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NORTH POINT LHC, LLC  
PO BOX 8858  
FORT MOHAVE, AZ 86427



**FEE# 2020020349**

OFFICIAL RECORDS  
OF MOHAVE COUNTY  
KRISTI BLAIR,  
COUNTY RECORDER



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PAGE: 1 of 46

**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
VIEWPOINT ESTATES  
(MOHAVE COUNTY, ARIZONA)**

When Recorded Return to:  
Law Office of Jamie Kelley PLLC  
2031 Highway 95, Suite 1  
Bullhead City, Arizona 86442

**SECOND AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
VIEWPOINT ESTATES  
(MOHAVE COUNTY, ARIZONA)**

## TABLE OF CONTENTS

1.	<b><u>DEFINITIONS.</u></b> .....	8
	1.1. <b><u>ARC.</u></b> .....	8
	1.2. <b><u>Articles.</u></b> .....	8
	1.3. <b><u>Assessments.</u></b> .....	8
	1.4. <b><u>Assessment Lien.</u></b> .....	8
	1.5. <b><u>Association.</u></b> .....	8
	1.6. <b><u>Association Documents</u></b> .....	8
	1.7. <b><u>Association Property</u></b> .....	8
	1.8. <b><u>Association Rules.</u></b> .....	8
	1.9. <b><u>Board.</u></b> .....	8
	1.10. <b><u>Bylaws</u></b> .....	8
	1.11. <b><u>County.</u></b> .....	8
	1.12. <b><u>Common Areas.</u></b> .....	9
	1.13. <b><u>Common Expenses.</u></b> .....	9
	1.14. <b><u>Community.</u></b> .....	9
	1.15. <b><u>Class A Voting Members</u></b> .....	9
	1.16. <b><u>Class B Voting Members</u></b> .....	9
	1.17. <b><u>Concealed From View.</u></b> .....	9
	1.18. <b><u>Declarant.</u></b> .....	9
	1.19. <b><u>Declaration</u></b> .....	9
	1.20. <b><u>Development Plan.</u></b> .....	9
	1.21. <b><u>Guests.</u></b> .....	9
	1.22. <b><u>Improvement.</u></b> .....	9
	1.23. <b><u>Landscaping.</u></b> .....	10
	1.24. <b><u>Lot.</u></b> .....	10
	1.25. <b><u>Maintenance.</u></b> .....	10
	1.26. <b><u>Maintenance Standard</u></b> .....	10
	1.27. <b><u>Member</u></b> .....	10
	1.28. <b><u>Member in Good Standing.</u></b> .....	10
	1.29. <b><u>Membership.</u></b> .....	10
	1.30. <b><u>Noncompliance.</u></b> .....	10
	1.31. <b><u>Owner.</u></b> .....	10
	1.32. <b><u>Period of Declarant Control.</u></b> .....	10
	1.33. <b><u>Property or Project.</u></b> .....	11
	1.34. <b><u>Record, Recording, Recorded and Recordation.</u></b> .....	11
	1.35. <b><u>Representative.</u></b> .....	11
	1.36. <b><u>Residence.</u></b> .....	11
	1.37. <b><u>Resident.</u></b> .....	11
	1.38. <b><u>Retaining Wall.</u></b> .....	11
	1.39. <b><u>Screen from Street View.</u></b> .....	11
	1.40. <b><u>Sole Discretion, Sole and Absolute Discretion, Sole Opinion or Opinion.</u></b> .....	11
	1.41. <b><u>Special Assessment.</u></b> .....	11
	1.42. <b><u>Turn Over Date.</u></b> .....	11
	1.43. <b><u>Viewpoint Estates.</u></b> .....	11
	1.44. <b><u>Violation.</u></b> .....	11

1.45.	<u>Visible from a Neighboring Property or the Street.</u>	12
1.46.	<u>Voting Power of the Association.</u>	12
2.	<b><u>PLAN OF DEVELOPMENT.</u></b>	12
3.	<b><u>THE ASSOCIATION.</u></b>	12
3.1.	<u>General Purpose and Powers.</u>	12
3.2.	<u>Membership</u>	12
3.3.	<u>Board</u>	12
3.4.	<u>Voting Members Rights</u>	13
3.4.1.	<u>Class A Voting Members.</u>	13
3.4.2.	<u>Class B Voting Members</u>	13
3.4.3.	<u>Transfer of Voting Rights.</u>	13
3.5.	<u>Meetings.</u>	13
3.5.1.	<u>Regular Meetings.</u>	13
3.5.2.	<u>Special Meetings</u>	13
3.5.3.	<u>First Meeting.</u>	14
3.5.4.	<u>Place of Meetings.</u>	14
3.6.	<u>Notices.</u>	14
3.7.	<u>Record Date.</u>	14
3.8.	<u>Articles and Bylaws.</u>	14
4.	<b><u>RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.</u></b>	14
4.1.	<u>Maintenance of Common Area.</u>	14
4.2.	<u>Labor and Services</u>	15
4.3.	<u>Association Functions.</u>	15
4.3.1.	<u>Actions for Owners' Benefits.</u>	15
4.3.2.	<u>Permitted Activities.</u>	15
4.4.	<u>Rules</u>	15
4.5.	<u>Dedication of Land</u>	16
4.6.	<u>Property Taxes</u>	16
4.7.	<u>Implied Rights</u>	16
4.8.	<u>Limitation on Rights.</u>	16
4.8.1.	<u>Contracts.</u>	16
4.8.2.	<u>Capital Improvements</u>	16
4.8.3.	<u>Compensation to Directors and Officers.</u>	16
4.8.4.	<u>Sale, Lease or Dedication of Association Property.</u>	16
5.	<b><u>COMMON AREAS, EASEMENTS AND IMPROVEMENTS.</u></b>	16
5.1.	<u>Title to and Use of Common Areas.</u>	16
5.1.1.	<u>Responsibility for Maintenance.</u>	16
5.1.2.	<u>Character of Common Areas</u>	17
5.2.	<u>Rights in the Association Property.</u>	17
5.2.1.	<u>Suspension of Rights to Use Association Property.</u>	17
5.2.2.	<u>No Violation of Insurance Requirement</u>	17
5.2.3.	<u>No Waste or Obstruction</u>	17
5.3.	<u>Loss or Damage to Association Property.</u>	17
5.4.	<u>Easements for Repair, Maintenance and Emergencies</u>	17
5.5.	<u>Easement for Correction of Improvements, Maintenance or Use.</u>	18
5.6.	<u>Negligence or Willful Misconduct</u>	18
5.7.	<u>Reservation of Construction Easement.</u>	18
5.8.	<u>Landscape, Utility and/or Drainage Easements</u>	18
6.	<b><u>ASSESSMENTS.</u></b>	18

6.1.	<b><u>Assessments.</u></b>	18
	6.1.1. <b><u>Regular, Special and Benefitted Lot Assessments.</u></b>	18
	6.1.2. <b><u>Board Authority to Assess</u></b>	19
6.2.	<b><u>Fiscal Year and Determination of Budgets</u></b>	19
	6.2.1. <b><u>Operating Budget</u></b>	19
	6.2.2. <b><u>Capital Replacement Reserve.</u></b>	19
6.3.	<b><u>Regular Assessments</u></b>	19
	6.3.1. <b><u>Annual Calculation</u></b>	19
	6.3.2. <b><u>When Approval of Owners Required</u></b>	20
	6.3.3. <b><u>Failure to Calculate.</u></b>	20
	6.3.4. <b><u>Limitation on Association Expenditures</u></b>	20
	6.3.5. <b><u>Merged Assessments.</u></b>	20
6.4.	<b><u>First Full Assessment</u></b>	20
6.5.	<b><u>Special Assessment.</u></b>	20
6.6.	<b><u>Benefitted Lot Assessment.</u></b>	20
6.7.	<b><u>Contribution to Capital Improvement Assessment</u></b>	21
6.8.	<b><u>Transfer Fee</u></b>	21
6.9.	<b><u>Apportionment of Assessment</u></b>	21
6.10.	<b><u>Time for Payments.</u></b>	22
6.11.	<b><u>Lien for Assessments and Other Amounts</u></b>	22
6.12.	<b><u>Liability of Owners and Purchasers</u></b>	22
6.13.	<b><u>Financial Statements</u></b>	22
6.14.	<b><u>Inspection of Books and Records</u></b>	22
7.	<b><u>RESTRICTION ON USE OF LOTS.</u></b>	23
7.1.	<b><u>Residential Sizes, Uses and Construction Standards</u></b>	23
	7.1.1. <b><u>Approval of Plans</u></b>	23
	7.1.2. <b><u>Residential Uses</u></b>	23
	7.1.3. <b><u>Square Footage</u></b>	23
	7.1.4. <b><u>Setbacks and Use</u></b>	23
	7.1.5. <b><u>Construction Standards</u></b>	23
	7.1.6. <b><u>Approval of Plans</u></b>	23
	7.1.7. <b><u>Construction Standards</u></b>	24
	7.1.8. <b><u>Height and Roof Limitations.</u></b>	24
	7.1.9. <b><u>Roof Material</u></b>	24
	7.1.10. <b><u>Architectural Integration of Machinery and Equipment.</u></b>	24
	7.1.11. <b><u>Landscape.</u></b>	24
	7.1.11.1 <b><u>Installation of Landscape.</u></b>	24
	7.1.11.2 <b><u>Maintenance of Landscaping.</u></b>	25
	7.1.11.3 <b><u>Xeriscape.</u></b>	25
	7.1.12. <b><u>Exterior Lights.</u></b>	25
	7.1.12.1 <b><u>Dusk to Dawn Solar Lights.</u></b>	25
	7.1.13. <b><u>Fences and Walls.</u></b>	25
	7.1.14. <b><u>Attached Garage and Driveways.</u></b>	25
7.2.	<b><u>Utility Easements.</u></b>	25
7.3.	<b><u>Utility Service.</u></b>	26
	7.3.1. <b><u>Subdivision of Lots</u></b>	26
	7.3.2. <b><u>Alteration of Topography.</u></b>	26
7.4.	<b><u>Animals</u></b>	26
7.5.	<b><u>Signs</u></b>	27

7.6.	<b><u>Obstruction of View by Vegetation.</u></b>	27
7.7.	<b><u>Residential Use and Trades or Businesses.</u></b>	27
7.8.	<b><u>Motor Vehicles</u></b>	28
	7.8.1. <b><u>On Street Parking.</u></b>	28
	7.8.2. <b><u>Storage.</u></b>	28
	7.8.3. <b><u>Auto Repair.</u></b>	28
	7.8.4. <b><u>Towing of Vehicles</u></b>	28
	7.8.5. <b><u>Vehicle Noise; Operation of Off Road Vehicles</u></b>	29
7.9.	<b><u>Antennas; Flag Poles.</u></b>	29
7.10.	<b><u>Basketball Goals, or Play Structures.</u></b>	29
7.11.	<b><u>Tanks.</u></b>	29
7.12.	<b><u>No Waste or Nuisance</u></b>	29
7.13.	<b><u>Storage of Equipment, Refuse and Miscellaneous.</u></b>	29
7.14.	<b><u>Clothes Drying Facilities</u></b>	30
7.15.	<b><u>Sun Screening.</u></b>	30
7.16.	<b><u>Solar Collecting Panels or Devices.</u></b>	30
7.17.	<b><u>Business of Declarant.</u></b>	30
7.18.	<b><u>Rental/Lease.</u></b>	31
8.	<b><u>ARCHITECTURAL REVIEW COMMITTEE.</u></b>	31
8.1.	<b><u>Creation</u></b>	31
8.2.	<b><u>Terms</u></b>	31
8.3.	<b><u>Right to Appoint.</u></b>	31
8.4.	<b><u>Removal and Resignation</u></b>	31
8.5.	<b><u>ARC Functions</u></b>	31
8.6.	<b><u>Rule Making Authority</u></b>	32
8.7.	<b><u>Review of Plans</u></b>	32
8.8.	<b><u>Approval of Improvements.</u></b>	32
8.9.	<b><u>Zoning Reclassification</u></b>	34
8.10.	<b><u>Variances</u></b>	34
8.11.	<b><u>Damage During Construction</u></b>	34
8.12.	<b><u>Time Limitations</u></b>	34
8.13.	<b><u>Liability of Representatives</u></b>	35
9.	<b><u>ENFORCEMENT.</u></b>	35
9.1.	<b><u>Enforcement and Remedies</u></b>	35
	9.1.1. <b><u>Litigation.</u></b>	35
	9.1.2. <b><u>Notice of Noncompliance with Association Documents.</u></b>	36
	9.1.3. <b><u>Violation by Resident</u></b>	36
	9.1.4. <b><u>Violation by Guest</u></b>	36
9.2.	<b><u>Right of Entry of Lots to Cure Violations</u></b>	37
9.3.	<b><u>Protection of Encumbrances</u></b>	37
10.	<b><u>MISCELLANEOUS.</u></b>	37
10.1.	<b><u>Duration of Declaration</u></b>	37
10.2.	<b><u>Amendment</u></b>	37
10.3.	<b><u>Amendments Affecting Declarant Rights</u></b>	38
10.4.	<b><u>Effect of Provisions of Declaration.</u></b>	38
10.5.	<b><u>Interpretation of the Covenant</u></b>	38
10.6.	<b><u>Assignment of Powers</u></b>	38
10.7.	<b><u>Non-Avoidance</u></b>	38
10.8.	<b><u>Limited Liability</u></b>	39

10.8.1.	<b>Good Faith</b>	39
10.8.2.	<b>Indemnification.</b>	39
10.8.3.	<b>Recovery Against Predecessor in Title</b>	40
10.8.4.	<b>Limitation of Liability</b>	40
10.9.	<b>Binding Effect</b>	40
10.10.	<b>Validity</b>	40
10.11.	<b>Waiver</b>	40
10.12.	<b>Laws, Ordinances and Regulations.</b>	41
10.13.	<b>References to this Declaration in Deeds.</b>	41
10.14.	<b>Gender and Number</b>	41
10.15.	<b>Captions and Title; Section References; Exhibits.</b>	41
10.16.	<b>Agreement to Perform Necessary Acts</b>	41
10.17.	<b>Notices</b>	41

**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR VIEWPOINT ESTATES  
(MOHAVE COUNTY, ARIZONA)**

This Second Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Chicago Title Agency, Inc., an Arizona corporation, as Trustee only under Trust No. 2705 and not personally, ("Declarant") as the owner of the real property acting at the appropriate direction of the trust beneficiary, North Point LHC, LLC, a Nevada limited liability company.

**RECITALS**

**WHEREAS**, the Declarant is the owner of real property legally described on Exhibit "A" attached hereto which has been or will be subdivided as Viewpoint Estates.

**WHEREAS**, the Declarant intends to sell, dispose of or convey from time to time all or a portion thereof the lots in Viewpoint Estates subdivision, as Viewpoint Estates, and has subjected the same to certain protective reservations, covenants, conditions and restrictions between it and the purchasers and/or users of the lots in said subdivision set forth in the Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded at Fee No. 2019070220, Official Records of Mohave County, Arizona. Section 10.2 of the Declaration requires not less than sixty-seven percent (67%) of the voting power of the Association may vote to amend the Declaration. The Declarant holds more than sixty-seven percent (67%) of the votes and executes this instrument to supercede, amend and restate in the entirety the Amended and Restated Declaration.

**WHEREAS**, the lands initially subject to this Declaration are legally described as Lots 1 through 269, inclusive; Parcel A through G, inclusive, Viewpoint Estates, Tract 3711, according to the plat of record thereof in Official Records of Mohave County Recorder.

**NOW, THEREFORE**, Declarant hereby declares that all of the Property shall at all times be owned, conveyed, transferred, hypothecated, mortgaged, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions contained herein, all of which are established and declared for the purpose of establishing a general plan for the protection, maintenance, development and improvement of all lots in Viewpoint Estates, Tract 3711 and for the purpose of increasing the economic value, desirability and attractiveness of the Property for the mutual benefit of the Owners thereof. The covenants, conditions and restrictions set forth in this Declaration shall run with the Property and shall be binding upon all other persons acquiring any right, title or interest in and to said real property or any part thereof, and shall inure to the benefit of Declarant, the Association and each person who becomes an Owner of any part of the Property, and each successor in interest of any such person; and further are each thereof imposed upon each and every lot, parcel or individual portion of



said Tracts as a mutual equitable servitude in favor of each and every other lot, parcel or individual portion of land therein as the dominant tenement.

1. **DEFINITIONS.**

The following terms shall have the meanings set forth below when used in this Declaration:

1.1. **ARC.** "ARC" shall mean the Viewpoint Estates Architectural Review Committee established pursuant to Article 8 below.

1.2. **Articles.** "Articles" shall mean the Articles of Incorporation for Viewpoint Estates Homeowner's Association as the same may be amended from time to time.

1.3. **Assessments.** "Assessments" shall mean the amount an Owner is obligated to pay the Association as provided for at Article 6.

1.4. **Assessment Lien.** "Assessment Lien" shall mean the lien created and imposed by Article 6 and A.R.S. § 33-1807.

1.5. **Association.** "Association" shall mean the Viewpoint Estates Homeowners Association, an Arizona nonprofit corporation and its successors and assigns.

1.6. **Association Documents.** "Association Documents" shall mean, collectively, this Declaration, and the Association's Articles, Bylaws, Board Resolutions, Rules, and ARC Guidelines, all as may be amended from time to time. Upon adoption, the Association Rules and ARC Guidelines will have the same force and effect as if they were set forth entirely in this Declaration.

1.7. **Association Property.** "Association Property" shall mean all real and personal property owned by, acquired by, or leased to the Association, together with such Common Areas as may be developed and transferred, in fee or by way of easement, or leased to the Association by the Declarant.

1.8. **Association Rules.** "Association Rules" shall mean Rules adopted by the Association through its Board as provided for at Article 4.4.

1.9. **Board.** "Board" shall mean the board of directors of the Association.

1.10. **Bylaws.** "Bylaws" shall mean the Bylaws of the Association.

1.11. **County.** "County" shall mean the Mohave County, Arizona.

1.12. **Common Areas.** "Common Areas" shall mean any interest in real property owned by the Association which is not a Lot. The initial Common Areas of the subdivision consists of streets, open space and drainage.

1.13. **Common Expenses.** "Common Expenses" shall mean expenditures made by or financial liabilities of the Association together with any allocations to reserves.

1.14. **Community.** "Community" shall mean all lots and parcels within Tract 3711.

1.15. **Class A Voting Members.** "Class A Members" shall be all owners of lots in Viewpoint Estates excluding Declarant until such time as Class B Member right's terminate as provided in Article 3.

1.16. **Class B Voting Members.** "Class B Members" shall be the Declarant only until such time Class B voting rights terminate as provided in Article 3.4.2.

1.17. **Concealed From View.** "Concealed From View" shall mean the obscuring from view of objects permitted under Association documents to be placed, kept or maintained in side or rear yards by placing, keeping or maintaining said objects behind a wall and/or opaque gate of not less than five feet nor more than six feet in height approved by the ARC. To be deemed concealed from view, the objects shall not be visible above the wall or opaque gate, from the street in front of property.

1.18. **Declarant.** "Declarant" shall mean Chicago Title Agency, Inc. as Trustee under Trust No. 2705 and any person to whom it may expressly assign any or all of its rights hereunder by written instrument recorded in the records of Mohave County Recorder affirmatively assigning Declarant Rights. Declarant shall include the affiliates of the beneficiary of Trust No. 2705 as identified herein.

1.19. **Declaration.** "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, as the same may be amended or supplemented from time to time.

1.20. **Development Plan.** "Development Plan" shall mean Viewpoint Estates development plan, as may be amended from time to time.

1.21. **Guests.** "Guests" of an Owner or Resident shall mean: (i) an employee, tenant, guest (whether or not for hire) or invitee of such Owner or Resident, including transient guests; and (ii) any person who has acquired any title or interest less than a fee simple interest in an Owner's or Resident's real property subject to this Declaration, by, through, or under such Owner or Resident, including a lessee, sub-lessee, licensee, or any employee, guest or invitee of any such person.

1.22. **Improvement.** "Improvement" shall mean: (a) any structure, building, fence or wall; (b) any swimming pool, tennis court, basketball court, road, driveway, parking area or satellite dish; (c) any trees, plants, shrubs, grass or other landscaping improvements of every type and kind; (d) any statuary, fountain, artistic work, craft work,

figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot); and (e) any other structure of any kind or nature.

1.23. **Landscaping.** "Landscaping" shall mean the arrangement of organic and inorganic materials such as xeriscape plants, boulders, rock, colored rock, decomposed granite, artificial turf, expressly excluding natural turf, and other materials as may be approved by the ARC to enhance the exterior aesthetics of a Residence.

1.24. **Lot.** "Lot" shall mean that unit of land defined as a Lot on the Final Plat for Viewpoint Estates zoned and restricted for residential uses.

1.25. **Maintenance.** "Maintenance" shall mean care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

1.26. **Maintenance Standard.** "Maintenance Standard" shall mean the standard for Maintenance of Improvements in Viewpoint Estates established from time to time by the board, or in the absence of any standard established by the board, the standard of Maintenance of Improvements generally prevailing within the Project.

1.27. **Member.** "Member" shall mean any person who is a Member of the Association pursuant to Article 2 below.

1.28. **Member in Good Standing.** "Member in Good Standing" shall mean a Member who is current in its obligations to the Association, including but not limited to payment of all Assessments, fines and penalties, and compliance with all Association Documents.

1.29. **Membership.** "Membership" shall mean a membership in the Association.

1.30. **Noncompliance.** "Noncompliance" shall mean and refer to any condition existing on a Lot that fails to comply, in part or in full, with the Association Documents, excluding the Rules.

1.31. **Owner.** "Owner" shall mean any person or entity which holds title in fee simple or equitable title to all or any interest in a Lot. Owner shall include an authorized agent or representative of a corporation, partnership, limited liability company or other entity which holds title in fee simple or equitable title to all or any interest in a Lot.

1.32. **Period of Declarant Control.** "Period of Declarant Control" shall mean the period commencing on the date of the Recording of this Declaration and ending on the earlier of: (a) that date that Declarant no longer owns a Lot offered for sale; (b) December 31, 2050; or (c) the date the Declarant Records a written instrument terminating the Period of Declarant Control.

1.33. **Property or Project.** "Property" or "Project" shall mean the Property described on Exhibit A together with all Improvements located thereon.

1.34. **Record, Recording, Recorded and Recordation.** "Record," "Recording," "Recorded" and "Recordation" shall mean placing or having placed an instrument of public record in the official records of Mohave County, Arizona.

1.35. **Representative.** "Representative" shall mean a member of the ARC established pursuant to Article 8 below.

1.36. **Residence.** "Residence" shall mean the single-family dwelling and accessory structure constructed on a Lot.

1.37. **Resident.** "Resident" shall mean any person, including a Tenant within the Arizona Residential Landlord Tenant Act, who is physically residing in any premises constructed on a Lot, for so long as said person is so residing.

1.38. **Retaining Wall.** "Retaining Wall" shall mean and refer to the wall system installed by Declarant for the benefit of Lots 170 through 198, inclusive.

1.39. **Screen from Street View.** "Screen from Street View" shall mean attractively screened or concealed from view from the street in front of the Residence, in a manner that the screening or concealment appears to be part of the integrated architectural design of the Residence and does not have the appearance of a separate piece or pieces of machinery, fixtures or equipment. An object may be visible through the screening.

1.40. **Sole Discretion, Sole and Absolute Discretion, Sole Opinion or Opinion.** "Sole Discretion," "Sole and Absolute Discretion," "Sole Opinion" or "Opinion" shall mean that the act or decision of the person may be made in the party's independent and individual choice of judgment, without regard to any objective or other standard of consideration. Except for those acts and decisions which may be made in the "Sole Discretion" and "Sole and Absolute Discretion" of a person, all acts or decisions of the person must be exercised in good faith discretion. Without limiting the preceding sentence, this standard shall be deemed to apply to the Declarant, the Board, the ARC, and the Association.

1.41. **Special Assessment.** "Special Assessment" shall mean any Assessment levied pursuant to Article 6.

1.42. **Turn Over Date.** "Turn Over Date" shall mean that date which the Period of Declarant Control ends or such sooner date as the Declarant may determine appropriate to transfer maintenance responsibility to the Association.

1.43. **Viewpoint Estates.** "Viewpoint Estates" shall mean and refer to Viewpoint Estates, Tract 3711.

1.44. **Violation.** "Violation" shall mean and refer to a failure to comply with the Association Rules.

1.45. **Visible from a Neighboring Property or the Street.** "Visible from a Neighboring Property or the Street" shall mean, with respect to any given object, if the object is or would be visible to a natural person six (6) feet tall standing at any location on adjacent real property or street at an elevation of no greater than the elevation of the base of the object being viewed.

1.46. **Voting Power of the Association.** "Voting Power of the Association" shall mean the total votes, Class A and Class B combined, in the Association as calculated pursuant to Article 3.4.

## 2. **PLAN OF DEVELOPMENT.**

This Declaration is being Recorded to establish a general plan for the development and use of the Property in order to protect and enhance the value and desirability of the Property. All Lots within the Property shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each such person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

## 3. **THE ASSOCIATION.**

3.1. **General Purpose and Powers.** The Viewpoint Estates Homeowners Association has been or will be incorporated as an Arizona not for profit corporation to serve as the homeowners association on behalf of the lot Owners to which reference is made in this Declaration. It shall have those powers as provided for in this Declaration and all powers permitted by law. In addition to the rights and powers of the Association set forth in this Declaration, the Association will have such rights and powers as are set forth in other Association Documents, together with such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association.

3.2. **Membership.** Each Owner of a Lot shall be a Voting Member of the Association for so long as he or she owns a Lot in Viewpoint Estates.

3.3. **Board.** The affairs of the Association shall be managed by the Board as provided for in the Bylaws, subject to the minimum and maximum number established by law. Unless the Association Documents specifically require the vote or written consent of

the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area. The Board shall determine the compensation to be paid to any such manager.

3.4. **Voting Members Rights.** There shall be two classes of voting membership in the Association:

3.4.1. **Class A Voting Members.** Each Member shall have one (1) vote for each Lot he or she owns; provided, however, that Declarant shall not have Class A voting rights until the date specified in Article 3.4.2.(ii) below. Further provided that in the event that fee simple title to a Lot is held by multiple Owners, the multiple Owners shall, prior to each meeting of the Association, provide the Association with a written statement, signed by all such multiple Owners, designating one person who shall have the right to cast the single vote assigned to the Lot owned by such multiple Owners. No fractional votes by multiple Owners of a Lot will be recognized by the Association.

3.4.2. **Class B Voting Members.** The Class B member(s) shall be the Declarant (as defined in this Declaration), and shall be entitled to six (6) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;
- (ii) on December 31, 2050; or
- (iii) when, in its discretion, the Class B Member so determines.

Notwithstanding the conversion of Class B Votes into Class A Votes, Declarant shall have the right to control the Association for so long as Declarant owns one Lot for sale in the Community.

3.4.3. **Transfer of Voting Rights.** The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of fee interest in any Lot to a new Owner or Owners shall operate to transfer the appurtenant membership and voting rights without the requirement of any express reference thereto.

3.5. **Meetings.** Meeting of the Members shall be held as follows:

3.5.1. **Regular Meetings.** Regular meetings of the Members shall be held at least once each calendar year at a time and place prescribed by the Bylaws of the Association.

3.5.2. **Special Meetings.** A special meeting of the Members shall be called by the Board upon the vote of a majority of the members of the Board, or upon

receipt of written request therefor by Members representing twenty-five percent (25%) or more of the voting power of the Association.

3.5.3. **First Meeting.** The first meeting of the Association shall be held not later than one (1) year after the first conveyance of a Lot from Declarant to an Owner is Recorded. Thereafter, the annual meeting shall be held as provided in the Bylaws.

3.5.4. **Place of Meetings.** Meetings of the Members shall be held within the Property or as close thereto as conveniently possible. Such meetings shall not be held outside of Mohave County, Arizona, unless the Board determines that unusual conditions exist that make a meeting elsewhere desirable.

3.6. **Notices.** Each Member is entitled to notice of a meeting. Notices of meetings shall be in writing and shall indicate each matter to be voted on at the meeting that is known to the Board at the time notice of the meeting is given; provided; however, that no business shall be conducted at a special meeting unless it is specified in such notice. Such notices shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting, except in such cases as are determined by the Board to be emergency situations. Any notice shall be deemed given and any budget or other information or material shall be deemed furnished or delivered to a party if sent in accordance with the provisions of Article 10.18 below.

3.7. **Record Date.** The Board shall have the power to fix in advance a date as a Record Date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any budget or other information or material, or in order to make a determination of Members for any purpose. Notwithstanding any provisions hereof to the contrary, the Members of record on any such record date shall be deemed the Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, for information or material with respect to the same matter for any adjournment of the same meeting. A Record Date shall not be more than thirty (30) days nor less than ten (10) days prior to the date on which the particular action requiring determination of the Members is proposed or expected to be taken or to occur.

3.8. **Articles and Bylaws.** The purpose and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws of the Association, including any reasonable provisions with respect to corporate matters, but in the event that any such provisions may be, at any time, inconsistent with any provisions of this Declaration, the provisions of this Declaration shall govern.

#### 4. **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.**

4.1. **Maintenance of Common Area.** The Association shall provide for the care, maintenance, repair and replacement of Common Area. Without limiting the generality of the foregoing, such obligation shall include keeping Common Area in good, clean, attractive and sanitary condition in a manner desirable for, and to promote, protect

and preserve the values of, a residential community, and making necessary or desirable alterations, additions, betterments or improvements thereto. The Board shall be the sole judge as to the appropriate maintenance of all properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board, or by its duly delegated representative.

4.2. **Labor and Services.** Subject to the provisions of Article 4.8, the Association, acting through the Board, may obtain and pay for the services of any person to manage its affairs, or any part thereof, to the extent it deems advisable. In addition, the Board may obtain and pay for the services of such other personnel, including independent contractors, as the Association shall determine to be necessary or desirable for the proper maintenance of Common Area, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts. An employment contract for a management agent may not provide for the management agent to collect fees through escrow for its benefit that would otherwise be payable to the Association, specifically including transfer fees.

4.3. **Association Functions.**

4.3.1. **Actions for Owners' Benefits.** The Association may undertake or contract for any lawful activity, function or service for the benefit of the Owners. The Association may assess costs and expenses of activities, functions or services undertaken by the Association for the benefit of fewer than all of the Owners against those Owners benefitted thereby, and such Assessments shall be enforced in accordance with the provisions of hereof. The Association shall obtain from any governmental authority any licenses necessary or appropriate to carry out its functions hereunder.

4.3.2. **Permitted Activities.** The activities, functions or services undertaken or contracted for by the Association may include, without limitation, (i) providing police or similar security services, (ii) providing legal and accounting services necessary or desirable in connection with the operation of the Association or the enforcement of this Declaration, (iii) directly employ personnel to maintain the Common Area and to own, operate, maintain and repair such equipment as may be necessary or useful to maintain the Common Area, and (iv) enforcing all rights granted to the Association in any lease, easement or other instrument, including this Declaration.

4.4. **Rules.** The Association, through its Board, may promulgate such reasonable rules as it deems appropriate and/or necessary for the governance and/or operation of the Association and the regulation of conduct on Common Areas through the adoption of Board resolutions. Such rules shall be enforced by the Association, or directly through any duly employed management agent or employee. Such rules may, without limitation: (i) regulate the burning of open fires, including fire pits, removal of weeds or other unattractive or invasive vegetation, (ii) regulate the use of and parking of vehicles, including speed limits, within the Property, (iii) regulate the time for which seasonal decorations may be displayed, and (iv) prohibit noxious or offensive activities, nuisances, unsafe or hazardous activities or construction, emissions of loud sounds or offensive odors and unsightliness within the Property.



4.5. **Dedication of Land.** The Association may dedicate, transfer, lease or grant easements in any part of the Common Area to any public agency, authority or utility if it deems the same to be for the benefit of all Association Members.

4.6. **Property Taxes.** The Association shall pay all real and/or personal property taxes and assessments levied on any portion of Common Area. The Association may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application of any such taxes or assessments.

4.7. **Implied Rights.** The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonable to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.8. **Limitation on Rights.** The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association:

4.8.1. **Contracts.** Entering into a contract with a third person wherein the third person will furnish goods or services for the Association or Association Property for a term longer than one (1) year.

4.8.2. **Capital Improvements.** Incurring aggregate expenditures for capital improvements to Common Area in any fiscal year in excess of twenty percent (20%) of the budgeted gross expenses of the Association for that fiscal year.

4.8.3. **Compensation to Directors and Officers.** Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

4.8.4. **Sale, Lease or Dedication of Association Property.** Sale, lease or dedication of Association property shall only be with the consent of seventy-five percent (75%) of the owners.

## 5. **COMMON AREAS, EASEMENTS AND IMPROVEMENTS.**

### 5.1. **Title to and Use of Common Areas.**

5.1.1. **Responsibility for Maintenance.** At such times as the Association has been formed and one Lot has closed escrow, Declarant shall convey to the Association fee simple title to the Common Areas free and clear of all monetary encumbrances and liens except those imposed by the County of Mohave, and subject to the provisions of this Declaration and easements, conditions, restrictions and reservations then of record. Prior to the Turnover Date, Declarant shall be responsible for the maintenance of the Common Areas.

5.1.2. **Character of Common Areas.** Subject to the provisions of any easements granted to, or conditions imposed by the County in connection with its approval of the subdivision of the property by Declarant, Common Areas shall be used only as landscape or open space and/or for recreational purposes maintained for the benefit and enjoyment by the Owners, Residents and their Guests pursuant to the rules of the Association.

5.2. **Rights in the Association Property.**

5.2.1. **Suspension of Rights to Use Association Property.** The rights of Owners and Residents to use Association Property shall be subject to this Declaration and to the rules of the Association. The Association shall have the right to enforce such rules against any Guest of an Owner or Resident by suspending the right of such Guest to use Association Property as though such Guest were an Owner or Resident referred to therein.

5.2.2. **No Violation of Insurance Requirement.** Without the prior written consent of the Association, no Owner, Resident or Guest shall do anything or cause anything to be kept in or on Association Property that might result in an increase in the premiums for any insurance policies obtained by the Association or that might cause cancellation of any such insurance policies. No Owner, Resident or Guest shall do anything or keep anything in or on Association Property that would violate any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

5.2.3. **No Waste or Obstruction.** Without the prior written consent of the Association, no Owner, Resident or Guest shall obstruct, damage or commit waste to or on any Association Property. No Owner, Resident or Guest shall change, alter, repair or store anything in or on any Association Property unless the same is authorized in writing by the Association.

5.3. **Loss or Damage to Association Property.** If loss or damage shall be caused to any Association Property due to the act, omission or neglect of an Owner or agent, guest, tenant (or tenant's guest or agent) of an Owner, said Owner, shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the insurer has waived its rights of subrogation against said party. If such loss or damage is not immediately repaired by the responsible party, the Association may effect such repairs, and the costs thereof shall be assessed against the Lot of the applicable Owners as an Assessment in accordance with Article 6 below and Article 4.3.1 above.

5.4. **Easements for Repair, Maintenance and Emergencies.** The Association shall have, and is hereby granted, an easement for access through each Lot for making repairs, on an emergency or non-emergency basis to prevent damage to the Common Area or to another Lot, to perform routine maintenance or to prevent damage to Common Area or to another Lot. Nothing herein shall be deemed to obligate the Association to make any such emergency repairs. Use of the easement for repair and maintenance shall not be deemed a trespass.

5.5. **Easement for Correction of Improvements, Maintenance or Use.** The Association shall have, and is hereby granted, the right, but not the obligation, to enter upon a Lot to correct any Noncompliance for which notice and opportunity to cure without penalty has been afforded to the Owner and said entry shall not be deemed a trespass. All costs incurred by the Association in correcting a Noncompliance shall be deemed a Special Assessment secured by an Assessment Lien on the Lot and collectible as provided herein at Article 6.

5.6. **Negligence or Willful Misconduct.** Any damage to any Lot caused by the gross negligence or willful misconduct of the Association or any of its agents during any entry onto any Lot shall be repaired by and at the expense of the Association.

5.7. **Reservation of Construction Easement.** For a period of twenty (20) years after recordation of this Declaration, Declarant reserves an easement for itself and its agents over the Property for the completion of construction of improvements thereon.

5.8. **Landscape, Utility and/or Drainage Easements.** Certain Lots may be conveyed subject to landscape, utility and/or drainage easements filed and recorded by Declarant. The Declarant and/or the Association may establish landscaped, utility or drainage areas within said easement areas for the benefit of Declarant, the Association and Owners and Residents. The Association shall maintain any of such established landscaped, utility or drainage areas and may utilize all or any portions of the landscape, utility or drainage easement areas for access, irrigation and maintenance purposes. The Association shall also maintain all landscaping, utilities or drainage installed by Declarant within Common Areas and may maintain the same which is within the public right of way of any public street, drainage way or retention basin bordering the Property. The Association shall have the exclusive right to maintain landscape, utility and/or drainage easements. The Association shall also have the right of entry onto or through such landscape, utility and/or drainage easements for the purposes of maintaining the same or any Common Areas adjacent thereto. The Association may transfer the maintenance of any utility and/or drainage easement only upon the completion of improvements which are based upon plans engineered by a licensed civil engineer or based upon plans certified by a licensed civil engineer that such improvements shall not adversely impact the integrity of the utility and/or drainage and approved by the ARC set forth in Article 8 below and upon the appropriate permit, if any being issued, by Mohave County. Unless the Association transfers maintenance of any utility and/or drainage easement s previously set forth to a Member or Owner, neither Members, Owners, Guests, or the general public shall have a right of ingress, egress or entry onto utility and/or drainage easement areas, any such unauthorized entry, ingress or egress shall be deemed a trespass on Association property.

6. **ASSESSMENTS.**

6.1. **Assessments.**

6.1.1. **Regular, Special and Benefitted Lot Assessments.** Each Owner (or, in the event of multiple Owners of the same Lot, such multiple Owners jointly and

severally) shall be obligated to pay to the Association amounts as hereinafter provided based on each Lot owned by such Owner or Owners, which amounts are herein called "Assessments". Assessments shall be classified as either "Regular", "Special", or "Benefitted Lot" Assessments.

6.1.2. **Board Authority to Assess.** Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessments, including, without limitation, power and authority to determine where, when and how Assessments shall be paid to the Association, and each Owner shall comply with all such determinations.

6.2. **Fiscal Year and Determination of Budgets.** A copy of the budget shall be sent to all owners prior to the beginning of the fiscal year. No later than thirty (30) days prior to the commencement of each fiscal year or partial fiscal year, the Board shall determine the budget for the Association for such fiscal year or partial fiscal year, in the following manner:

6.2.1. **Operating Budget.** The Board shall prepare or cause to be prepared and approve an Operating Budget for the fiscal year or partial year showing, in reasonable detail, the estimated operating costs and expenses that will be payable in that fiscal year or partial fiscal year to fulfill the regular operating functions and obligations of the Association in that fiscal year or partial fiscal year, including amounts necessary to cover obligations made in connection with, or contemplated under, any previously approved budgets, plus an amount sufficient to provide a reasonable carry-over reserve for the next fiscal year.

6.2.2. **Capital Replacement Reserve.** The Board shall also determine the amount to be set aside in a special fund allocated for any maintenance and replacement of improvements not required to be performed annually. Capital Replacement Reserve funds shall be maintained in a segregated account separate and apart from the Association's operating account. Capital Replacement Reserves deposited into the Association's operating account shall be transferred to the segregated account no less frequent than quarterly.

Upon determination of the budget for a fiscal year or partial year, the Board shall furnish a copy of the budget to each Owner, which budget shall separately identify amounts attributable to the Operating Budget and to the Capital Replacement Reserve fund.

6.3. **Regular Assessments.**

6.3.1. **Annual Calculation.** The amount to be raised by Regular Assessments during a fiscal year or partial fiscal year shall be equal to (i) the Operating Budget for such period, plus (ii) the Capital Replacement Reserve to be set aside for said period, less the amount attributable to the Operating Budget collected but not disbursed in the immediate preceding fiscal year or partial fiscal year (provided, however, that in lieu of such subtraction the Association may elect to refund said surplus to the Owners).

6.3.2. **When Approval of Owners Required.** If the aggregate amount of the Regular Assessment to be levied in any fiscal year against the Owners of each Lot is more than twenty percent (20%) greater than the Regular Assessment for the prior fiscal year, such Regular Assessment shall not be levied without the prior approval of Owners holding fifty-one percent (51%) or more of the Class A total voting power of the Association.

6.3.3. **Failure to Calculate.** If the Board fails to determine or cause to be determined the total amount to be raised by Regular Assessments in any fiscal year or partial fiscal year, and/or fails to notify the Owners of the amounts of such Regular Assessments, then the amounts thereof shall be deemed to be the amounts assessed in the previous fiscal year.

6.3.4. **Limitation on Association Expenditures.** Except as emergencies may require, the Association shall make no commitments or expenditures in excess of the funds reasonably expected to be available to the Association.

6.3.5. **Merged Assessments.** Notwithstanding any of the provisions set forth elsewhere in this Declaration, an Owner who constructs a Residence across the common property line of two contiguous and adjacent Lots shall be deemed to have merged the two Lots into one Lot for purposes of this Declaration. Assessments shall remain merged for as long as the two Lots are used and maintained as one residential home site.

6.4. **First Full Assessment.** Full Assessments shall commence for each Lot on the first day of the first month following the close of escrow of the initial conveyance from Declarant to an Owner.

6.5. **Special Assessment.** In addition to Regular Assessments, the Association may levy Special Assessments, payable over such period as the Association may determine: (i) for the purpose of defraying, in whole or in part, to the extent the amounts in the capital replacement reserve fund are insufficient therefor, the costs of any construction or reconstruction, maintenance, repair or replacement of improvements or any part thereof, (ii) for the purpose of defraying any other expense incurred or to be incurred as provided in this Declaration, or (iii) to cover any deficiency, in the event that, for whatever reason, the amount received by the Association from Regular Assessments is less than the amount determined to be necessary and assessed by the Board. Special Assessments in excess of ten percent (10%) of the budgeted gross expenses of the Association for a fiscal year may not be levied without the prior approval of Owners holding fifty-one percent (51%) or more of the Class A voting rights. No Special Assessment may be levied for the first year.

6.6. **Benefitted Lot Assessment.** The Association may levy a Benefitted Lot Assessment against a Lot, or group of Lots, for which the Association has incurred an expense benefitting those Lots only.

6.7. **Contribution to Capital Improvement Assessment.** Except as otherwise provided in this section, each purchaser of a Lot shall pay to the Association a Capital Improvement Assessment immediately upon becoming the Owner of the Lot a sum equal to .0015 of the sales price of the property at the time of sale for a Lot (the "Capital Improvement Contribution") as a contribution to the Association's Capital Improvement Fund for the construction of additional Community recreation facilities or amenities, the expansion or addition to existing Community recreation facilities and amenities or the future periodic maintenance, repair or replacement of the Community recreation facilities and amenities. The Capital Improvement Contribution shall be in addition to, and not in lieu of, any other Assessments or amounts payable to the Association by the Owner making the Capital Improvement Contribution, and the Capital Improvement Contribution shall be secured by the Assessment Lien. The Capital Improvement Contribution shall be deemed a contribution to the capital improvement fund of the Association.

No Capital Improvement Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by Declarant; (b) the transfer or conveyance of a Lot by devise or intestate succession; (c) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (d) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Capital Improvement Contribution; or (e) the transfer or conveyance of a Lot as a result of a trustee's sale under a deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

All Capital Improvement Contributions may only be used to pay costs and expenses related to the design or construction of recreational facilities and amenities on the Common Area, for the design and construction of additions to or expansions of existing community recreational facilities and amenities situated on the Common Area or the maintenance, repair or replacement of the Areas of Association Responsibility, unless the expenditure of any or all of the Capital Improvement Contributions for other purposes is approved by the vote of owners having two-thirds (2/3) of the eligible votes. All Capital Improvement Contributions shall be maintained in a segregated account separate and apart from the Association's operating account. Capital Improvement Contributions deposited into the Association's operating account shall be transferred to the segregated account no less frequent than quarterly.

6.8. **Transfer Fee.** Each purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board, and as permitted by statute. An independently contracted management agent may not charge the Association or a purchaser of a Lot any fee intended to be in lieu of or a transfer fee.

6.9. **Apportionment of Assessment.** The Regular and Special Assessments shall be payable either in full upon receipt of the notice of Assessments, or semiannually,

quarterly, or monthly as prescribed more particularly in the Bylaws, and shall be uniformly applied against Lots without regard to the improved or unimproved state of the Lot.

6.10. **Time for Payments.** The amount of the Assessment, charge, fine, penalty or other amount payable with respect to any Owner or such Owner's Lot shall become due and payable as specified by the Board. In the event that the Association does not receive payment within thirty (30) days after any notice of the amount due as such Assessment, charge, fine, penalty or other amount, interest shall accrue at a rate specified by the Board but in no event greater than the maximum amount allowed by law from the date due until paid. Furthermore, the Board shall have the discretion to impose a reasonable late charge in lieu of or in addition to interest. All amounts assessed, imposed by or levied by the Association against a Lot shall constitute a lien against said Lot as provided for herein.

6.11. **Lien for Assessments and Other Amounts.** If an Owner does not pay in full within thirty (30) days after its due date, any Assessment, charge, fine, penalty or other amount or any installment thereof, or any interest accrued thereon, the Association may record with the Mohave County Recorder a Notice of Delinquent Assessment Lien describing the amount and nature of such Assessment and the Lot or Lots owned by the defaulting Owner. Said Assessment Lien shall include costs and expenses of collecting the unpaid amount (including reasonable attorney's fees). The Notice of Delinquent Assessment Lien shall include costs and penalties, the Owner's name and a description of the applicable Lot(s) against which the Assessment Lien is recorded, and shall be signed by an authorized representative of the Association. Upon payment or other satisfaction of the Assessment Lien, the Association shall cause to be recorded a further notice stating the satisfaction and release of the Assessment Lien. In exercising its right to foreclose on an Assessment Lien, the Association shall have such rights, and shall comply with such requirements and conditions and shall follow such procedures as may be established under the laws of the State of Arizona for foreclosure of association liens. The foregoing remedies shall be in addition to any other remedies provided by law or in equity for the enforcement of such obligations.

6.12. **Liability of Owners and Purchasers.** The amount of any Assessment, charge, fine or penalty owing to the Association of any Owner under this Declaration shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, personal representative, successors and assigns. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

6.13. **Financial Statements.** Within ninety (90) days after the end of each fiscal year, the Association shall distribute to its Members an Income/Expense statement as of the last day of such year. The Board shall cause a certified public accountant to conduct a review or compilation of the Association's financial records annually.

6.14. **Inspection of Books and Records.** The membership register, books and account, and minutes of the meetings of the Members and of the Board (or committees of the Board), shall be made available for inspection and copying by any Member, except to

the extent that the same may contain privileged information or communications in compliance with applicable statutes or by his or her duly appointed representative, at any reasonable time and for the purpose reasonably related to his or her interest as a Member, at the office of the Association or at such other place as the Board shall prescribe. The Board may establish reasonable rules with respect to the notice to be given to the custodian of the records by the Member desiring to make the inspection, the hours and days of the week when such an inspection may be made, and payment of the costs of reproducing copies of documents requested by a Member. Inspection of Association's records for commercial use is expressly prohibited.

7. **RESTRICTION ON USE OF LOTS.**

7.1. **Residential Sizes, Uses and Construction Standards.**

7.1.1. **Approval of Plans.** No Improvement shall be erected or maintained nor shall any construction thereof be commenced upon a Lot, or any part thereof, until the plans therefor have been approved by the ARC as provided at Article 8.7 hereof.

7.1.2. **Residential Uses.** Any Residence to be constructed on a Lot is hereby restricted to residential site built dwelling for residential, single-family use.

7.1.3. **Square Footage.** No Residence shall be erected, placed or permitted to remain which contain less than one thousand five hundred (1,500) square feet of living area under roof exclusive of any porch, patio, ramada, awning, carport, garage or basement.

7.1.4. **Setbacks and Use.** Setbacks for the Lots shall be the set backs established by the ARC Guidelines, as amended from time to time, and such Lots shall be improved, used and occupied under the conditions set forth in the ARC Guidelines unless the conditions of this Declaration.

7.1.5. **Construction Standards.** No buildings or structures shall be moved from other locations onto said Lots. Mobile homes and all structures built or prefabricated off the Lots are expressly prohibited, including but not limited to, modular and manufactured structures. No structures of a temporary character, trailer, camper, recreational vehicles, tent, shack, barn or other outbuilding shall be used on any portion of the Lots at any time as a residence, either temporary or permanently. All buildings shall be constructed in compliance with the building code for the County. In the event there is a conflict between the County's building code and this Declaration, the more restrictive provision shall apply.

7.1.6. **Approval of Plans.** No building, wall, fence or other exterior Improvement shall be erected or maintained nor shall any construction thereof be commenced upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing



as to harmony or external design and location in relation to surrounding structures and topography by the ARC.

7.1.7. **Construction Standards.** All construction shall be of new materials. No used building constructed or erected upon other real property shall be moved from other locations onto any Lot. Any temporary structures on any Lot during construction of Premises thereon must be approved in advance by the ARC and must be removed when construction is completed.

7.1.8. **Height and Roof Limitations.** All buildings shall have a maximum building height of thirty (30) feet but not more than two (2) stories from the surface of the Lot to the peak of the highest projection thereof.

7.1.9. **Roof Material.** On any roof visible from ground level at any point within the subdivision as its exposed visible surface, a tile composition such as clay, ceramic tile, concrete tiles, metal material, or equal as approved by ARC. Alternative materials for porches and/or patio covers not seen from the street may be approved by the ARC.

7.1.10. **Architectural Integration of Machinery and Equipment.** No machinery, fixtures or equipment of any type, including but not limited to, heating, cooling, air conditioning and refrigeration equipment, solar panels or equipment, hot water storage systems, radio and TV antennas, satellite TV, and Direct or Dish TV type systems shall be Visible from the Street. The screening or concealment of said machinery and equipment shall be integrated architecturally with the design of the building or structure, shall not have the appearance of a separate piece or pieces of machinery, fixtures or equipment, and shall be constructed and positioned in such a manner so it is aesthetically incorporated with the building. Approval of the ARC is required prior to installation of any machinery, fixtures or equipment.

7.1.11. **Landscape.**

7.1.11.1 **Installation of Landscape.** Concurrent with the completion of a Residence on a Lot, Landscaping shall be installed in the front (streetside), and rear yards, and side yards on corner lots commencing at the back of the curb and continuing to the front of the nearest portion of the Residence, wall or fence. All areas of a Lot Visible from a Neighboring Property or the Street shall be Landscaped no later than ninety (90) days after the completion of a Residence. All Landscaping must be installed in accordance with plans approved in writing by the ARC. If Landscaping is not installed on a Lot in the manner and by the applicable dates provided for in this section, the Association shall have the right, but not the obligation, to enter upon such Lot to install such Landscaping as the Association deems appropriate and the cost of any such installation shall be paid to the Association by the Owner, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this section shall be a Special Assessment secured by and collectible as an Assessment Lien.

7.1.11.2 **Maintenance of Landscaping.** Each Owner shall properly maintain and keep free of trash, weeds, dead or unsightly vegetation, and other unsightly material, all Landscaping located on Owner's Lot in compliance with the community Maintenance Standard.

7.1.11.3 **Xeriscape.** Only xeriscape, low water plants may be used in Landscaping. Natural turf is expressly prohibited.

7.1.12. **Exterior Lights.**

7.1.12.1 **Dusk to Dawn Solar Lights.** Each Residence shall have two downward directed solar lights, one on each side of the garage, which operate from dusk to dawn. An Owner shall maintain, including the timely replacement of inoperative light bulbs, the dusk to dawn light fixture at Owner's expense. No Owner may take any action to remove, replace, preclude or otherwise interfere with the operation of the light.

Dusk to dawn solar lights are intended to promote dark skies yet provide sufficient light to promote safety. The Association shall have the right, but not the obligation, to maintain and repair the dusk to dawn solar lights. Entry onto the Lot to maintain or repair the dusk to dawn solar lights shall not be deemed a trespass, and any costs therefor shall be paid to the Association by the Owner, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this section shall be a Special Assessment secured by and collectible as an Assessment Lien.

7.1.13. **Fences and Walls.** Fences and walls shall not exceed six (6) feet in height or extend beyond the front wall of the Residence. Prior to occupancy of a home, but not later than thirty (30) days from the issuance of a certificate of occupancy, a wall enclosing the rear yard shall be constructed in compliance with ARC Guidelines. Construction of the rear yard walls is the responsibility of the Owner. For purposes of this paragraph, use as a model home shall constitute occupancy.

7.1.14. **Attached Garage and Driveways.** Any Residence constructed on a Lot shall include an attached minimum two (2) car conventional or a recreational vehicle garage with a concrete floor and driveway extending from the exterior of the garage to the curb line. The interior of all conventional garages shall be maintained in a neat, clean and slightly condition. Conventional garages shall be used only for parking vehicles and storage, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons for routine, normal use and maintenance.

7.2. **Utility Easements.** No structure of any kind or nature shall be erected, permitted or maintained on, over or across any easement for utilities located on an Owner's Lot. Walls and/or fences shall not be considered a structure; however, any wall and/or fence across or over any such utilities easement may be subject to being moved at Owner's expense at the request of the utility company.

7.3. **Utility Service.** No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot, unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the ARC. Power poles or other transmission lines existing as of the date of the recording of this Declaration are excluded from the provisions of this section. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures for emergency purposes or incident to the construction of buildings or structures approved by the ARC. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel or other equipment on the outside front wall of a residence or other building facing the street running directly in front of or beside such residence.

7.3.1. **Subdivision of Lots.** A Lot may be re-subdivided for the purpose of combining the re-subdivided portions of one Lot with adjoining Lots to create a larger homesite provided that no additional or smaller Lot is created thereby; provided, further, that prior approval is obtained from the ARC and the appropriate governmental agency.

7.3.2. **Alteration of Topography.** Under no circumstances shall any Owner be permitted to deliberately alter the topographic conditions of his Lot(s) in any way that would permit additional quantities of water from any source other than what nature originally intended to flow from such Owner's Lot(s) onto any adjoining Lot or any public right-of-way, or to redirect said flow. No excavation shall be made on any Lot except in connection with construction of an Improvement on such Lot, and upon completion thereof any exposed opening shall be back-filled, and disturbed ground shall be compacted, graded and leveled in such a manner that the drainage over the disturbed ground shall be the same as it was prior to such excavation. All excavation shall be performed in accordance with plans approved by the ARC.

7.4. **Animals.** No animals, livestock or poultry of any kind shall be raised or kept on any Lot, except for dogs, cats or other commonly accepted indoor household pets. At any one time the total number of household pets other than fish shall not exceed three (3), nor shall any animals be kept, bred, manicured, or maintained for any commercial purposes. No animals, expressly including vicious dogs, may be kept which, in the sole discretion of the Board, constitute a nuisance, annoyance or hazard to other Owners or Residents. Any such nuisance shall be corrected at the Owner's expense. Should the Owner not comply with the requirements imposed by the Association, such correction shall be made under the Association's direction with any costs to be billed to the Owner and collectible as a Special Assessment as to said Owner and the applicable Lot pursuant to Article 6 above. In no event shall an Owner permit any animal to roam from an Owner's Lot. If required pursuant to rules and regulations promulgated by the Board any animal allowed on the Property shall be registered with the Association. Such rules may

require a certificate of good health and current vaccination issued by any veterinarian licensed to practice in the State of Arizona and such periodic recertification as may be reasonable with respect to the type of animal involved.

7.5. **Signs.** An Owner may display for sale or for rent signs, open house signs, political signs, cautionary signs regarding children, or address signs of customary and reasonable dimensions subject to reasonable restrictions imposed by the Association in compliance with governmental regulations. No other advertising signs, billboards, unsightly objects or nuisance shall be erected, placed or permitted to remain on the Property. All permitted signs shall conform to the ARC Guidelines and procedures noted in Article 8 below. Nothing herein contained shall restrict the rights of Declarant, nor shall Declarant be required to obtain ARC approval, to place signs of reasonable dimensions on Lots or in Common Areas as a part of its marketing activities.

7.6. **Obstruction of View by Vegetation.** No hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection or the street lines from the intersection of the street property lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No tree, shrub or plant of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk or any other pedestrian way from ground level to a height of seven (7) feet.

7.7. **Residential Use and Trades or Businesses.** All Lots shall be used, improved and devoted exclusively, to residential use. No trade or business may be conducted on any Lot, except that an Owner or other Resident may conduct a business activity in a Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity conforms to all applicable zoning ordinances or requirements; (c) the business activity does not involve the door-to-door solicitation of Owners or other Residents in the Project; (d) the use of the Residence for trade or business shall in no way destroy or be incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business shall be conducted only inside the Residence or inside an accessory building, and shall not involve the viewing, purchase or taking delivery of goods or merchandise at, to, from or in any Residence, including excessive small package deliveries by US Postal Service, UPS, or Federal Express type carriers; (f) the trade or business shall be conducted by a Resident or Residents of the Residence with no employees; (g) no more than twenty percent (20%) of the total floor area of the Residence shall be used for trade or business; (h) the Residence used for trade or business shall not be used as a storage facility for a business conducted elsewhere; (i) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood; (j) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (k) a trade or business shall not utilize large vehicles not customary to a residential use. The terms "business" and

"trade" as used in this section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this section.

#### 7.8. **Motor Vehicles.**

7.8.1. **On Street Parking.** To preserve and promote the high quality of a residential community, on street parking by Residents and Guests should be minimized, and long-term parking or storage of vehicles of any type avoided. The Association may prohibit on street parking on its private roads. The Association may adopt rules regulating on street parking on public roads within the Community, if any, to the extent permitted by law.

7.8.2. **Storage.** Automobiles, trucks, buses, boats, boat trailers, recreational vehicles, campers, camper shells, detached campers, or other similar recreational equipment, off road vehicles and the like shall not be stored in the street setback areas (being both the front and side in the case of corner Lots) unless screened from view. For purposes of this provision, a vehicle or equipment parked or stored in the same location for more than forty-eight (48) hours shall be deemed stored. The parking of a recreational vehicle in an Owner's driveway for purposes of loading or unloading of the recreational vehicle for not more than twenty four (24) hours is permitted. No commercial vehicles exceeding seven (7) feet in height and eighteen (18) feet in length shall be parked or stored on a Lot.

7.8.3. **Auto Repair.** Except for emergency vehicle repair, no automobile or other vehicle shall be constructed, reconstructed or repaired upon a Lot or street within the Project.

7.8.4. **Towing of Vehicles.** The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Association Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.

7.8.5. **Vehicle Noise; Operation of Off Road Vehicles.** Any motor vehicle operated within Viewpoint Estates community, including an automobile, truck, dune buggy, motorcycle, jet ski, boat, and trail bike, shall have a muffler on its exhaust system if ridden, and shall be ridden only on paved roads within the Project. No motorcycle, motorbike, all-terrain vehicle, off-road vehicle or any similar vehicle licensed or unlicensed, used primarily for off-road purposes shall be parked, maintained or operated on any Lot except in garages or in areas concealed from view.

7.9. **Antennas; Flag Poles.** The Association shall promulgate rules governing the erection of poles, masts, or outdoor antennas or satellite dishes in compliance with the applicable Federal Communication Commission's regulatory rulings and any other applicable governmental regulations.

7.10. **Basketball Goals, or Play Structures.** No basketball goal, backboard or similar structure or device, and no swingsets or other play structures shall be placed or constructed on any Lot without the prior written approval of the ARC (including, without limitation, approval as to appearance, screening and location). Permanent Basketball Goals are prohibited.

7.11. **Tanks.** No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot. Propane tanks may be placed underground in compliance with ARC Guidelines subject to the approval of the fire department. Nothing herein shall be deemed to prohibit use or storage upon any Lot of a propane tank 5 gallons or less in size, incidental to the use of a residential barbeque, so long as any such tank is appropriately located, stored, used and/or screened, in accordance with the ARC Guidelines.

7.12. **No Waste or Nuisance.** No Lot shall be used or allowed to become in such condition as to depreciate the value of other Lots, including the failure to effect normal and routine maintenance for aesthetic purposes. No weeds, underbrush, unsightly growth, refuse piles, junk piles or other unsightly objects shall be permitted to be placed or remain upon any Lot. No Lot shall have loud speakers, stereo or car speakers, boom boxes or other stereo equipment permanently affixed outside of buildings, residences, garages or vehicles. No affixed spotlights or other illuminated objects shall be permitted to remain, to be erected or placed on a Lot which unreasonably interferes or disturbs the use and enjoyment by an owner of another Lot. In the event of any Owner not complying with this provision, Declarant or Association shall have the right to enter upon the land and remove the offending objects or undertake such action as is necessary to remedy or eliminate the waste or nuisance (including effecting routine maintenance such as painting) at the expense of the Owner, who shall repay the same upon demand as a Special Assessment, and such entry shall not be deemed a trespass.

7.13. **Storage of Equipment, Refuse and Miscellaneous.** All yard equipment, garbage cans, rubbish, trash, woodpiles, storage piles and other items that shall in appearance detract from the aesthetic values of the Lot shall be kept screened by fencing so as to conceal them from view of neighboring Lots and streets. All rubbish, trash, garbage shall be regularly removed from Residence, and shall not be allowed to

accumulate thereon. Trash for collection may be placed at the street right-of-way line on regular collection days for a period not to exceed twelve (12) hours prior to pickup and once trash has been collected, the Owner's receptacles shall be removed within twelve (12) hours thereafter.

7.14. **Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot unless said clothesline or other outside facilities for drying or airing of clothes is Concealed From View.

7.15. **Sun Screening.** At no time shall aluminum foil, tin foil, paper, cardboard or other similar materials be permitted on any window, arcadia door, or similar openings as sun shades. Nothing herein contained will prevent the use of commercially available sun film materials, shade screens or similar solar screening or shading devices on or over windows, arcadia doors or similar openings, provided that architectural approval be first obtained if appropriate.

7.16. **Solar Collecting Panels or Devices.** The Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, the Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the ARC, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property so long as such solar collecting panels and devices are placed, constructed and maintained in such locations, and with such means of screening or concealment as the ARC may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed from any street or from any other property (whether within or outside the Property). Notwithstanding any other provision of this Declaration to the contrary, the Declarant (during the Period of Declarant Control) or the Board (after the expiration or termination of the Period of Declarant Control) shall have the right, without the consent or approval of any Owner or other person, to amend this section (which amendment may, without limitation, impose additional or different restrictions on solar collecting panels and devices) as the Declarant or the Board (as applicable) deems appropriate in the event that, after the date this Declaration is Recorded, section 33-439 of the Arizona Revised Statutes (or any successor thereto) is amended, repealed or replaced.

7.17. **Business of Declarant.** Notwithstanding any other provisions herein to the contrary, Declarant and its agents (including sales agents) and representatives may use any areas of the Property for model home sites and sales and display office. Said office may be a trailer or mobile office facility. No provision of this Declaration shall be applicable to prohibit any act or activity of Declarant, its agent or representatives in connection with or incidental to Declarant's improvement and/or development and/or sale of the Property.

7.18. **Rental/Lease.** The renting or leasing of a Residence is permissible subject to the following restrictions: (1) the rental or lease agreement shall not be for a period of time less than one (1) month; daily and weekly rentals are expressly prohibited; (2) the Owner renting or leasing his Residence shall give notice thereof to the Association on a form promulgated by the Association; and (3) the Tenant or Lessee executes a receipt evidencing he, she or it has been provided a set of Association Documents and agrees to comply with the terms and provisions of the Association Documents. The Association shall be entitled to assess a reasonable fee for the Association Documents delivered to the Tenant or Lessee.

## 8. **ARCHITECTURAL REVIEW COMMITTEE.**

8.1. **Creation.** The ARC is hereby created with all of the rights, powers, privileges and duties herein set forth. The ARC shall consist of not less than three and no more than five persons. Two people shall constitute a quorum, regardless of the actual number of committee members.

8.2. **Terms.** Each ARC Member shall hold office for such term as is set forth in the appointment and until his or her successor has been duly appointed as herein set forth, unless he or she has sooner resigned or been removed.

8.3. **Right to Appoint.** Declarant shall have the sole and exclusive right to appoint and remove all of the ARC Members during the Period of Declarant Control or such other earlier time the Declarant shall decide. After the expiration of the Period of Declarant Control or the relinquishment of the right to appoint ARC Members by Declarant, whichever shall first occur, the Board shall appoint and remove the Representatives.

8.4. **Removal and Resignation.** Any ARC Member appointed by Declarant may be removed by Declarant with or without cause. Any ARC Members may resign by submitting a written notice to the Board stating the effective date of his or her resignation. Acceptance of the resignation shall not be necessary to make the resignation effective.

8.5. **ARC Functions.** The functions of the ARC, in addition to any functions set forth elsewhere in this Declaration, shall be (i) to consider and approve or disapprove any plans, specifications or other material submitted to it for the erection, construction, installation, alteration, placement, or maintenance of any Improvements on Lots, or for the alteration or remodeling of, or construction of additions to, any then existing Improvements on Lots, and (ii) to perform such other duties as may, from time to time be delegated to it by the Association. The ARC's actions on matters shall be by majority vote of the Members. Any action required to be taken by the ARC may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a majority of the Members then serving. The ARC shall keep and maintain a record of all its actions. A Member appointed by Declarant may appear at a meeting telephonically providing that the Member has been provided in advance a complete package of materials which are to be considered at the meeting.



8.6. **Rule Making Authority.** The ARC shall promulgate rules and regulations not incompatible with this Declaration (i) establishing the procedures for the submission and approval of said plans, specifications, and other materials, (ii) regulating construction on the Property, including, without limitation, dust and noise abatement requirements, use of temporary construction camps, trailers, construction offices, supply and equipment shelters and screening, hours of construction activity and construction equipment routes, and (iii) interpreting, applying, supplementing and implementing the provisions of this Declaration pertaining to the design of Improvements, including without limitation, types of building materials, permissible exterior colors, landscaping and aesthetic requirements. Said rules and regulations shall be called the "ARC Guidelines". A copy of the ARC Guidelines of Viewpoint Estates as from time to time adopted, amended or repealed, shall be maintained in the Association office and shall be available for inspection during normal business hours by any Owner or prospective Owner and any architect or agent of any Owner of prospective Owner. Those ARC Guidelines, as they may from time to time be amended or revised, are incorporated into this Declaration by this reference, as if set forth in full.

8.7. **Review of Plans.** The ARC may, by enacting appropriate rules, specify the procedures for the submission and approval of said plans, specifications and other materials; provided, however, that the ARC's review of any such plans, specifications and other materials shall be accomplished within 30 days of a completed submittal package, as specified in such rules. The ARC shall notify the Owner of its decision within 14 days of its review.

8.8. **Approval of Improvements.** Any Owner or other person desiring approval of the ARC for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of a Lot, or any Improvements located thereon, shall submit to the ARC, on a form provided by the ARC, a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change, replacement or other work which such Owner or other person desires to perform. Any Owner or other person requesting the approval of the ARC shall also submit to the ARC any additional information, plans and specifications which the ARC may reasonably request. In the event that the ARC fails to approve or disapprove an application for approval within thirty (30) days after the completed application, and together with all supporting information, plans and specifications required by the ARC Rules or reasonably requested by the ARC, have been submitted to it, approval will not be required and this section will be deemed to have been complied with by the Owner or other person who submitted such application for approval.

8.8.1. The ARC shall, in reviewing plans, specifications and other materials submitted to it, consider the suitability of the proposed building or other Improvements for the area in which it will be located; the quality of the materials to be used in construction; and the effect of the proposed building or other Improvement on the Property, and other Lots.

8.8.2. The approval by the ARC of any construction, installation, addition, alteration, repair, change, replacement or other work pursuant to this section shall not be deemed a waiver of the ARC's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, replacement or other work subsequently submitted for approval.

8.8.3. Upon receipt of approval from the ARC for any construction, installation, addition, alteration, repair, change, replacement or other work, the Owner or other person who has requested such approval shall proceed to perform, construct or make the installation, addition, alteration, repair, change or other work approved by the ARC as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the ARC, subject to the provisions herein.

8.8.4. Any change, deletion or addition to the plans and specifications approved by the ARC must be approved in writing by the ARC.

8.8.5. The ARC shall have the right to charge a reasonable fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change, replacement or other work pursuant to this section, which fee shall be payable at the time the application for approval is submitted to the ARC. Such fee, if established and charged by the ARC, shall be set at such reasonable level as the ARC may estimate will be necessary to defray the reasonable costs and expenses of the ARC in reviewing and evaluating any such request or application, and may include, if the ARC deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the ARC by an architect or engineer.

8.8.6. The ARC shall have the right to condition approval on receipt of a reasonable deposit to ensure compliance with the Association Documents. The amount of the deposit, if required by the ARC, shall be determined by the ARC and shall be set at such reasonable level as the ARC may estimate will be necessary to defray the reasonable costs and expenses anticipated to be incurred in causing the construction to comply with the Association Documents. Upon satisfactory completion, in the sole discretion of the ARC, of the construction, installation, alteration, addition, repair, change, replacement or other work pursuant to this section, the deposit shall be refunded to the Owner or other person who paid the deposit. In the event the construction, installation, alteration, addition, repair, change, replacement or other work pursuant to this section is not completed to the satisfaction of the ARC, then, without prejudice to any other rights, remedies or causes of action of the Association, the deposit shall be paid to the Association to be used, to the extent reasonably possible, to cause the construction to comply with the Association Documents.

8.8.7. The provisions of this section do not apply to, and approval of the ARC shall not be required for, any construction, installation, addition, alteration, repair, change, replacement or other work by, or on behalf of, the Declarant.

8.8.8. The approval required of the ARC pursuant to this section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, or under any other Recorded instrument. The ARC may condition its approval of any application, plans or other items submitted to it on delivery to the ARC of evidence satisfactory to the ARC that the Owner or other person seeking its approval has also made appropriate applications for (and prior to commencing work shall have obtained) any and all such other approvals or permits. The ARC shall cooperate reasonably with any other approving authorities or entities, provided, however, that the ARC shall not be bound by any approvals, permits or other decisions of any other such approving authority or entity.

8.9. **Zoning Reclassification.** Should any Owner make application for and obtain an approval for a zoning reclassification from the appropriate governing body such new classification will not in itself constitute an automatic deviation from the provisions herein, but such reclassification as it applies to the terms and conditions of this Declaration shall be subject to approval by the ARC.

8.10. **Variances.** The ARC may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 8 if the ARC determines in its discretion that: (a) a restriction would create an unreasonable hardship or burden on an Owner or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete; and (b) the activity permitted under the variance will not have any substantial adverse effect on Owners and is consistent with the high quality of life intended for residents of the Project.

8.11. **Damage During Construction.** During the course of construction and/or landscaping installation on a Lot, the Owner thereof shall be responsible at its expense, for the prompt repair and/or replacement and restoration of real or personal property damaged, destroyed, or adversely impacted by the Owner, its agents, contractors or employees. Should the Owner fail to satisfactorily and promptly replace, repair or restore any such damage to the satisfaction of the ARC within ten (10) days after the ARC's written notice thereof to the Owner, the Association may effect repair, replacement or restoration at the expense of Owner. Any such costs shall be charged to the Owner and the applicable Lot as an Assessment, the payment of which shall be enforceable in accordance with the provisions of Article 6 above.

8.12. **Time Limitations.** In no event shall the construction of any building, structure, addition, alteration or improvement be commenced prior to the approval by the ARC of plans and specifications therefor. An Owner must complete construction and obtain an unconditional Certificate of Occupancy from the County for the Residence constructed in full accordance with plans and specifications approved by the ARC within twelve (12) months of the date on which construction commences. Landscaping and irrigation systems shall be completed concurrent with the completion of the home, but not later than thirty (30) days from the issuance of the Certificate of Occupancy. Other than initial construction of a Residence, construction of any other structures, alterations, additions or Improvements on a Lot shall be completed within time frames established by the ARC which shall not be inconsistent with the provisions hereof. If an Owner fails to

comply with any of the time limitations set forth above or established by the ARC, Declarant states and all Owners, by acquiring title to any interest in a Lot, agree that the damage to other Owners and the Association shall be difficult to determine. If, after expiration of any of the foregoing time periods, a required performance has not been completed, the Association may assess an Owner up to Two Hundred Dollars (\$200.00) per month for each day that such performance has not been completed, each Owner by acquiring title to any interest in a Lot acknowledges that said Two Hundred Dollars (\$200.00) sum represents a reasonable estimate of said damages. Any sum so assessed shall be a Special Assessment in accordance with Article 6 above. Failure to complete any construction, alteration or other work within the above time limits shall further operate automatically to revoke the approval of plans and specifications by the ARC and, upon demand by the ARC, the Lot upon which such construction, alteration or other work was undertaken shall be restored by the Association, which may undertake such restoration and charge the cost thereof to the Owner of said Lot, which cost shall be enforceable as a Special Assessment in accordance with Article 6 above. The Representatives and the ARC's duly appointed agents may enter upon any Lot at any reasonable time or times to inspect the progress or status of any such construction, alteration or other work. The ARC may record a notice reflecting the fact that any such work has not been approved or that any approval given has been automatically revoked. An Owner may request an extension of time for good cause beyond the one year time to complete the Residence. Any such extension shall be granted sparingly by the ARC and only for just, good cause.

8.13. **Liability of Representatives.** Provided that Representatives act in good faith and with due diligence, neither the ARC nor any Representatives thereof shall be liable to the Association, any Owner or any other person for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, specifications or materials, including, but not limited to, flood control plans, whether or not defective; the construction or performance of any work, whether or not pursuant to approved plans, specifications and materials; the execution or recordation of a form of approval or disapproval pursuant to this Article 8, whether or not the facts stated therein are correct; the performance of any other function pursuant to the provisions of this Declaration; or any other act or omission of the ARC or Representative.

## 9. **ENFORCEMENT.**

### 9.1. **Enforcement and Remedies.**

9.1.1. **Litigation.** The Association, the Declarant or any Owner shall have the right to enforce the Association Documents at law or in equity. Specifically the Association Documents may be enforced by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. The Association shall be entitled to recover its costs, including reasonable attorney's fees, when enforcing the Association Documents, without regard to whether or not litigation commences. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the

losing party any costs and expenses in connection therewith, including reasonable attorney's fees.

**9.1.2. Notice of Noncompliance with Association Documents.** The Association shall have the right to Record a written Notice of a Noncompliance by any Owner of any restriction or provision of the Association Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the Noncompliance; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner to cure the Noncompliance. Recordation of a Notice of Noncompliance shall serve as a notice to the Owner, and to any subsequent purchaser of the Lot, that there is such a Noncompliance. If, after the Recordation of such notice, it is determined by the Association that the Noncompliance referred to in the notice does not exist or that the Noncompliance referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the Notice of Noncompliance was recorded, the Recording data of the Notice of Noncompliance, and shall state that the Noncompliance referred to in the Notice of Noncompliance has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a Notice of Noncompliance shall not constitute a waiver of any existing Noncompliance or evidence that no Noncompliance exists. If, after the recording of the Notice of Noncompliance, the Noncompliance has not been cured, the Association shall have the right, upon not less than twenty-four (24) hours prior written notice, to enter upon any Lot for the purpose of curing the Noncompliance, including but without limitation, removal of any unauthorized Improvements and restoration of the premises, removal of any unauthorized personal property and placing the same in storage at the expense of the defaulting Owner, repainting the exterior of any building which has been painted in an unapproved manner of color, replacement of any trees, or other vegetation which has died or been removed without approval and cleaning up any unsightly material or debris upon any Lot. Any such entry shall not be deemed a trespass. Any expenses incurred by the Association through the exercise of the right of entry to enforce the Declaration shall be enforceable as a Special Assessment against the Lot enforced as an Assessment Lien.

**9.1.3. Violation by Resident.** Should a Resident violate any rule or the Association Documents, or should any Resident's act, omission or neglect cause damage to the Common Area, such violation, act, omission or neglect shall be considered and treated as a violation, act, omission or neglect of the Owner upon whose Lot the Resident resides. The Owners shall be financially responsible to the Association for damages caused by the Resident. Any sums owing the Association shall be paid to the Association by the Owner, upon demand from the Association. Any amounts payable by an Owner pursuant to this section shall be a Special Assessment secured by and collectible as a Special Assessment.

**9.1.4. Violation by Guest.** Should any Guest of a Resident commit any such violation of the Association Documents or cause damage to Common Area, such

violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner upon whose Lot the Resident resides.

9.2. **Right of Entry of Lots to Cure Violations.** The Association shall have the right, upon not less than twenty-four (24) hours prior written notice which states with specificity the actions to be taken by the Association and a reasonable estimate of the costs to be incurred, to enter upon any Lot for the purpose of enforcing this Declaration or any rules of the Association. By virtue of the easement granted the Association at Article 5.5 hereof, any such entry shall not be deemed a trespass. Any expenses incurred by the Association through the exercise of the right of entry to enforce the Declaration shall be paid to the Association by the Owner, upon demand from the Association. Any amounts payable by an Owner pursuant to this section shall be a Special Assessment secured by and collectible as a Special Assessment.

9.3. **Protection of Encumbrances.** No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage, deed of trust or other lien on any Lot taken in good faith and for value and recorded prior to the time of recording a notice giving notice of such violation, breach or failure to comply; nor shall such violation, breach or failure to comply or action to enforce this Declaration, affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage, deed of trust or other lien or title or interest of any such mortgage, deed of trust or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other lien result in any liability, personal or otherwise, of any such holder or purchaser.

## 10. **MISCELLANEOUS.**

10.1. **Duration of Declaration.** Each of the provisions contained in this Declaration shall run with the land and continue and remain in full force and effect for a period of sixty (60) years beginning as of the date of recordation of this Declaration, and shall automatically be extended thereafter for successive periods of ten (10) years each unless an instrument executed by the then Owners of not less than two-thirds (2/3) of the Lots has been recorded agreeing to terminate this Declaration.

10.2. **Amendment.** Any provision contained in this Declaration may be amended or changed, and additional provisions may be added hereto by the recording of a written instrument or instruments specifying the amendment or change, executed (i) by the Declarant at any time during the first year following recordation of this Declaration; or (ii) at any time thereafter, by Owners who hold not less than sixty-seven percent (67%) of the Voting Power of the Association. No amendment shall be effective without the Declarant's approval evidenced by its execution of the instrument evidencing the amendment as long as Declarant owns one Lot for sale. Any amendment shall have an effective date on the date of recording such amendment with the Mohave County Recorder's Office.

10.3. **Amendments Affecting Declarant Rights.** Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this section) which grants to or confers upon the Declarant any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as the Declarant owns any portion of the Property, without the express written consent of the Declarant.

10.4. **Effect of Provisions of Declaration.** Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration (i) shall be deemed incorporated in each deed, agreement of sale or other instrument by which any right, title or interest in the Property or in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed, agreement or other instrument; (ii) shall, by virtue of acceptance of any right, title or interest in the Property or in any Lot by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and shall be deemed a personal covenant, to and for the benefit of the Association and any other Owner; (iii) shall be deemed a real covenant by Declarant for itself, its successors and assigns and also an equitable servitude, running, in each case, as a burden with and upon the title to the property and each Lot and, as a real covenant and servitude for the benefit of the property and each Lot; (iv) shall be deemed a covenant, obligation and restriction secured by a Lien in favor of the Association burdening and encumbering the title to the property and each Lot in favor of the Association.

10.5. **Interpretation of the Covenant.** Except for judicial construction, the Association, through its Board, will have the exclusive right to construe and interpret the provisions of the Association Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions will be final, conclusive, and binding as to all persons and property benefitted or bound by the Association Documents. The provisions of this Declaration shall be liberally construed to promote and effectuate the fundamental concepts for the development and use of the Property set forth in this Declaration, and no provision hereof shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over the Property.

10.6. **Assignment of Powers.** Any and all of the rights and powers vested in Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by Declarant to another person or the Association, and if to the Association, it shall accept the same effective upon the recording by Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

10.7. **Non-Avoidance.** No Owner through non-use or abandonment of his/ her Lot may avoid the burdens or obligations imposed on him or her by this Declaration.

## 10.8. Limited Liability.

10.8.1. **Good Faith.** Neither Declarant, the Association, any member of the ARC, any Member of the Board, any officer of the Association, any Management Agent Representative, any duly appointed ARC Member nor any agent or employee of Declarant, the Association, or the ARC shall be liable to any Owner or any other person for any and all claims, damages, liabilities, obligations, fees or expenses (including attorney's fees) incurred as a result of any act or any failure to act with respect to any matter if the act taken or failure to act was made in good faith, regardless of whether such act or failure to act would otherwise give rise to a cause of action for negligence or breach of duty or contract, including, without limitation, any acts or failure to act with respect to the planning, design, engineering and development of the Property and the Residence to be constructed thereon.

10.8.2. **Indemnification.** The Association shall indemnify each and every officer and director of the Association, each and every member of the ARC, and each and every member of any committee appointed by the Board (including, for purposes of this section, former officers and directors of the Association, former members of the ARC, and former members of committees appointed by the Board) and any management agent hired by the Board, and its employees (collectively, "Association Officials" and individually an "Association Official") to the full extent permitted by A.R.S. § 10-2305(C), as amended from time to time. This indemnification shall include indemnification against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Association, by reason of the fact that the Association Official is or was a member, director, officer, employee or agent of the Association or is or was serving at the request of the Association as a member, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorney fees, and against judgments, fines and amounts paid in settlement (if the settlement is approved by the Board serving at the time of such settlement) actually and reasonably incurred by the Association Official in connection with such action, suit or proceeding if the Association Official acted, or failed to act, in good faith and in a manner the Association Official reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Member of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association



Official to meet on going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this section or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

10.8.3. **Recovery Against Predecessor in Title.** After the date hereof, each Owner who acquires any interest in all or any part of a Lot further agrees that upon such acquisition of any interest in all or part of a Lot, said acquiring party shall look only to the immediate predecessor Owner of said Lot for any performance or relief deemed equitable or necessary for the enforcement of the covenants, conditions and restrictions contained herein.

10.8.4. **Limitation of Liability.** Anything in this Declaration to the contrary notwithstanding, each Owner shall look solely to the interest of Declarant in the Property for the satisfaction or collection of any judgment against Declarant and no other asset of Declarant shall be subject to levy, execution or any other procedure in connection with the exercise of Owner's remedies.

10.9. **Binding Effect.** This Declaration shall be binding upon and inure to the benefit of the parties, their representative heirs, legal representatives, successors and assigns.

10.10. **Validity.** If for any reason any clause or provision of this Declaration, or the application of any clause or provision in a particular context or to a particular situation, circumstance or person, should be held unenforceable, invalid or in violation of law by any court or other tribunal, then the application of such clause or provision in context or to situations, circumstances or persons other than that in or to which it is held unenforceable, invalid or in violation of law shall not be affected thereby, and, in any event, the remaining clauses and provisions hereof shall nevertheless remain in full force and effect.

10.11. **Waiver.** No failure or delay by a party to insist upon the strict performance of any term, condition, covenant or agreement of this Declaration, or to exercise any right, power or remedy hereunder or under law or consequent upon a breach hereof or thereof shall constitute a waiver of the same or any other term, condition, covenant, agreement, right, power or remedy or of the same or any other prior, concurrent or subsequent breach or preclude such party from exercising the same or any such other right, power or remedy at any later time or times.

**10.12. Laws, Ordinances and Regulations.**

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

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

**10.13. References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or Property may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee Owner or other person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

**10.14. Gender and Number.** Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

**10.15. Captions and Title; Section References; Exhibits.** All captions, titles or headings of the articles and sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Declaration to numbered articles, sections or subsections, or to lettered exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

**10.16. Agreement to Perform Necessary Acts.** Each Owner agrees to immediately upon demand therefor perform any and all further acts and execute, acknowledge and deliver any and all further instructions, instruments and documents which may be reasonably necessary or useful to carry out the provisions of this Declaration or to evidence, perfect or otherwise effectuate the right and remedies relating to this Declaration.

**10.17. Notices.** Any notice required or permitted to be given under this Declaration shall be in writing and shall be sent by a recognized private courier company or by United States mail, first class, postage prepaid and addressed as follows:

If to Declarant: North Point LHC, LLC  
PO Box 8858  
Fort Mohave, AZ 86427

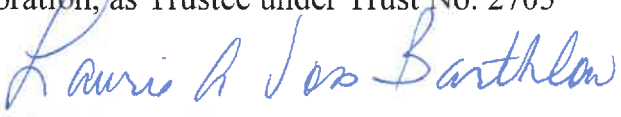
If to an Owner: (TO THE MAILING ADDRESS OF THE LOT OF  
SUCH OWNER, AS REFLECTED ON THE  
RECORDS OF THE ASSOCIATION)

or such other address as either party may from time to time specify in writing to the other in the manner aforesaid. Such notices shall be deemed delivered upon three (3) business days after being deposited in the United States certified mail, postage prepaid, return receipt requested, or delivery or refusal to accept delivery as indicated by the U.S. Postal Service or advice from the courier company; provided, however, that if any such notice shall also be sent by telecopy or FAX machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on it's machines and forwards a copy thereof with its mailed or courier delivered notice. Any party to whom notices were to be sent pursuant to this Declaration may from time to time change its or his address for future communication hereunder by giving notice in the manner prescribed to all other parties hereto.

**IN WITNESS WHEREOF**, Declarant has executed this Declaration as of the day and year written above.

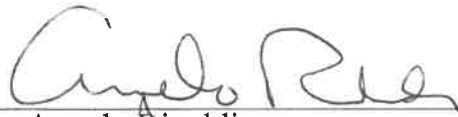
**DECLARANT:**

CHICAGO TITLE AGENCY, INC., an Arizona corporation, as Trustee under Trust No. 2705

By:   
By: Laurie Barthlow  
Its: Trust Officer

Beneficiary of Chicago Title Agency, Inc. Trust No. 2705:

NORTH POINT LHC, LLC,  
a Nevada limited liability company

By:   
By: Angelo Rinaldi  
Its: Member

By: *Dawey D. Davide*  
By: Dawey D. Davide  
Its: Member

STATE OF ARIZONA     )  
  ) SS  
COUNTY OF MOHAVE    )

On this, the 2<sup>nd</sup> day of March, 2020, before me, the undersigned notary public, personally appeared Laurie Barthlow, who acknowledged herself to be the Trust Officer of Chicago Title Agency, Inc., an Arizona corporation, as Trustee under Trust No. 2705, and that she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by herself as such officer.

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

My Commission Expires:  
March 11, 2022

*Donna L Honberger*  
Notary Public



STATE OF ARIZONA     )  
  ) SS  
COUNTY OF MOHAVE    )

On this, the 30<sup>th</sup> day of March, 2020, before me, the undersigned notary public, personally appeared Angelo Rinaldi, who acknowledged himself to be a member of North Point LHC, LLC, a Nevada limited liability company, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

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

Kris Kae Nicander  
Notary Public

My Commission Expires:  
9-25-2020



STATE OF ARIZONA     )  
  ) SS  
COUNTY OF MOHAVE    )

On this, the 30<sup>th</sup> day of March, 2020, before me, the undersigned notary public, personally appeared Dewey D. Davide, who acknowledged himself to be a member of North Point LHC, LLC, a Nevada limited liability company, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

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

Kris Kae Nicander  
Notary Public

My Commission Expires:  
9-25-2020



## **EXHIBIT "A"**

Lots 1 through 269, inclusive, and Parcels A through G, inclusive,  
Viewpoint Estates, Tract 3711, according to the plat of record in Fee No.  
2017053966, Official Records of Mohave County, Arizona.