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| **SECOND RESTATED AND AMENDED DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS FOR
FOUNTAIN PARK
aka ACACIA PARK**

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SECOND RESTATED AND AMENDED DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS FOR
FOUNTAIN PARK
aka ACACIA PARK

This Restatement and Amendment is to the Declaration of Covenants, Conditions and Restrictions for Fountain Park, aka Acacia Park, (hereafter referred to as "Declaration") which was recorded in the office of the Pima County Recorder on March 9, 1981 at Docket 6482 at Pages 856 through 913, and as amended at Docket 6611 at Page 312.

WHEREAS, Section 7.02 of the Declaration provides that the Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association certifying that such Amendment was approved by the vote or written consent of the Owners of at least 75% of the Dwelling Units; and

WHEREAS, the Owners of at least 75% of the Dwelling Units have approved this Restated and Amended Declaration of Covenants, Conditions and Restrictions for Fountain Park, aka Acacia Park;

NOW THEREFORE, all of the property described in Book 33 of Maps and Plats at Page 94, described as Acacia Park shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. These easements, covenants, restrictions, and conditions shall run with the property and shall bind all parties having or acquiring any right, title, or interest in the Property and shall inure to the benefit of each such Owner.

The Declaration of Covenants, Conditions and Restrictions for Fountain Park, aka Acacia Park, which was recorded in the office of the Pima County Recorder at Docket 6482 at Pages 856 through 913 and as amended at Docket 6611 at Pages 312 through 323 is superseded in its entirety, including the amendment thereto, by this Restated and Amended Declaration. Such Declaration, as amended, will no longer be in effect as of the date of recording of this Restated and Amended Declaration.

ARTICLE 1: DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter assigned.

Section 1.1. "Articles" refers to the Articles of Incorporation of the Association and any amendments filed in the Office of the Arizona Corporation Commission.

Section 1.2. "Association" refers to the Fountain Park Homeowners' Association, Inc., an Arizona non-profit corporation; its successors and assigns.

Section 1.3. "Board" means the Board of Directors of the Association.

Commented [KS2]: These recitals will be updated to reflect when and how the proposed amendments are approved upon completion of the approval of the amendments by the Association's Membership.

- Section 1.4. "Bylaws" means the Bylaws of the Association, together with any amendments thereto. The Bylaws set forth the operating procedures of the Association.
- Section 1.5. "Committee" refers to a group comprised of Members who were appointed by the Board to make recommendations and assist the Board in performing its duties.
- Section 1.6. "Common Area(s)" refers to the real property designated as such on the Plats of record for Acacia Park. The Common Areas include all improved or unimproved property, which is owned or leased by the Association for the common use and enjoyment of the Owners.
- Section 1.7. "Declaration" refers to this Declaration of Covenants, Conditions and Restrictions, as amended from time to time upon the vote of the Owners of Lots and which imposes conditions and restrictions on the use and occupancy of such Lots. The Declaration of Covenants, Conditions and Restrictions is a document (or set of documents) which establishes the formal regulations for all of the property within Fountain Park (a.k.a. Acacia Park). The declaration (a) restricts the use and governs the conduct and activities of the residents; (b) establishes the basic rights and responsibilities of each owner, resident and guest; (c) grants easements and use rights to owners and guests, provides for services and privileges to residents of Fountain Park and sets the standards for maintenance and upkeep of all lots and the common areas; (d) outlines the financial obligations of each owner and the rights which each owner has in the operation of the Association which governs the community; (e) creates the Homeowners Association; and sets out the rights each owner has to participate in the affairs of the Association, to select its directors and to oversee the Association's financial affairs; and (f) any such other items found herein.
- Section 1.8. "Dwelling Unit" and "Lot" shall be synonymous and refer to the numbered parcel of land which is shown on the recorded Plat of the subdivision and includes all improvements located on the Lot. A Lot does not include the Common Area.
- Section 1.9. "Governing Documents" refers to this Declaration, the Articles of Incorporation, the Bylaws, ~~and any~~ Rules and Regulations, Design Guidelines, and other policies promulgated by the Board.
- Section 1.10. "Member" refers to any person corporation, partnership, joint venture or other legal entity who is an Owner of a Lot and who is entitled to membership in the Association, who has the privilege of using and enjoying the Common Areas, and who has a duty to pay assessments for these privileges, as further set forth in this Declaration.
- Section 1.11. "Mortgage" means any mortgage, deed of trust or other security instrument by which a Lot or any part of a Lot is encumbered. "First Mortgagee" refers to the holder of a mortgage which has priority over any other mortgage or deed of trust encumbering any Lot.

Commented [KS3]: This amendment is proposed to cover any miscellaneous items in the CC&Rs.

Commented [KS4]: This amendment is proposed to clarify all those documents included in the definition.

Section 1.12. "Owner" refers to the record Owner, whether one or more ~~persons~~Persons, of the fee simple title to any Lot including a buyer under a contract for the sale of real estate, but excludes any person who holds an interest merely as security for the performance of an obligation. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the Trustor shall be deemed to be the "Owner."

Commented [KS5]: This amendment is proposed to correct a grammatical error.

Commented [KS6]: This amendment is proposed to clarify who is an owner in the case of trust ownership.

Section 1.13. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person.

Section 1.14. "Plat" refers to the plat recorded in the office of the Pima County Recorder in Book 33, at page 94, which shows that the subdivision was originally recorded under the name of Acacia Park.

Section 1.15. "Property" or "subdivision" means all the real property described in the Plat.

Section 1.16. "Rules and Regulations" means those policies and procedures adopted by the Board which govern the conduct and actions of Owners, tenants, visitors, and guests on Lots and the Common Areas which are not otherwise covered in this Declaration. Rules and Regulations, when adopted by the Board, have the same force and effect as the Restrictions set forth in this Declaration.

ARTICLE II: USES AND RESTRICTIONS

All property within the subdivision shall be held, used and enjoyed, subject to the following limitations and restrictions:

Section 2.1. Private Residential Purposes.

All Lots shall be used for single-family residential purposes only, and no other structures except single-family residences shall be placed or maintained thereon. Single-family means a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household.

Commented [KS7]: This amendment is proposed to provide clarification of the definition in compliance with federal fair housing laws.

Section 2.2. Business Activities.

No trade or business may be conducted in or from any Lot except that an Owner or occupant residing in any Lot may conduct a home business 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 Lot; (b) the business activity conforms to all zoning requirements for properties; (c) the business activity does not involve any person conducting such business who does not reside on the Lot or door-to-door solicitation of residents in the Lots; (d) the existence or operations of the business does not increase that Lot's use of Common Area over that which is standard for a single family residence; (e) the existence or operation of the business does not require customers or delivery trucks to visit the residence; and (f) the business

activity does not constitute a nuisance, or a hazardous or offensive use, or cause the Owners to violate any other provisions of this Declaration, or threaten the security or safety of other residents in Acacia Park, as may be determined in the sole discretion of the Board.

Section 2.3. Renting.

Each Owner has the right to lease or rent his/her Lot. ~~No Owner may lease less than his or her entire Lot, which, without limiting the foregoing, prohibits leasing individual rooms within a Dwelling Unit separately or leasing any structure besides the Dwelling Unit on the Lot separately from the Dwelling unit. No Owner may lease or rent, or offer to lease or rent for an initial term of less than thirty (30) days (which may be extended for lesser terms, but only with the same lease).~~ Each tenant shall comply with the Governing Documents. Each Owner is responsible for the actions of the tenant. ~~It shall be a material default in any lease if a tenant violates any provision of the Governing Documents. Each Owner shall provide his/her tenant's information to the Association as permitted by A.R.S. § 33-1806.01, as may be amended from time to time.~~

Commented [KS8]: This amendment is proposed to bring the CC&Rs in harmony with the membership's desires.

Section 2.4. Antennas and Exterior Additions.

~~Subject to the provisions of the Telecommunications Act of 1996, no exterior antennas or other devices for the transmission or reception of television or radio signals, including satellite dishes, shall be erected or maintained if they are visible to neighboring Lots or from the Common Areas. The Association may adopt reasonable rules and regulations regarding placement and other specifications for the following: (a) an antenna or satellite dish designed for over-the-air reception of signals from direct broadcast satellites (DBS) that is 1 meter or less in diameter, (b) an antenna or satellite dish designed for multi-channel multi-point distribution (wireless cable) providers (MMDS) that is 1 meter or less in diameter, or (c) antennas designed to receive television broadcast signals (TVBS) regardless of size ("Covered Antenna"), together with their associated mounting hardware and mast, if applicable ("Antenna System").~~

Commented [KS9]: These amendments are proposed to bring this section into compliance with A.R.S. § 33-1806.01.

Commented [KS10]: These amendments are proposed to bring this section into compliance with the Federal Over The Air Reception Devices Rules.

Any antenna other than a Covered Antenna, must be approved by the Board of Directors or Architectural Committee prior to installation, including, without limitation, antennas used for AM/FM radio, amateur ("ham") radio, CB radio, Digital Audio Radio Services ("DARS") and antennas used as part of a hub to relay signals among multiple locations.

Section 2.5. Insurance Rates.

Nothing shall be done or kept on any Lot or in the Common Areas which will increase the rate of insurance unless approved, in writing, by the Board, nor shall anything be done or kept on any Lot or Common Areas which will result in the cancellation of insurance on any such property or which would be in violation of any law.

Section 2.6. Signs.

Commented [KS11]: These amendments are proposed to bring this section into compliance with A.R.S. § 33-1808.

No signs or flags whatsoever ~~(including but not limited to, commercial, advertising, political and similar signs)~~ shall be maintained anywhere on the Lot or in the Common Areas, ~~including, but not limited to, the inside or outside of windows of any improvements on the Lot, except those minimally permitted by A.R.S. § 33-1808, as may be amended from time to time, and those pre-approved by the Association.;~~

- ~~2.6.1. Signs which are required by legal proceedings;~~
- ~~2.6.2. Sign giving the address of the Lot so long as it is located on the Dwelling Unit and the number is painted on the curb;~~
- ~~2.6.3. One (1) "for rent" or "for sale" sign not larger than five (5) square feet for each Lot;~~
- ~~2.6.4. Signs indicating a security system has been installed in the Dwelling Unit;~~
- ~~2.6.5. Signs indicating a personal sale such as yard, patio, garage or estate sale; provided, however, that the Board may establish rules to limit the number of sales in any calendar year and the number of signs allowable for such sales.~~

Section 2.7. Animals.

No animals or fowl of any kind shall be raised, bred, or kept, except that a reasonable number of generally recognized house or yard pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. No chickens of any kind may be raised, bred, or kept anywhere within the Property. No animal shall be allowed to become a nuisance. The Board may adopt a rule which establishes the number of pets which are deemed to be reasonable. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable.

Commented [KS12]: These amendments are proposed to provide clarification to this section.

Section 2.8. Nuisances.

No rubbish or debris of any kind shall be placed or permitted to accumulate on any lot and there shall be no odors emanating therefrom, which will make any Lot unsanitary, unsightly, offensive or detrimental to any neighboring Lot or to its occupants. No noise or other nuisance shall be permitted on any Lot which is offensive or detrimental to a neighboring Lot or to its occupants. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any Lot without the prior written approval of the Board. The Board in its sole discretion has the right to determine the existence of such nuisance.

No Lot shall be used in whole or part for the storage of rubbish; garbage or wood of any character whatsoever nor for the storage of anything which will cause such Lot to appear in any unclean or untidy condition or that will be otherwise obnoxious. No storage of any material is permitted outside the walls constructed on a Lot. Wood storage is allowed if the wood piles are fully screened from

neighboring Lots, or the Common Area. No unsightly articles shall be visible from adjoining Lots or from the street. No Owner shall cause any condition on the Lot which might, in the sole discretion of the Board, be a nuisance to the other Owners or their tenants, guests or visitors.

Section 2.9. Common Area; Native Growth and Planting; Storage.

The native growth and planting on all Common Areas shall not be removed or destroyed unless written permission is first obtained from the Board. Owners must obtain the Board's written approval before planting in the Common Area. Owners may not store or place any personal property on the Common Area without prior written approval from the Board.

Commented [KS13]: These amendments are proposed to clarify Common Area maintenance.

Section 2.10. Violation of Rules.

If any Owner, his/her family or any licensee, tenant or lessee or invitee violates the Governing Documents, the Board may in addition to any other rights of enforcement contained herein, suspend the right of such person to use the Common Areas, under such conditions as the Board may specify, during any period in which the person is in violation, for a period of 60 days or for so long as the Owner is in violation of the Governing Documents, whichever is longer. Before such suspension, the Board shall provide the Owner with at least 14 days written notice of the violation and provide the Owner with the opportunity for a hearing before the Board, together with a copy of the procedure to be followed at the hearing.

Section 2.11. Drainage.

No person may take any action which interferes with the established drainage pattern over any property, including any private drainage easement, within the subdivision unless adequate provision is made for proper drainage conforming to all governmental rules, regulations, ordinances and drainage criteria and is approved by the applicable governmental agency handling such matters. As used in this Declaration, the term "established drainage" is defined as the drainage which existed at the time the overall grading of the Property was completed.

Section 2.12. Unsightly Articles.

No unsightly articles shall be visible from adjoining Dwelling Units or from the street or public way. At no time shall there be any outside storage of motor vehicles in any stage of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories or other storage viewable from the street or neighboring properties. Any and all items stored in a carport or garage area shall be stored so they are not visible from adjoining Lots or from the streets or public way. Grass, shrub or tree clippings and all machinery, storage piles, wood piles, garbage or trash containers shall be kept within an enclosed structure or appropriately screened from view of adjoining property or from streets or public way except when necessary to effect such collection. The Board has the sole discretion to determine if any activity by an Owner is in violation of this Section.

Commented [KS14]: This amendment is proposed to clarify the restriction contained in it.

All garbage or trash shall be kept on the Lot in covered containers of a type, size and style which comply with City of Tucson ordinances. No incinerators are allowed.

Section 2.13. Right of inspection.

During reasonable hours, and upon at least twenty-four hours written notice to the Owner or resident, any member of the Board, or any authorized representative, shall have an easement on any Lot within the Association and has the right to enter upon and inspect any property within the subdivision (except the interior of the Dwelling Units), for the purpose of ascertaining whether or not the provisions of the Governing Documents have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

Commented [KS15]: This amendment is proposed to clarify the Association's easement right.

~~Section 2.14. Mail Boxes.~~

~~The Board shall determine the location, color, size, design, lettering and all other particulars of all mail and paper delivery boxes, including the standards and brackets and name signs so that the area will be strictly uniform in appearance. All of the above shall comply with US Postal Service Regulations.~~

Commented [KS16]: This amendment is proposed because it does not apply to the nature of cluster mailboxes contained in the Association.

Section 2.15. Vehicles.

The use of all vehicles, including but not limited to trucks, automobiles, bicycles, and motorcycles shall be subject to the Governing Documents.

Section 2.16. Clotheslines.

No exterior clotheslines shall be erected or maintained, ~~which that~~ are visible to neighboring Lots ~~or the street, and there shall be no outside laundering or drying of clothes.~~

Commented [KS17]: This amendment is proposed to better conform to the membership's desires.

Section 2.17. Diseases and Insects.

No Owner shall permit anything or any condition to exist upon any Lot which induces, breeds, or harbors infectious plant diseases, rodents, snakes or noxious insects.

ARTICLE III: ARCHITECTURAL CONTROL

Section 3.1. Board Approval/Disapproval.

The Board has the right to approve or disapprove of all changes or modifications to all areas on a Lot which are visible from another Lot or from the Common Areas. No changes to such areas can be made until approval by the Board has been first obtained.

Section 3.2. Prior Approval.

Changes or modification to an Owner's Lot and/or Dwelling Unit or to the exterior color scheme thereof cannot be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing as to harmony of external design, location in relation to

surrounding structures, and existing environment and topography, by the Board. In the event the Board fails to approve or disapprove such design and location within forty-five (45) days after the plans and specifications have been submitted to it, approval will not be required and the requirements in this Section will be deemed to be fulfilled the request is deemed not approved.

Commented [KS18]: This amendment is proposed to provide clarification.

Section 3.3. Effect of sale.

Notwithstanding anything contained to the contrary in this Article, no additions or modifications to any improvement or structure shall be made by an Owner prior to the close of escrow on the sale of a Dwelling Unit unless such addition or modification has been approved by the Board and the City of Tucson Building Department.

Commented [KS19]: This amendment is proposed because it is outside the Association's "jurisdiction."

ARTICLE IV: EASEMENTS

Section 4 .1. Easements for Encroachments.

Each Dwelling Unit and the Common Area is subject to an easement for encroachments created by construction, settlings and overhangs, as designed or constructed by the developer, including the footings and walls. A valid easement for said encroachments and for the maintenance of same exists for so long as it stands. In the event any Dwelling Unit(s) is partially or totally destroyed, and then rebuilt, the Owner agrees that minor encroachments on parts of the adjacent Dwelling Units or Common Areas due to construction shall be permitted and that a valid easement for said encroachments and the maintenance exists.

Section 4.2. Easement for Perimeter Walls and Other Improvements.

"Perimeter Wall" is defined as a masonry wall or fence that separates Lots within the Association or that separates a Lot from Common Area or a public street or other public property. Perimeter Wall does not include a wall between a Lot in Fountain Park and lots in adjacent subdivisions. Perimeter Walls that are built as part of the original construction of a Dwelling Unit and are attached to the Dwelling Unit or to the side walls attached to the Dwelling Unit is part of the Lot of that Dwelling Unit.

Commented [KS20]: The proposed amendment in this section is to incorporate the language already adopted in the Association's Perimeter Wall Policy.

4.2.1. Perimeter Wwalls and other improvements constructed by the developer or the Association, including but not limited to, driveways, walkways, exterior lighting (metered to a particular Dwelling Unit), drainage structures, etc., as a part of, or for the use of, a particular Dwelling Unit may exist which encroach upon or encompass portions of the Common Area or adjacent Lots. Wherever such encroachments on the Common Area or adjacent Lots occur, the Owner of the Dwelling Unit involved has, subject to the conditions hereinafter set forth, a perpetual permanent right for such perimeter walls to encompass portions of the Common Area or adjacent Lots and for such other improvements to encroach upon portions of the Common Area or adjacent Lots.

4.2.2. In consideration ~~thereof~~ of Section 4.2.1, above, such Owners agree to maintain and keep in repair any improvements encroaching upon the Common Area or adjacent Lots which were constructed for the use of their ~~unit~~ Lot, unless such maintenance and repairs are the responsibility of the Association.

4.2.3 In the event any such Owners make demands upon the Association to maintain any Common Area within the confines of such Perimeter Wall, or to maintain and keep in repair any improvements encroaching upon the Common Area or adjacent Lots which is the responsibility of the Owner to repair, then the Association or the adjacent Lot Owner, as the case may be, has the absolute right, and may cause the Owner making such demand to remove at his/her expense, any improvement, including the Perimeter Wall, encroaching upon the Common Area or adjacent Lot, and to replace and rebuild such improvement or perimeter wall as to be within such Owner's Lot.

4.2.4 Maintenance of Perimeter Wall between Lots and Common Area or Publicly Owned Land. A Lot Owner is responsible for any needed structural repair to their own Perimeter Walls located between his/her Lot and a Common Area or Public Street, or between the Lot and an alleyway or open space owned by the City or County. The Association is only responsible for painting the side of a wall that faces the Common Area or Public Street. However, the structural maintenance responsibility remains with the Lot Owner. The Lot Owner is granted an easement for the encroachment and is responsible for maintenance of any Common Area that has been enclosed by the Perimeter Wall.

4.2.5. Maintenance of Perimeter Walls Between Lots.
The Lot Owner of a Perimeter Wall shall be responsible to maintain, repair, and replace the Perimeter Wall. However, should maintenance, repair, or replacement be necessitated by the negligent or willful acts of a Lot Owner whose Lot is immediately adjacent to a Perimeter Wall that they do not own, such Lot Owner shall be financially responsible to the Lot Owner of the Perimeter Wall for such maintenance, repair, and replacement.

If a dispute arises between adjoining Lot Owners pertaining to financial responsibility for maintenance, repair, or replacement of a Perimeter Wall that is between the Lots, the dispute shall be resolved by the Lot Owners and not by the Association, which shall have no involvement in such disputes.

4.2.6 Changes to Perimeter Yard Walls. If all or a portion of a Perimeter Wall needs to be replaced, any change or modification from the original materials and appearance of the wall must have the prior written approval of the Board in accordance with this Declaration. The Board has the sole discretion to

[approve or reject any proposed replacement Perimeter Wall. Materials used for replacement walls need to be the same as materials already being used in the Association.](#)

Section 4.3. Private Drainage Easements.

Private drainage easements have been established as shown on the plat over and across certain Lots for the exclusive use and benefit of upstream Lot Owners. Each Owner of a Lot on which a private drainage easement is located is responsible for maintaining that easement and keeping it free and clear from all debris, refuse and any other foreign matter which in any way interferes with or hinders the free flow of water in the easement as originally constructed. In the event of the failure of any Lot Owner to so maintain an easement, upstream Lot Owners shall have no cause of action against the Association, but shall proceed solely against that Lot Owner.

Section 4.4. Utility and Access Easements.

A blanket easement is created on, across, over and under the property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communications lines and systems, etc. By virtue of this easement, it is expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Dwelling Units. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the property except as initially designed and installed by developer or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Property. In no event shall any portion of the above mentioned easements for utilities be construed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the property. This easement shall be limited to improvements as originally constructed. There shall be an access easement for the delivery and collection of the U.S. Mail.

Section 4.5. Electrical Service and Communication Lines.

All electrical service and communication lines shall be placed underground and no outside electrical lines shall be placed overhead, except existing overhead lines. Prior to the construction of temporary electrical and/or communications lines incidental to construction, written permission must be obtained from the Board if lines are to remain in place for over 30 calendar days. Approval shall be obtained for a specific construction project and shall not constitute approval for any other Dwelling Units or lines.

ARTICLE V: ASSOCIATION AND BOARD OF DIRECTORS

Section 5.1. Association.

The Association is an Arizona, non-profit corporation which has the duties and the powers prescribed by law and set forth in the Governing Documents.

- 5.1.1. The Association is responsible for maintenance, repair and upkeep of any improvements including, but not limited to the private streets, recreational facilities, pool and parking area located in the Common Areas; the masonry wall constructed along the North right-of-way line of Wrightstown Road (except that the maintenance of the North surface of the wall facing individual Dwelling Units is the responsibility of the Owners of such Dwelling Units), and any landscaping or other improvements, including the fountain. Further, the Association is responsible for maintenance, repair and upkeep of the private pedestrian easements shown on the Plat.
- 5.1.2. Membership in the Association. Each Owner of a Dwelling Unit, by virtue of being such an Owner and for so long as he/she is such an Owner, is a member of the Association.
- 5.1.3. Transfer of Membership. Membership in the Association is appurtenant to the ownership of any Lot and shall neither be transferred, pledged, nor alienated in any way except upon the transfer of ownership to the Lot, and then only to the transferee. Any attempt to make a prohibited transfer is void. Any transfer of ownership of a Lot automatically transfers membership to the new Owner.

~~5.1.4. Voting. The Owners are entitled to one (1) vote for each Lot owned. When more than one person has an interest in any Lot all such persons shall be members. The vote for each Lot shall be exercised as the Owners determine, but in no event shall more than one (1) vote be cast for each Lot owned.~~

Commented [KS21]: This amendment is proposed because this language is better found in the Bylaws.

5.1.5. Any Owner who is delinquent in payment of assessments, or in violation of the Governing Documents may have his/her voting rights suspended by a majority vote of the Board, for so long as the delinquency or violation continues. However, this penalty will only be imposed after written notice of the nonpayment of the assessments or violation of the Governing Documents and the opportunity to cure have been provided to the Owner. Such right to vote shall be suspended until the violation or delinquency has been cured.

Commented [KS22]: This amendment is proposed to clarify the section.

Section 5.2. Bylaws.

The Bylaws shall among other things, establish the procedure for electing members of the Board and officers of the Association, the duties of the Board, the procedure for regular and special meetings, ~~and the disposition of hazard insurance proceeds and amendments to the Bylaws.~~

Commented [KS23]: This amendment is proposed because this should be addressed in the CC&Rs and not the Bylaws.

ARTICLE VI: OWNER'S RESPONSIBILITIES

Section 6.1. Exterior Maintenance, Repair, Upkeep and Repainting.
Maintenance, repair, upkeep and repainting of Dwelling Units, including perimeter yard walls and any other improvements on a Lot, including but not limited to landscaping, is the sole responsibility of each Owner. In this regard, each Owner shall maintain, repair and repaint his/her Dwelling Unit, including all visible perimeter walls, and other improvements on a Lot in a manner and with such frequency, to keep each owner's Dwelling Unit in an attractive, well-kept and maintained condition in conformity with all other Dwelling Units in the subdivision.

Section 6.2. Exterior Lighting.
Each Owner is responsible for the maintenance and repair, including replacement of light bulbs, of all exterior lighting fixtures located within the owner's Lot, or in the Common Area, provided such lighting in the Common Area is metered to the owner's Dwelling Unit. The Board may adopt rules regarding the placement and usage of lighting.

Commented [KS24]: This amendment is proposed to clarify that regulations of lighting can be found in the Rules and Regulations of the Association.

Section 6.3. Right to Determine.
The Board in its sole discretion has the right to determine whether or not a Lot or the exterior of a Dwelling Unit is in need of maintenance, repair and upkeep, in order to conform to the standards of the general neighborhood of Fountain Park, and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the Dwelling Units as a whole will reflect a high pride of ownership.

Section 6.4. Failure to Maintain.
If any Owner fails to maintain his/her Lot or the exterior of his/her Dwelling Unit in a manner in keeping with the general neighborhood of Fountain Park, then the Board, after the approval of two-thirds (2/3) the majority of the members of the Board, has the right, through its agents and employees, to enter upon the subject property, and to repair, maintain, and restore the Lot and the exterior of the Dwelling Unit, and any other improvements erected on the Lot. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

Commented [KS25]: This amendment is proposed because the Association believes it is in its best interest.

Section 6.5. Right of Access.
Each Owner or his/her authorized agent or the Association, as the case may be, in order to maintain, repair or repaint perimeter yard walls or exteriors of Dwelling Units, has an easement and the right to enter the adjacent Lots at reasonable times, provided reasonable notice of such entry is first given by the affected Owner to the Owner of the adjacent Lot.

Commented [KS26]: This amendment is proposed to clarify the Association's easement rights.

ARTICLE VII: INSURANCE REQUIREMENTS

Section 7.1. — First Mortgagee's Protection.

Commented [KS27]: This amendment is proposed to address appropriate insurance requirements in a planned community.

~~In the event of substantial damage to or destruction of any Dwelling Unit or any part of the Common Area, any first mortgagee on a Dwelling Unit is entitled to timely written notice of any such damage or destruction and no Owner of a Dwelling Unit or other party has priority over such first mortgagee regarding the distribution to such unit Owner of such proceeds.~~

Section 7.2. Insurance Obtained by the Owners.

7.2.1. Each Owner is responsible ~~for, and obligated-recommended to,~~ purchase fire and other hazard insurance covering his/her Dwelling Unit and to maintain such insurance in full force and effect at all times. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the owner's Dwelling Unit, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona on a replacement cost basis, in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

Commented [KS28]: The amendments to this section are proposed to remove the excessive oversight of the Association on its Members.

~~Each such policy must contain or have attached thereto a standard mortgagee or beneficiary clause which provides that all proceeds paid thereunder shall be paid to the Owner for the use and benefit of all mortgagees under mortgages or beneficiaries under deeds of trust, encumbering any Dwelling Units, as their interest may appear, and such policy or policies must further provide that the insurance carrier shall notify each first mortgagee or beneficiary named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy. Such policy or policies shall further provide that the interest of each mortgagee holding a mortgage or beneficiary under a deed of trust on any Dwelling Unit in insurance proceeds shall not be invalidated by any action, neglect or inaction of the Board, Owners of Dwelling Units or their tenants or agents.~~

~~Such policy or policies shall further provide for waiver by the insurer of any policy provisions which would render the mortgagee or beneficiary clause invalid by reason of the failure of such mortgagee or beneficiary to notify the insurer of any hazardous use of any Dwelling Unit and any policy requirement that the mortgagee or beneficiary pay the premium thereon. Each hazard insurance policy obtained by an Owner shall comply with the same requirements applicable to the Association.~~

7.2.2. Any Owner may, if he/she wishes, and at his/her own expense, carry any and all other insurance he/she deems advisable; however, if available, such policy or policies shall provide that there shall be no contribution or offset between policies of the Association and policies an individual Owner may have in effect.

Section 7.3. Insurance Obtained by the Association.

The Board shall obtain the following insurance:

- 7.3.1. Comprehensive General Liability and Property Insurance. Comprehensive general liability and property damage insurance covering all Common Areas and all other areas under the jurisdiction or control of the Association shall be purchased by the Association and shall be maintained in full force and effect at all times. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or of any other Owners. The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use as Fountain Park. Coverage shall be for at least one million dollars (\$1,000,000.00) per occurrence for personal injury and/or property damage.
- 7.3.2. Fire Hazard Insurance. Fire and other hazard insurance covering improvements constructed on the Common Areas, including but not limited to ramadas or recreation buildings, shall be purchased by the Association and shall thereafter be maintained in full force and effect. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona, on a replacement cost basis, in an amount of not less than one hundred percent (100%) of the insurable value (based upon the replacement cost).

~~If any improvement constructed on the Common Area is the subject of a mortgage or deed of trust, then each policy must contain or have attached thereto a standard mortgage or beneficiary clause which provides that all proceeds paid thereunder shall be paid to the Association for the use and benefit of all mortgagees under mortgages or beneficiaries under deeds of trust, encumbering any such improvements, as their interest may appear, and such policy or policies must further provide that the insurance carrier shall notify each first mortgagee or beneficiary named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy. Such policy or policies shall further provide:~~

~~7.3.2.1. that the interest of each mortgagee holding a mortgage or beneficiary under a deed of trust on any such improvements in insurance proceeds shall not be invalidated by any action, neglect or inaction of the Board, Owners of Dwelling Units or their tenants or agents;~~

~~7.3.2.2. for waiver by the insurer of any policy provisions which would render the mortgage or beneficiary clause invalid by~~

Commented [KS29]: These amendments are proposed because they are not required by law in a planned community.

~~reason of the failure of such mortgagee or beneficiary to notify the insurer of any hazardous use of such improvements and any policy requirement that the mortgagee or beneficiary pay the premium thereon.~~

Section 7.4. Worker's Compensation Insurance.

The Association shall obtain Worker's Compensation insurance to the extent necessary to comply with any applicable laws.

Section 7.5. Other Insurance.

The Association shall ~~may~~ purchase and maintain in force, if available, fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than 1-1/2 times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers. The Association shall also purchase directors and officers liability insurance in such amounts as it deems necessary to protect the Association against claims made against it and the Board.

Commented [KS30]: This amendment is proposed because it is not always necessary and, therefore, provides the Association to only purchase it when necessary.

Section 7.6. Minimum Financial Rating Carrier.

Each hazard insurance policy obtained by the Association pursuant to the foregoing shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies shall also be acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided that such insurance carrier has a general policyholder's rating of at least "A". Each such carrier shall be specifically licensed or authorized by law to transact insurance business in the State of Arizona.

Section 7.7. Unacceptable Policies.

Policies are unacceptable where:

- 7.7.1. Under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against an Owner or the designee of the Federal Home Loan Mortgage Corporation, or the Federal Housing Authority or the Veterans Administration; or
- 7.7.2. By the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or
- 7.7.3. The policy includes any limiting clauses (other than insurance conditions) which could prevent the Federal Home Loan Mortgage Corporation or the

Federal Housing Authority or the Veterans Administration or any Owner from collecting insurance proceeds.

Section 7.8. In General.

Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against the Board, and such other persons or entities affiliated with the Association such as a manager and their representatives, members and employees and a provision, if available, preventing any cancellation or modification thereof except upon at least ten (10) days written notice to the insurers and their mortgagees.

~~7.8.1. In addition, every policy of insurance obtained by the Association shall provide, if available, for the payment of assessments which the insured property is obligated for under this Declaration until the insured property is repaired and made habitable.~~

Commented [KS31]: This amendment is proposed because it is not appropriate for this Association.

7.8.2. The liability insurance obtained by the Association shall name as separately protected ~~insurers~~insureds, the Association, the Board, and such other persons or entities affiliated with the Association such as a manager and its representatives, members and employees as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property.

Commented [KS32]: This amendment is proposed to correct a grammatical error.

7.8.3. If permitted under the policy, the Association waives and releases all claims against the Board and such other persons or entities named in said insurance, and agents and employees of the Board with respect to any loss covered by the insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood, liability and fidelity insurance. which meets the insurance requirements for planned unit development projects established by Federal National Mortgage Association and Government National Mortgage Association, so long as either is a mortgagee or Owner of a Lot within the project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

~~Section 7.9. Insurance Premiums:~~

~~Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Dwelling Units and all such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Owners.~~

Commented [KS33]: This amendment is proposed because it is not necessary and inappropriate for a planned community.

Section 7.10. Owner's Liability for Insurance.

The Association is not responsible nor obligated to provide fire and other hazard insurance covering Dwelling Units. Such insurance is the sole responsibility and obligation of Owners of Dwelling Units. It is the individual responsibility of each Owner at his/her own expense, to provide as he/she sees fit, Owner's liability insurance, theft and other insurance covering personal property damage and loss.

Section 7.11. Personal Liability.

No member of the Board or any Committee of the Association or any officer or employee of the Association is personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, or any representative or employee of the Association or any Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him/her, acted in good faith, without willful or intentional misconduct.

ARTICLE VIII: OWNERSHIP, USE AND MANAGEMENT OF THE COMMON PROPERTY

Section 8.1. Owner's Easements of Enjoyment.

Every Owner has a right and easement to enjoy the Common Area which is appurtenant to and passes with title to every Dwelling Unit.

Section 8.2. Conditional Use of Common Property.

Every Owner, his/her family, licensees, invitees, tenants or lessees, who reside in a Dwelling Unit, is entitled to use the Common Areas subject to:

- 8.2.1. the provisions of the Governing Documents. Each Owner agrees that in using the Common Areas he/she will comply with the provisions of the Governing Documents
- 8.2.2. the right of the Association to charge a reasonable security deposit and clean-up fee for the use of any recreational facility located in the Common Areas.

Section 8.3. Delegation of Use.

Any Owner may delegate his/her right to enjoy the Common Areas and facilities to the members of his/her family, his/her tenants or lessees or contract purchasers who reside in the Dwelling Unit, subject to the rules, established from time to time by the Board. Such delegation does not relieve the Owner of his/her obligations and responsibilities as a member under the Governing Documents.

Section 8.4. Management.

The Board shall control, maintain, manage and improve the Common Areas as provided in the Governing Documents. Such right and power of control and management is exclusive. In managing the Common Areas, the Association accepts

all responsibility for the control, maintenance, safety and liability of such Common Areas including but not limited to collecting and paying taxes on Common Areas. Any agreement for professional management of the Association shall not exceed one (1) year, but may be renewed for successive one (1) year periods upon agreement of the parties. Any such agreement shall provide for termination by either party without cause and without payment of termination fee on ninety (90) days (or less, if agreed to) written notice and for termination with cause and without payment of termination fee upon thirty (30) days written notice.

Section 8.5. Damages.

Each Owner is liable to the Association to the extent applicable under local law for any damage to the Common Areas which may be sustained by the negligence or willful misconduct of the Owner or of his/her family or any licensee, tenant, lessee or invitee. In the case of joint ownership of a Dwelling Unit, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The amount of such damage shall be an assessment against the Dwelling Unit and may be collected as provided for in the Governing Documents for the collection of other assessments.

Section 8.6. Restriction on Conveyance of Common Areas and Facilities.

The Common Areas and facilities, owned directly or indirectly by the Association, may not, by act or omission, be abandoned, partitioned, subdivided, encumbered, sold or transferred without the ~~prior written~~ approval of ~~seventy-five per cent (75%) of the first mortgagees and by the~~ Owners of at least two thirds (2/3) of the Dwelling Units, except that the Association shall, at all times, have the right to grant and convey to any person or entity easements, or rights of way, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (1) roads, streets, walks, pathways, and driveways; (2) temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone, cable TV, communications and other purposes; (3) sewers, storm drains and pipes, drainage easements, water systems, water, heating and gas lines or pipes; (4) such improvements as may be permitted under this Declaration.

Commented [KW34]: This amendment is proposed to provide more decision-making power to the members and not their lenders.

ARTICLE IX: COVENANTS FOR MAINTENANCE ASSESSMENT

Section 9.1. Creation of the Lien and Personal Obligation to Pay Assessments.

Each Owner, upon recordation of a deed to any Dwelling Unit, whether or not it is stated in such deed covenants and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments. Such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, late fees, costs, litigation expenses and reasonable attorney fees, are a charge on the Dwelling Unit and shall be a continuing lien upon the property against which each assessment is made. Delinquent assessments, together with interest, late fees, costs, litigation expenses

and reasonable attorney fees, are also the personal obligation of the person who was the Owner of such Dwelling Unit at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to his/her successors in title unless assumed by them.

Section 9.2. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the members and their guests, for the improvement and maintenance of the Common Areas and for all purposes set forth in the Governing Documents. The amount of the annual assessment shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Areas and Common Property owned by the Association that must be replaced on a periodic basis. All such dues, charges and assessments imposed by the Association shall be paid on a periodic basis as determined by the Board in regular installments rather than by special assessments.

Commented [KS35]: This amendment is proposed to allow the Board to provide for a different periodic installment for assessments.

Section 9.3. Maximum Annual Assessment.

Within (30) days prior to the end of each calendar year (January 1 through December 31) the Board shall estimate the total charges to be paid during the forthcoming year to determine the annual assessment (including a reasonable reserve for contingencies and less any expected surplus from the prior year). The Board has the authority to revise, periodically within each calendar year, the annual assessment to reflect the current operating costs of the Association. Under no circumstances shall the Board increase the annual assessment by an amount greater than ten percent (10%) over the previous year's assessment, unless the increase is approved by a vote of two-thirds (2/3) of the of members, voting in person or by proxy absentee ballot at a meeting called for that purpose.

Commented [KS36]: This amendment is proposed comply with A.R.S. § 33-1812.

Section 9.4. Special Assessments.

In addition to the annual assessments authorized above, the Board may levy a special assessment for (1) constructing improvements in the Common Areas; (2) correcting any inadequacy in the current operating account; (3) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of improvements in the Common Areas; or (4) paying for such other matters as the Board may deem appropriate. The Board shall specify the effective date of any special assessment and may provide that the special assessment is payable in installments. Any such assessment must be approved by a vote of two-thirds (2/3) of the members who are voting in person or by proxy absentee ballot at a meeting duly called for this purpose.

Commented [KS37]: This amendment is proposed comply with A.R.S. § 33-1812.

Section 9.5. Uniform Rate of Assessment.

Both annual and special assessments must be set at a uniform rate for all Dwelling Units and may be collected on a monthly basis or another increment as determined by the Board. The amount of the assessment may be revised periodically to reflect revisions in the annual assessments based on actual operating costs of the Association.

Commented [KS38]: This amendment is proposed to allow the Board to provide for a different periodic installment for assessments.

Section 9.6. Date of Commencement of Annual Assessments; Due Dates.

The Board shall establish the amount of the annual assessment against each Dwelling Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Dwelling Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Dwelling Unit is binding upon the Association as of the date of its issuance.

Section 9.7. Effect of Non-Payment of Assessments; Remedies of the Association.

Each Owner agrees to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessment obligation in the manner specified herein. All delinquent assessments shall bear interest at a rate determined by the Board, but not more than fifteen percent (15%) per annum. Late payments shall first be credited toward assessments, late fees, attorney fees and costs and then to accrued interest. If the Association employs an attorney to collect any delinquent assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the Governing Documents or for any other purpose in connection with the breach of the Governing Documents, each Owner agrees to pay reasonable attorney fees, litigation expenses and costs incurred by the Association, in addition to any other amounts due or any other relief or remedy obtained against the Owner. In the event any assessment is delinquent, and in addition to any other remedies available to the Association, the Association may enforce each such obligation in the manner provided by law or in equity, or without any limitation to the foregoing, by either or both of the following procedures:

9.7.1. Enforcement by Suit.

The Board may file a lawsuit in the name of the Association against an Owner to enforce each assessment obligation. Any judgment rendered in such action shall include the amount of the delinquency, together with interest thereon from the date of the delinquency until paid, court costs, litigation expenses and reasonable attorney fees in an amount determined by the Court.

9.7.2. Enforcement by Lien.

The Association has a lien on any Dwelling Unit to secure the payment of any delinquent assessment, late fee costs, litigation expenses and attorney fees incurred. Pursuant to the Planned Communities Act, recordation of the Declaration in 1981 constitutes record notice and perfection of any lien for delinquent assessments. To perfect its lien, the Association is not required to record any other claim of lien for assessments or monetary penalties, but may record, at its sole option, a Notice of Lien in the Office of the Pima County Recorder in order to provide notice to third persons of its claim of lien on the Dwelling Unit. The lien provided for in this Section is in favor

of the Association and is for the benefit of all the Owners. The Association may foreclose its lien in the same manner as the foreclosure of mortgages. The lien for assessments constitutes a lien on the Lot which is prior and superior to all other liens, except (1) liens and encumbrances recorded before the date the Declaration was recorded in 1981; (2) the first mortgage or deed of trust on the Dwelling Unit; and (3) liens for real estate taxes and other governmental assessments against the Dwelling Unit.

The Association has the right to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Dwelling Unit. In the event such foreclosure is by action in court, reasonable attorney fees, litigation expenses, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner. Each Owner waives the benefit of any homestead or exemption laws of this State now or then in effect regarding any lien created pursuant to this Declaration.

Section 9.8. No Exemption of Owner

No Owner is exempt from liability for payment of assessments by nonuse of the Common Areas, by abandonment of his/her Dwelling Unit, or for any other reason.

Section 9.9. Subordination of the Lien to Mortgages.

The lien for assessments is subordinate to the lien of any first mortgage. Sale or transfer of any Dwelling Unit shall not affect the assessment lien. However, the sale or transfer of any Dwelling Unit pursuant to mortgage foreclosures or any proceeding in lieu thereof, shall extinguish the lien for assessments which become due prior to such sale or transfer. No sale or transfer shall relieve such Dwelling Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9.10. Mortgage Protection and Additional Assessment as Common Expense.

Notwithstanding and prevailing over any other provisions of the Governing Documents, the following provisions apply to and benefit each holder of a first mortgage upon a Dwelling Unit (called the first mortgagee):

~~9.10.1. The first mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any provision of the Governing Documents, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as hereinafter provided.~~

~~9.10.2. During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the first mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the~~

~~rights and privileges of the Owner of the mortgaged Dwelling Unit, including but not limited to the right to vote as a member of the Association to the exclusion of the Owner's exercise of such rights and privileges.~~

Commented [KS39]: This amendment is proposed because it is outdated and unnecessary for the Association.

9.10.3. At such time as the first mortgagee becomes the record Owner of a Dwelling Unit, such first mortgagee shall be subject to all of the terms and conditions of the Governing Documents, including but not limited to the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.

9.10.4. The first mortgagee, or any other party acquiring title to a mortgaged Dwelling Unit through foreclosure suit or through any equivalent proceeding arising from said first mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged Dwelling Unit free and clear of any lien authorized by or arising out of any of the provisions of the Governing Documents which secured the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption. ~~Any such unpaid assessment against the Dwelling Unit foreclosed against may be treated as an expense common to all of the Dwelling Units, which expense may be collected by a pro rata assessment against each of the Dwelling Units, excluding the Dwelling Unit foreclosed against, and which pro rata assessment may be enforced as a lien against each Dwelling Unit in the manner provided for other assessments.~~

Commented [KS40]: This amendment is proposed because it is outdated and unnecessary for the Association.

Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the respective Dwelling Unit to the Association, and the Board shall use reasonable efforts to collect the same from the Owner even after he/she is no longer a member of the Association. There shall be a lien upon the interest of the first mortgagee or other party which acquired title to a mortgaged unit by foreclosure suit or by equivalent procedures for all assessments authorized by the Governing Documents which accrue and are assessed after the date the acquirer has acquired title to the Dwelling Unit free and clear of any right or redemption.

~~9.10.5 Any provisions contained in this Declaration to the contrary notwithstanding, unless at least two thirds (2/3) of the first mortgagees and at least two thirds (2/3) of the Owners have given their prior written approval, the Association shall not be empowered or entitled to: (a) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner; (b) by act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior~~

Commented [KS41]: This amendment is proposed because it is outdated and unnecessary for the Association.

~~appearance of Dwelling Units, the exterior maintenance of Dwelling Units, the maintenance of Common Area walkways or common fences and driveways, or the upkeep of lawns and planting areas in the subdivision; (e) fail to maintain fire and extended coverage insurance on the Common Areas and common property on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value (based on current replacement costs); and (d) use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement or reconstruction of such Common Areas.~~

- 9.10.6 First mortgagees are granted the right to jointly or singly pay taxes or other charges which are in default and which may or have become a charge against any Common Areas or other Common Property owned by the Association, and such first mortgagees may jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas or Common Property and any first mortgagees making such payments may be owed. immediate reimbursement therefor from the Association.
- 9.10.7 Nothing in this Declaration shall in any manner be deemed to give an Owner, or any other party, priority over any rights of a first mortgagee of a Dwelling Unit pursuant to the terms of such first mortgagee's mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses to or a taking of any unit or any part of the Common Area owned by the Association. ~~Each first mortgage shall be entitled to timely written notice of such loss or taking.~~
- 9.10.8 Each first mortgagee shall, upon notice to the Association, be entitled to a written notification from the Association of any default in the performance by the Owner of a Dwelling Unit encumbered by the mortgage in favor of such mortgagee of any obligation under the Governing Documents which is not cured within sixty (60) days.
- 9.10.9 Each first mortgagee shall, upon notice to the Association, be entitled to (i) inspect the books and records of the Association during normal business hours; (ii) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and (iii) receive written notice all meetings of the Association, and designate a representative to attend such meetings.
- 9.10.10. Each first mortgagee shall, upon written notice to the Association, be entitled to written notice from the Association at least (30) days prior to (i) abandonment or termination of the Association; (ii) any material amendment to the Governing Documents; and (iii) the effectuation of any decision by the Association to terminate professional management and assume self-management of the Association.

Commented [KS42]: This amendment is proposed because it is outdated and unnecessary for the Association.

ARTICLE X: GENERAL PROVISIONS

Section 10.1. Term.

The provisions of this Declaration shall run with the land and continue and remain in full force and effect at all times and against all persons.

Section 10.2. Amendments.

This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by the vote or written consent (with or without an Association meeting; subject, however, to the voting rights set forth in [the Bylaws at Article 2, Section 5-1.42.02](#)) of the then Owners of ~~at least two-thirds (2/3)~~ [the majority](#) of the Dwelling Units, and such amendment shall be effective upon its recordation with the Pima County Recorder.

Commented [KS43]: This amendment is proposed to coincide with the Bylaws and allow for a simple approval by the membership of CC&R amendments.

Section 10.3. Enforcement and Non-Waiver.

10.3.1. Enforcement Except as otherwise provided herein, the Association, or any Owner has the right, but not the obligation, to enforce by a proceeding at law or in equity, all restrictions, conditions, covenant reservations, liens or charges now or hereafter imposed by the provisions of the Governing Documents

10.3.2. Prerequisites to Litigation. In the event of a dispute (excluding the nonpayment of assessments [or Owner violations of these CC&Rs on Lots](#)) between an Owner and the Board or Association, the complainant, as an absolute condition precedent to instituting a legal action against respondent must first serve notice in writing on respondent in the manner hereinafter provided, advising him/her of the alleged grievance, the action or results desired and a date and time convenient for a meeting; the respondent shall have a minimum of fifteen (15) days, but not to exceed thirty (30) days, from receipt of the notice in which to schedule a meeting for the purpose of arriving at a settlement of the controversy with complainant.

Commented [KS44]: This amendment is proposed to provide the Association the opportunity to enforce the CC&Rs as requirement by Arizona law.

10.3.3. Violations and Nuisances. Every act or omission where any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not relief sought is for negative or affirmative action, by the Association, or any Owner or group of Owners.

10.3.4. Violation of Law. Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable governmental ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the

subdivision is hereby declared to be a violate on of these Restrictions and subject to any or all of the enforcement procedures set forth herein or in the Bylaws.

10.3.5. Remedies Cumulative. Each remedy provided in this Declaration is cumulative and not exclusive.

10.3.6. Non-Waiver. Failure by the Board, the Association or by any Owner to enforce any of the provisions of these Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any of such provisions or any other provisions of these Restrictions.

Section 10.4. Mortgage Protection.

Notwithstanding any other provisions of this Declaration, no amendment to this Declaration shall operate to defeat and render invalid the rights of a mortgagee or a beneficiary under a Deed of Trust secured by a Dwelling Unit made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such Deed of Trust or mortgage such Dwelling Unit shall remain subject to this Declaration, as amended.

Section 10.5. Construction.

10.5.1. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the subdivision; This Declaration shall be construed and governed by the laws of the State of Arizona. ~~So long as the Federal Home Loan Mortgage Corporation is the holder of any first mortgage, this Declaration shall be interpreted in conformity with all rules, regulations and requirements of the Federal Home Loan Mortgage Corporation applicable to conventional mortgages, in effect as of the day of this Declaration, or as thereafter amended, and any provision hereof which is inconsistent therewith shall be deemed to be modified to conform thereto.~~ If there is any conflict between the Governing Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to the Articles of Incorporation, then to the Bylaws, and then to the Rules and Regulations. The Board has the sole right to interpret the documents and to act on behalf of the Association unless such action requires specific approval of the membership.

10.5.2. Restrictions Severable. Notwithstanding the provisions of the foregoing Paragraph 10.5.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Commented [KS45]: These amendments are proposed to remove outdated language and provide for clarification of the governing documents.

10.5.3. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

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

Section 10.6. Delivery of Notices and Documents.

Any written notice or other documents relating to or required by this Declaration may be delivered either personally, ~~or~~ by mail, or electronically if agreed by both parties in writing. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy has been deposited in the United States mail, postage prepaid, addressed; to the Association at its business address; to an Owner at the address reflected in the books of the Association. If by email, it shall be deemed delivered immediately. Each Owner of a Dwelling Unit shall provide the Association with his/her correct mailing address and shall promptly notify the Association in writing of any subsequent change of address.

Commented [KS46]: These amendments are proposed to allow for easier communication between the Association and the Members.

Section 10.7. Binding Effect.

By accepting a deed or acquiring any Ownership interest in any Lot each person or entity, for himself/herself, or itself, his/her heirs, personal representatives, successors, transferees and assigns, binds himself/herself, his/her 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 and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Property and hereby evidences his/her interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.