  
Page 3 of 3

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