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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR  
KARMA SUBDIVISION**

Dated: June 2, 2021

## TABLE OF CONTENTS

	Page
ARTICLE I	DEFINITIONS..... 1
ARTICLE II	PROPERTY AND PERSONS BOUND BY THIS DECLARATION..... 6
2.1	General Declaration..... 6
2.2	Owners and Occupants Bound..... 6
ARTICLE III	EASEMENTS; RIGHTS OF ENJOYMENT IN THE COMMON AREA..... 6
3.1	Owner's Easements and Rights of Enjoyment..... 6
3.2	Utility Easement..... 7
3.3	Easement in Favor of Association ..... 7
3.4	Easement for Encroachments..... 7
3.5	Lot Line Easements over Lots in favor of Specific Owners or the Association ..... 8
3.6	Lot Line Easements Over Common Area in favor of Specific Owners ..... 8
3.7	Broad Reserved Powers of Declarant..... 9
3.8	Delegation of Use ..... 10
3.9	Waiver of Use ..... 10
3.10	Acceptance of Certain Common Area and Other Areas ..... 10
ARTICLE IV	CITY DESIGN AND LANDSCAPING GUIDELINES..... 10
ARTICLE V	PERMITTED USES AND RESTRICTIONS..... 10
5.1	Covenants, Conditions, Restrictions, and Easements Governing Use ..... 10
5.2	Prohibited Uses ..... 10
5.3	Plat Notes and Zoning Conditions ..... 11
5.4	On-Site Drainage ..... 11
5.5	Overhead Encroachment..... 11
5.6	Permissible Encroachments ..... 11
5.7	Restriction on Further Subdivision, Property Restrictions and Rezoning..... 12
5.8	Nuisances; Dust Control; Construction Activities ..... 12
5.9	Vehicles and Parking ..... 12
5.10	Commercial Vehicles ..... 13
5.11	Health and Welfare ..... 14
5.12	Incidental Uses ..... 14
5.13	Antennas and Dishes; Solar Devices..... 14
5.14	Clothes Drying Facilities ..... 14
5.15	Mineral Exploration, Withdrawal of Water, Etc..... 14
5.16	Diseases and Insects..... 14
5.17	Single Family Use..... 15

**TABLE OF CONTENTS**  
**(cont'd)**

	Page
5.18 Yard and House Walls .....	15
5.19 Party Walls.....	15
5.20 Perimeter Walls .....	15
5.21 Commercial Use .....	16
5.22 Leasing .....	16
5.23 Animals .....	17
5.24 Trash and Recycle Materials Regulation .....	17
5.25 Machinery and Equipment .....	17
5.26 Signs.....	17
5.27 Model Homes.....	18
5.28 Variances.....	18
5.29 Additional Restrictions by Additional Covenants.....	18
5.30 Declarant's Exemption.....	18
5.31 Sales Offices, Administrative Offices, and Other Facilities .....	19
5.32 Savings Clause.....	19
<b>ARTICLE VI ORGANIZATION OF ASSOCIATION.....</b>	<b>19</b>
6.1 General Purpose and Charge .....	19
6.2 Board of Directors and Officers.....	19
6.3 Association Rules .....	19
6.4 Personal Liability.....	20
6.5 Mergers or Consolidations .....	20
<b>ARTICLE VII MEMBERSHIPS AND VOTING.....</b>	<b>20</b>
7.1 Votes of Owners .....	20
7.2 Membership is Appurtenant to Ownership.....	20
7.3 Declarant .....	20
7.4 Membership Classes .....	20
7.5 Right to Vote .....	21
7.6 Members' Rights.....	21
7.7 Control by Declarant, and Rights of the Class B Member.....	21
7.8 Transfer of Membership.....	21
<b>ARTICLE VIII ASSESSMENTS AND CREATION OF LIEN.....</b>	<b>21</b>
8.1 Creation of Assessment Lien; Personal Obligation of Lot Owner .....	21
8.2 Annual Assessments .....	22
8.3 Annual Assessment Period.....	22
8.4 Association's Rights in Spending Funds from Year to Year.....	22
8.5 Rate of Assessment.....	22
8.6 Maintenance Assessments.....	23
8.7 Fines and Penalties .....	23
8.8 Special Assessments.....	24
8.9 Billing and Collection Procedures .....	24

**TABLE OF CONTENTS**  
**(cont'd)**

	Page
8.10 Collection Costs and Interest on Delinquent Amounts .....	24
8.11 Assessments Upon Transfer .....	24
8.12 Declarant's Exemption .....	25
8.13 Payment of Deficiencies .....	25
8.14 Management Fee .....	26
8.15 Savings Clause .....	26
<b>ARTICLE IX ENFORCEMENT OF THE ASSESSMENT LIEN .....</b>	<b>26</b>
9.1 Association Remedies to Enforce Assessments .....	26
9.2 Subordination of Assessment Lien .....	26
<b>ARTICLE X MAINTENANCE .....</b>	<b>27</b>
10.1 Maintenance Obligations of the Association .....	27
10.2 Maintenance Obligations of Owners .....	28
10.3 Maintenance of Lot Line Easement Areas .....	29
10.4 Standard of Care .....	29
<b>ARTICLE XI RIGHTS AND POWERS OF ASSOCIATION .....</b>	<b>29</b>
11.1 Rights, Powers and Duties of the Association .....	29
11.2 Rules and Regulations .....	30
11.3 Association's Rights of Enforcement .....	30
11.4 Enforcement Methods and Means .....	30
11.5 Contracts with Others; Bulk Service Agreements .....	31
<b>ARTICLE XII EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA .....</b>	<b>31</b>
12.1 Eminent Domain .....	31
12.2 Condemnation or Insurance Proceeds; Protections of First Mortgagees .....	32
12.3 Authority to Purchase Insurance .....	32
12.4 Individual Responsibility .....	32
12.5 Insurance Claims .....	33
<b>ARTICLE XIII DISPUTE RESOLUTION .....</b>	<b>33</b>
13.1 Approval of Association Action .....	33
13.2 Right to Inspect and Right to Corrective Action .....	33
13.3 Alternative Method for Resolving Disputes .....	34
13.4 Claims .....	34
13.5 Mandatory Procedures .....	34
13.6 Amendment of Article; Severability .....	35
<b>ARTICLE XIV TERM; AMENDMENTS; TERMINATION .....</b>	<b>35</b>
14.1 Term; Method of Termination .....	35
14.2 Amendments .....	36

**TABLE OF CONTENTS**  
**(cont'd)**

	Page
ARTICLE XV    PROJECT DISCLOSURES .....	36
15.1   View Impairment .....	36
15.2   Centralized Refuse/Recycle Locations .....	37
ARTICLE XVI   MISCELLANEOUS .....	37
16.1   Additional Covenants .....	37
16.2   Enforcement Rights .....	37
16.3   Interpretation of the Covenants.....	37
16.4   Assumption of Risk .....	37
16.5   Severability .....	38
16.6   Change of Circumstances.....	38
16.7   Declarant's Disclaimer of Representations .....	38
16.8   Successors and Assigns.....	38

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR  
KARMA SUBDIVISION**

This Declaration of Covenants, Conditions, Restrictions and Easements for Karma Subdivision ("**Declaration**") is executed this 2nd day of June, 2021, by **BV I - 1317, LLC**, an Arizona limited liability company ("**Declarant**").

**RECITALS**

A. Declarant is the owner of certain real property located in Maricopa County, Arizona, being a legal subdivision of Maricopa County and located within the corporate limits of the City of Phoenix, and as further described on **Exhibit A** attached hereto and incorporated herein.

B. The real property described in **Exhibit A** shall be referred to hereinafter as the "**Covered Property**."

C. Declarant desires to see that the Covered Property be developed as a residential community, with certain open spaces and other features and characteristics, all as provided herein, and Declarant desires and intends that the Covered Property shall be held, sold and conveyed subject to the provisions hereof, which are for the purpose of protecting the value, desirability, attractiveness and character of the Covered Property and which shall run with all of the property. This Declaration shall be binding on all persons or entities having any right, title or interest in the Covered Property, or any part thereof, and shall inure to the benefit of the aforementioned parties and their successors and assigns.

D. Declarant has formed, or shall form, an Arizona nonprofit corporation known as "Karma Subdivision Association, Inc.," or to be known by any other designated name, for the purposes of, among other things: (i) holding title in fee or otherwise to certain Common Areas; (ii) fostering the efficient preservation of the Covered Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Areas and enforcing the Governing Documents; and (iii) establishing, collecting, disbursing and enforcing the Assessments created herein.

**NOW, THEREFORE**, Declarant hereby declares, covenants and agrees as follows:

**ARTICLE I  
DEFINITIONS**

As used in this Declaration, the following terms shall have following meanings:

1.1 "**Additional Covenants**" means the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any other instrument approved by Declarant or as otherwise provided herein, including those which may be adopted pursuant to Section 16.1 hereof.

1.2 "**Administrative Fee**" has the meaning set forth in Section 8.11.3.

1.3 "**Agency**" means the Federal Housing Administration (FHA), Veterans Administration (VA), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), and

any other governmental agency or financial institution insuring or guaranteeing residential loans or purchasing such loans on the secondary market.

1.4 “**Annual Assessments**” means the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.

1.5 “**Articles**” means the Articles of Incorporation of the Association, as amended or restated from time to time.

1.6 “**Assessment Lien**” means the charge and continuing servitude and lien against a Lot for payment of Assessments as described in Section 8.1 of this Declaration.

1.7 “**Assessment Period**” means each period for which Assessments are to be levied against a Lot pursuant to this Declaration, as more particularly described in Section 8.3 below.

1.8 “**Assessments**” means all Annual Assessments, Maintenance Assessments and Special Assessments, and shall include any charges or fines hereunder which are stated to be secured by the Assessment Lien.

1.9 “**Association**” means “Karma Subdivision Association, Inc.,” an Arizona nonprofit corporation, its successors and assigns, or an association given another available name and serving the purposes of the Association hereunder.

1.10 “**Association Rules**” means the rules and regulations adopted by the Association pursuant to Section 6.3 of this Declaration.

1.11 “**Bins**” has the meaning set forth in Section 5.24.

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

1.13 “**Bylaws**” means the Bylaws of the Association, as amended or restated from time to time. The Bylaws contain the operational procedures of the Association.

1.14 “**City**” means the City of Phoenix.

1.15 “**City Guidelines**” has the meaning set forth in ARTICLE IV.

1.16 “**Class A Member**” has the meaning set forth in Section 7.4.1.

1.17 “**Class B Member**” has the meaning set forth in Section 7.4.2.

1.18 “**Common Area**” means Tracts A, B, C, D, E, and F as shown on the Plat, and all improvements or amenities thereon, including all structures, and all easements and licenses, and all other real property and personal property which shall from time to time be owned, controlled or operated by the Association within the Covered Property (including, but not limited to, any area used for landscaping, flood control, drainage, active or passive recreational areas, if any, open space, walkways, and pedestrian and vehicular ingress and egress which the Association in its discretion may elect to accept), or with respect to which the Association has undertaken administrative, maintenance or other similar responsibilities. To the

extent accepted by the Association, Common Area shall include easements for trails established over and across Lots or Common Area either by plat dedication or by separate instrument.

1.19 **“Common Expenses”** means the expenses incurred or to be incurred by the Association, as estimated by the Board, for the benefit of the Members and Owners within the Covered Property, generally, including reasonable reserves, and which are, in the sole and absolute discretion of the Board, determined to be properly chargeable by Assessments to all Owners and Members, and including the cost of all maintenance, repair and other activity, all taxes, utility charges in relation to Common Area, the cost of Trash and Recycle Materials collection, management and other fees, and the cost of all insurance, bonds, and fidelity bonds, and all general and overhead expense.

1.20 **“Covered Property”** means the property subject to this Declaration commencing first with the Covered Property as defined above.

1.21 **“Declarant”** means BVI – 1317, LLC, an Arizona limited liability company, and any assignee who has received an express written assignment of the rights and duties granted or reserved to Declarant herein, which assignment may be in whole or in part.

1.22 **“Declarant Affiliate”** means any Person owning any portion of the Covered Property and directly or indirectly controlling, controlled by or under common control with the Declarant or, if a trust, the beneficiary of Declarant, and shall include without limitation, any general or limited partnership, limited liability company, corporation or trust in which the Declarant, any member of Declarant, or the beneficiary of Declarant (or another Declarant Affiliate) is a general partner, managing member, controlling shareholder, or beneficiary.

1.23 **“Declarant Control Period”** means the earlier of:

(a) the period of time expiring one hundred twenty (120) days after all Lots within the Covered Property have been conveyed to persons other than Declarant or a Declarant Affiliate;

(b) such date as Declarant relinquishes all rights which may be exercised during the Declarant Control Period; or

(c) December 31, 2061.

Should annexations of other real property occur, or should other events cause Declarant to own portions of the Covered Property after the Declarant Control Period has first expired, the Declarant Control Period shall revive subject to the provisions above.

1.24 **“Declarant Party”** or **“Declarant Parties”** means, collectively, Declarant, Declarant Affiliates, Declarant’s builders, general contractors or brokers or their agents or employees.

1.25 **“Declaration”** means this Declaration of Covenants, Conditions, Restrictions and Easements, as amended, restated, or supplemented from time to time.

1.26 **“Delinquent Amount”** means any Assessment, or installment thereof, not paid when due.



1.27 **"Dwelling Unit"** means any building, or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

1.28 **"Event of Foreclosure"** means the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust or other encumbrance inferior in priority to an Assessment Lien.

1.29 **"Exempt Transfer"** means any transfer:

- (a) To Declarant or Declarant Affiliate;
- (b) By a co-Owner to any Person who was a co-Owner immediately prior to such transfer;
- (c) To the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (d) To an entity wholly owned by the Owner or to a family trust created by the Owner for the direct benefit of the Owner and his or her spouse and/or heirs at law; provided, any subsequent transfer of an ownership interest in such entity shall not be an Exempt Transfer;
- (e) To a corporation, limited liability company, partnership or other entity in which the Owner 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 Working Capital Fund Contribution and Reserve Fund Assessment;
- (f) To an institutional lender as security for the performance of an obligation pursuant to a mortgage or pursuant to a foreclosure sale; or
- (g) To the Association pursuant to a foreclosure sale and resale.

1.30 **"First Mortgage"** means any mortgage or deed of trust on any Lot with the first priority over any other mortgage or deed of trust encumbering such Lot.

1.31 **"First Mortgagee"** means the holder of any First Mortgage.

1.32 **"Governing Documents"** means this Declaration, the Articles of Incorporation and Bylaws of the Association, and the Association Rules, as same may from time to time be amended.

1.33 **"Improvement"** means any structure or improvement, including any Dwelling Unit or modification thereof, any patio, outbuilding, pool, wall, path, driveway, excavation, fixture, antenna, satellite system, fence, coping, awning, sunshade, flagpole, or other structure or improvement or appurtenance, and including decorative or aesthetic changes, such as color changes or changes to materials, and also includes any and all landscaping, including any addition or removal of plants.

1.34 **"Invitee"** means any Person whose presence within the Covered Property is approved by or is at the request of a particular Owner, Lessee or Occupant, including family members, guests, employees and contractors.

1.35 “**Lessee**” means any Person who is the tenant or lessee under any type of rental agreement, and/or who provides value or consideration in exchange for the right to occupy the Dwelling Unit, whether such rental agreement is within the definition set forth in A.R.S. § 33-1310(11) or otherwise.

1.36 “**Lot**” means Lots 1 through 11, inclusive, shown on the Plat, and any Lot shown on any Plat of real property annexed under the purview hereof.

1.37 “**Lot Development Area**” means the developable area within a Lot in which all improvements must be built, and the only area in which alterations to the existing landscape may occur. The Lot Development Area for each Lot shall be addressed and regulated by the City Guidelines.

1.38 “**Maintenance Assessments**” means the Assessments, if any, levied by the Board pursuant to Section 8.6 of this Declaration.

1.39 “**Member**” means any Owner or Person entitled to Membership, including Declarant for so long as Declarant is a Class A or Class B Member and whether or not Declarant owns any Lot.

1.40 “**Membership**” means the rights and duties of Members, including Declarant so long as Declarant is a Class A or Class B Member, with respect to the Association.

1.41 “**Occupant**” means any Person, other than an Owner, in possession of a Lot, or any portion thereof or building or structure thereon, at the request of or with the consent of the Owner of such Lot or portion thereof.

1.42 “**Owner**” means the record holder of legal title to the fee simple interest in any Lot or, in the case of a recorded “contract” (as that term is defined in A.R.S. § 33-741(2)), the holder, of record, of the purchaser’s or vendee’s interest under said contract, but excluding others who hold such title merely as security, such as any trustee under a deed of trust. An Owner shall include any Person who holds record title to a Lot in joint ownership or as an undivided fee interest.

1.43 “**Person**” means a corporation, partnership, limited liability company, joint venture, natural person or individual, trust or any other legal entity.

1.44 “**Plat**” means the recorded plat for the Covered Property, and any amendment or resubdivision thereof, and in the event of successive plats for portions of the Covered Property, the term shall include all such plats unless the context clearly indicates otherwise.

1.45 “**Reserve Fund Assessment**” has the meaning set forth in Section 8.11.2.

1.46 “**Resident**” means an Owner, Occupant or Lessee.

1.47 “**Single Family**” means a group of persons related by blood, marriage or legal adoption, or a group of not more than three unrelated persons maintaining a common household. “Single Family” use shall not include any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, except that this prohibition shall not apply those certain limited kinds of group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.

1.48 **“Special Assessments”** means the assessments, if any, levied by the Board pursuant to Section 8.8 of this Declaration.

1.49 **“Trash and Recycle Materials”** has the meaning set forth in Section 5.24.

1.50 **“Working Capital Fund Contribution”** has the meaning set forth in Section 8.11.1.

## ARTICLE II PROPERTY AND PERSONS BOUND BY THIS DECLARATION

2.1 **General Declaration.** Declarant desires to facilitate development of the Covered Property in accordance with this Declaration which establishes a general plan of development for the planned community known as Karma Subdivision. This Declaration provides for the overall development, administration, maintenance and preservation of the Covered Property, and a reasonable mechanism for enforcement of the provisions hereof. Nothing in this Declaration shall be construed to prevent or limit Declarant’s right to modify or change the plan for the development of the Covered Property, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot or Common Area.

2.2 **Owners and Occupants Bound.** Upon the recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Lot to or from such Owners or Occupants, and the provisions hereof shall be deemed covenants running with the land.

## ARTICLE III EASEMENTS; RIGHTS OF ENJOYMENT IN THE COMMON AREA

3.1 **Owner’s Easements and Rights of Enjoyment.** Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Area, which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner’s Lot. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Area so long as they remain Occupants. Without limiting the foregoing, each Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets and roads within the Covered Property (including, without limitation, any constructed and delineated roadways on Tracts A, B, E and F) for the purpose of vehicular access, ingress and egress to and from such Owner’s Lot and the public right-of-way.

The foregoing grants and rights are subject to the following limitations, in addition to all other limitations and reserved powers set forth in this Declaration:

3.1.1 **Right to Modify and Change.** The rights, duties and obligations of the Association, and the reserved right of Declarant, and of the Association, to modify the use of Common Area, or to convey same free of claims or rights of the Owners or Members, subject to the easements created in Section 3.6 and to provisions of zoning, applicable law, or other instruments of record;

3.1.2 **Restrictions on the Plat.** All easements granted on the Plat are subject to specific restrictions and limitations noted on the Plat;

3.1.3 **Suspension of Rights.** The right of the Association, after such notice and hearing as may be required by law, to suspend the voting rights and the rights to use and enjoyment of the Common

Area (other than roads) by any Owner or Occupant, as the case may be, for any period during which an Assessment remains delinquent, or for a period not to exceed 60 days for any single infraction of this Declaration, the Association Rules, or the City Guidelines (provided such suspension shall not be limited if the infraction remains uncured). Furthermore and notwithstanding anything herein to the contrary, in no event shall an Owner's right to use any private roadway within the Covered Property to access such Owner's Lot be suspended;

3.1.4 **Limitation of Invitees.** The right of the Association to limit the number of Invitees of an Owner or Occupant who may use the Common Area; and

3.1.5 **Regulation, Liens and Conveyances.** The right of the Association to regulate use of the Common Area in accordance with this Declaration, and to mortgage or convey portions of Common Area with the affirmative vote or written consent, with or without a meeting, of Declarant and Owners representing at least two-thirds (2/3rds) of the total votes held by the Members.

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

3.3 **Easement in Favor of Association.** The Lots (except for the interior of a Dwelling Unit or other buildings) are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(a) For inspection of the Lots in order to verify the performance by Owners, their Invitees, and the other Occupants of a Lot of all items of maintenance and repair for which they are responsible;

(b) For inspection, maintenance, repair and replacement of the Common Area reasonably accessible only from such Lots;

(c) For correction of emergency conditions in, under, upon or over one or more Lots;  
and

(d) For inspection, maintenance, repair, and replacement of walls and fences which the Association is obligated to maintain.

3.4 **Easement for Encroachments.** To the extent that any Improvements on Lots or Common Area encroaches on any other Lot or Common Area as a result of original construction, shifting, settling or movement of any Improvement or alteration or restoration authorized by this Declaration, or any other reason, a valid easement for the encroachment, and for the maintenance thereof, is hereby granted and created; provided such encroachment resulting from any such original construction, alteration or restoration does not materially affect the square footage of any other Owner's Lot, interfere with any other Owner's ability to

operate its Lot or construct Improvements on its Lot or otherwise adversely affect such Owner's value of or quiet enjoyment of its Lot.

3.5 **Lot Line Easements over Lots in favor of Specific Owners or the Association.** Certain portions of Lots 2, 3, 4, 5, 6, 7, 8, 9, and 10 (each, a "**Burdened Lot**") are identified on **Exhibit B** attached hereto and incorporated herein as "*Lot Line Easements over Lots in Favor of Specific Owners*" ("**Lot Line Easement Lot Area**") or "*Lot Line Easements over Lots in Favor of the Association*" ("**Lot Line Easement Common Area**"). The Lot Line Easement Lot Areas and the Lot Line Easement Common Areas are collectively referred to as "**Lot Line Easement Areas.**"

3.5.1 Each Lot Line Easement Lot Area located on a Burdened Lot is hereby made subject to the following four (4) foot wide easements in favor of the Owner of the contiguous Lot to the west of each Burdened Lot ("**Benefited Lot**"), respectively, for (a) for use, access and enjoyment in and to, over and across the Lot Line Easement Area; (b) for inspection, maintenance, repair and replacement of any Improvements on the Benefited Lot or situated in the Lot Line Easement Area; and (c) drainage.

3.5.2 Each Lot Line Easement Common Area located on Lot 4 and Lot 6 is hereby made subject to the following four (4) foot wide nonexclusive easement in favor of the Association for (a) for use, access and enjoyment in and to, over and across the Lot Line Easement Common Area; and (b) for installation, inspection, maintenance, repair and replacement of any Improvements on the immediately adjacent Common Area or situated in the Lot Line Easement Common Area.

3.5.3 Owners of Benefited Lots, or the Association, as applicable, shall not, whether directly or indirectly by granting permission, construct, install, or place any Improvement, including any building or other structure, plant any trees, store personal property or other materials of any kind, or alter the ground level, within the Lot Line Easement Area located within such Benefited Lot or Common Area. This Section does not prohibit the use of Lot Line Easement Area for soft landscaping (except for trees), provided that such use is otherwise in accordance with the terms of this Section 3.5 and does not interfere with the reserved rights of Owners of Burdened Lots for access, inspection, maintenance and repair in accordance with the next paragraph.

3.5.4 There is hereby reserved for each Owner of a Burdened Lot the right to access and use the respective Lot Line Easement Area located on Burdened Lot solely for purposes of reasonable periodic or routine inspection, maintenance and repair of such Owner's Dwelling Unit and other Improvements which are located immediately adjacent to the Lot Line Easement Area and which are accessible via the Lot Line Easement Area. Each Owner of a Burdened Lot shall cooperate in good faith with the corresponding Owner of a Benefited Lot and the Association to allow the Owner of such Burdened Lot or the Association to access the Lot Line Easement Area for purposes of inspection, maintenance and repair as set forth in this Section 3.5.

3.5.5 There is hereby reserved for the Owner of Lot 6 the right to use the Lot Line Easement Common Area located on Lot 6 for drainage from Lot 6 onto Tract D of the Common Area.

3.6 **Lot Line Easements Over Common Area in favor of Specific Owners.** Certain portions of Common Area Tract D are identified as "*Lot Line Easement over Common Area in Favor of Specific Owners*" on **Exhibit B**, each such area also referred to herein as a Lot Line Easement Area.

3.6.1 The Lot Line Easement Area located on Tract D that is contiguous with Lot 5 is hereby made subject to a four (4) foot wide nonexclusive easement in favor of the Owner of Lot 5 for (a) use, access, and enjoyment in and to, over and across Lot Line Easement Area; (b) the inspection, maintenance, repair and replacement of any Improvements on Lot 5; and (c) drainage.

3.6.2 The Lot Line Easement Area located on Tract D that is contiguous with Lot 6 is hereby made subject to a four (4) foot wide nonexclusive easement in favor of the Owner of Lot 6 for (a) use, access, and enjoyment in and to, over and across Lot Line Easement Area; and (b) inspection, maintenance, repair and replacement of any Improvements on Lot 6.

3.6.3 The Owners of Lot 4 and Lot 6 shall not, whether directly or indirectly by granting permission, construct, install, or place any Improvement, including any building or other structure, plant any trees, store personal property or other materials of any kind, or alter the ground level, within the Lot Line Easement Areas located on Common Area. This Section does not prohibit the use of the Lot Line Easement Areas for soft landscaping (except for trees), provided that such use is otherwise in accordance with the terms of this Section 3.6 and does not interfere with the rights of the Association for access, inspection, maintenance and repair of Tract D in accordance with the next paragraph.

3.6.4 There is hereby reserved for the Association the right to access and use the respective Lot Line Easement Area located on Lot 5 or Lot 6 solely for purposes of (reasonable periodic or routine inspection, maintenance and repair of Common Area Improvements which are located immediately adjacent to the Lot Line Easement Area and which are accessible via the Lot Line Easement Area. Each Owner of Lot 5 or Lot 6 shall cooperate in good faith with the Association to allow the Association to access the Lot Line Easement Area for purposes of inspection, maintenance and repair as set forth in this Section 3.6.

3.7 **Broad Reserved Powers of Declarant.** Notwithstanding anything to the contrary herein, Declarant may at any time cause the Association to convey, and the Association, with the consent of Declarant so long as Declarant owns any Lot, may convey minor, insignificant, or immaterial portions of Common Area (such as those caused by encroachment areas, boundary line discrepancies, survey errors and other such matters), and portions of Common Area determined by Declarant to be more burdensome or costly to own than the concomitant benefit to the Association would warrant, and such conveyance may be made without the consent or vote of any other Person or Member, should Declarant or the Board, with the consent of Declarant so long as Declarant owns any Lot, determine that such conveyance or transfer is in the best interests of the Association or Covered Property. Furthermore, Declarant may at any time resubdivide Common Area into Lots or other Common Area or dedicated land, and may cause the Board or Association to execute such instruments as may be necessary to cause such resubdivision or dedication, and no consent or approval shall be required of any other Members nor shall a meeting of Members be required.

Any sale, disposition, or resubdivision of the Common Area shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof.

In addition, the Association shall in all cases have the right, with the consent of Declarant so long as it owns any Lot, to convey and dedicate to the public lands and interests such as public roads, streets, drainageways, culverts, parks, sewer facilities (if any) and other Common Area, and such action shall not require the approval of any Owners or Members of the Association.

3.8 **Delegation of Use.** Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his or her rights of use and enjoyment in the Common Area to the members of his or her family, his or her Occupants, or Invitees subject to the limitations set forth herein and in the Association Rules, and in the event of such delegation, including any lease of a Lot, the Owner shall be deemed to have relinquished his or her right of use and enjoyment for the period of such lease or delegation. Without limitation, the Rules may limit the number of Invitees and/or prescribe restrictions on certain types of gatherings or events.

3.9 **Waiver of Use.** No Owner shall be exempt from personal liability for Assessments, except Declarant as provided herein, nor shall any Owner have any right to release a Lot from the liens or charges arising under this Declaration by waiver of the right of use and enjoyment of Common Area or for any other reason, and no Owner shall in any fashion or by any means have a right of set-off of claims against any sum owed to the Association.

3.10 **Acceptance of Certain Common Area and Other Areas.** Declarant shall have the absolute right to require that the Association accept title to certain areas the Declarant in its discretion determines shall be Common Area, including areas shown upon any plat or other instrument pertaining to the Covered Property. Such right of Declarant shall, without limitation, extend to all property that Declarant determines is appropriate for Common Area designation or otherwise appropriate for Association control and maintenance. Common Area to be accepted by the Association at Declarant's direction may include, but shall not be limited to, such open spaces, landscaped areas, trails and recreational areas, if any, and other areas or facilities, but no representation or warranty is made as to any such facilities or which shall be offered or included in the Covered Property or within Common Area. Further, the Declarant may at any time in writing elect, in its sole discretion, to convert any Lot or portion thereof to Common Area, and to convey same to the Association, but no commitment or representation of any nature exists in that regard.

#### **ARTICLE IV CITY DESIGN AND LANDSCAPING GUIDELINES**

All development within the Covered Property is subject to the City of Phoenix's Single-Family Residential Housing Design Review Development Agreement between the City of Phoenix and Boyer Vertical LLC dated May 6, 2021 ("**City Guidelines**"), a copy of which is attached hereto as **Exhibit C**. The City Guidelines are binding on all successors and assigns. The City Guidelines establish applicable development standards and design review characteristics for Karma Subdivision. All proposed site changes must be reviewed and approved by the City of Phoenix prior to any building permit approval issuance. No development, construction, grading, improvement, landscaping or other work or alteration of any land, nor any Improvement, as defined, shall be commenced unless such use is permitted or not in violation of the City Guidelines.

#### **ARTICLE V PERMITTED USES AND RESTRICTIONS**

5.1 **Covenants, Conditions, Restrictions, and Easements Governing Use.** The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots.

5.2 **Prohibited Uses.** The following uses are prohibited:

(a) any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is otherwise materially injurious to the perceived value of any Lot; and

(b) any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, Maricopa County, the City of Phoenix or any other governmental entity having jurisdiction over the Covered Property.

**5.3 Plat Notes and Zoning Conditions.** In addition to the restrictions contained herein, the Covered Property shall be subject to all applicable rezoning conditions and to the restrictions and limitations set forth on the Plat for the Covered Property. All such restrictions are incorporated herein by reference as if fully set forth and need not be repeated verbatim. Notwithstanding the foregoing, each Owner is advised of the following specific restriction, which may be the same or more restrictive than those shown on the Plat:

No structure of any kind, including man-made or natural improvements or materials not already located in such areas as of the date hereof, including any vegetation, is permitted to be located in any public utility easement, storm drain, sewer, water or drainage easements as shown on the Plat which would impede the flow of water over, under or through the easement or land burdened or located in such easement or tract.

**5.4 On-Site Drainage.** No water shall be drained or discharged from any Lot, or building thereon, except in accordance with approvals of the City of Phoenix and with all applicable ordinances, and except as set forth in Sections 3.5 and 3.6. Nothing herein shall prohibit natural storm drainage from leaving a Lot and entering upon adjacent property in the course of natural drainage patterns or incidental runoff typical of any improved property.

Each Owner agrees that neither the Declarant, its members, shareholders, or beneficiaries, the Board, the Association, nor any member or shareholder thereof, nor any Director or officer of the Association, nor any management company shall in any way be liable or responsible for any drainage, storm water or flooding event, and each Owner for themselves and their successors does hereby release the all said parties as well as the City from any claim, cost, expense, demand, damage, injury (including injury to any Dwelling Unit) or death in any way relating to drainage, storm water or flooding, and does hereby fully agree to indemnify and defend the all said parties as well as the City.

**5.5 Overhead Encroachment.** No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of six (6) feet, without the prior written approval of Declarant or the Board. The Association shall have the right to cause an Owner to trim any offending tree, shrub or planting.

**5.6 Permissible Encroachments.** Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, Improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by an Owner may from time to time encroach in minor degree upon the Common Area or other Lots in the Covered Property. Such minor and incidental encroachments, such as those caused by good faith survey error, shall be deemed permissible, particularly where removal of Improvements would cause gross economic waste.



Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments is conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

#### 5.7 **Restriction on Further Subdivision, Property Restrictions and Rezoning.**

5.7.1 So long as Declarant is a Member of the Association, all subdivision plats, and Additional Covenants must be submitted to and approved by Declarant before being recorded or approved by the City, as applicable. Except for property owned by the Declarant, after a subdivision plat has been approved, no Lot, or any portion of a Lot, shall be further subdivided and no portion less than all of the Lot shall be conveyed or transferred by any Owner without the prior written approval of the Declarant. The combining of a Lot or Common Area with an adjacent Lot or Common Area, where no additional Lot is created, and which is approved by Declarant or the Board if applicable shall not be deemed a resubdivision in accordance with the foregoing requirements.

5.7.2 No proposed application for rezoning, variance or use permit for any portion of the Covered Property shall be made, filed, submitted to, or recorded with the county or any other governmental authority or agency unless it has first been approved by Declarant so long as Declarant is a Member of the Association.

5.7.3 Subsections 5.7.1 and 5.7.2 shall not apply to portions of the Covered Property owned by Declarant or to subdivision plats or Additional Covenants submitted or proposed by Declarant and pertaining to portions of the Covered Property owned by Declarant. Declarant may at any time, of its own volition, and with no other consent or approval required, resubdivide all or any portion of the Lots or Common Area, subject only to provisions of law or local ordinance.

5.7.4 Declarant may at any time in writing relinquish all or a portion of its approval rights under this Section. After Declarant no longer is a Member of the Association, or after Declarant may have relinquished its rights under this Section, the Board shall succeed to the right to approve of subdivision plats or Additional Covenants, unless Declarant has assigned such right to one or more Persons, in which case the Board shall succeed to such rights only after such Persons no longer own any portion of the Covered Property.

5.8 **Nuisances; Dust Control; Construction Activities.** No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Each Lot shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent Covered Property. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Association may, but is not required, to take action to abate what any Owner may consider a nuisance.

#### 5.9 **Vehicles and Parking.**

5.9.1 As used in this Section 5.9 and Section 5.10: (i) **“Vehicle”** means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, “trekker” van, or similar class b van, motorcycle, all-terrain vehicle, utility vehicle, pickup truck or other motor vehicle, and including any travel trailer, tent

trailer, trailer, camper shell, boat trailer or other similar equipment and vehicles; and (ii) “**Streets**” means the streets shown on the Plat for the Covered Property.

5.9.2 No Vehicle may be parked, kept or stored on the Common Area or on any Lot or on the Streets, provided that Vehicles may be parked, kept and stored fully within such Lot’s garage or respective driveway subject to the provisions of this **Section 5.9**. Notwithstanding the foregoing:

(a) Temporary parking of Vehicles of Declarant and its contractors and subcontractors, or Vehicles of contractors and subcontractors of others, as approved by Declarant, is permitted on Lots or Common Area, including streets, during periods of construction of Improvements.

(b) Temporary, short-term parking of delivery Vehicles designed or used for carrying merchandise, supplies or equipment for commercial purposes is permitted on the Common Area or on a Lot for the purposes of package or other delivery.

(c) Vehicles owned by an Invitee of a Resident may be parked in the garage or driveway on a Lot or, in the case of visits, parties, or events, on certain designated parking spaces on the Common Area within Tract B (“**Community Spaces**”).

5.9.3 Community Spaces are designated as “guest,” “visitor” or Invitee parking only and may not be used or occupied by any Resident or for any other use. Community Spaces shall not be occupied for periods exceeding twenty-four (24) consecutive hours and may only be used for intermittent, non-permanent parking and loading. In no event shall use or occupancy of any Community Space prohibit or inhibit the use and enjoyment of any Common Area for its designated purpose.

5.9.4 No Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be visible within the Covered Property, and no inoperable Vehicle may be stored or parked on any Lot in such a manner as to be visible within the Covered Property. Except for emergency repairs, no Vehicle shall be constructed, reconstructed or repaired on the Streets or any other part of the Common Area.

5.9.5 The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Vehicles on Lots or the Community Spaces and implementing the provisions of this Section, and establishing certain exceptions that may in certain cases be warranted.

5.9.6 This Section shall not prohibit the parking of vehicles protected by A.R.S. § 33-1809. Further, in the event of dedication of the Streets to the City or other governmental entity, the provisions of A.R.S. § 33-1818 shall control.

#### 5.10 **Commercial Vehicles.**

5.10.1 No Vehicle shall be parked on the Covered Property if the exterior of the Vehicle contains or exhibits any signage relating to a commercial enterprise or commercial activity that is visible from the exterior of such Vehicle (and the Vehicle is not kept in an approved enclosed garage), except such signage that is limited to the exterior driver or passenger door of such Vehicle shall be permitted if the Vehicle is used by the Owner as regular transportation in commuting to work.

5.10.2 No Vehicle shall be permitted to park on a Lot, even if such Vehicle otherwise qualifies under the preceding paragraph, or other provisions hereof, if such Vehicle is used for a commercial

enterprise or activity and such Vehicle has ladders, work beds, lights or other commercial items attached to or hanging from such Vehicle so as to be visible from the exterior of such Vehicle (and the Vehicle is not kept in an approved enclosed garage), except as provided in Section 5.9.2 above and except as permitted by Declarant and the Board.

5.10.3 The foregoing restriction shall not apply to vehicles protected by A.R.S. §33-1809 or any other law from prohibition by covenant, nor to vehicles parked within an enclosed structure approved by the Board, nor to commercial vehicles of contractors and others working on the Covered Property, nor to vehicles of vendors, business invitees and others in the process of temporarily serving the Covered Property. The Board shall have the right to reasonably interpret and further define, regulate, and make certain exceptions for certain commercial vehicles.

5.11 **Health and Welfare.** In the event uses of, activities on, or facilities upon a Lot are deemed by the Board to be a nuisance or to adversely affect the health or welfare of Owners or Occupants, the Board may make rules restricting or regulating their presence.

5.12 **Incidental Uses.** The Board may approve, regulate and restrict incidental uses of property. By way of example and not of limitation, the Board may adopt Rules governing recreational facilities, if any, or other facilities.

5.13 **Antennas and Dishes; Solar Devices.** No television, radio, or other electronic towers, aeriels, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

No solar heating or cooling equipment or other visible solar device may be installed or erected without approval of Declarant or the Board, which shall give due regard to state law restricting the limitation of such devices. Without limiting the foregoing, solar panels may only be installed and located in accordance with the City Guidelines.

5.14 **Clothes Drying Facilities.** No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot without the prior written consent of the Board unless they are not visible from neighboring property.

5.15 **Mineral Exploration, Withdrawal of Water, Etc.** No Lot shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, and no well may be drilled within the Covered Property.

5.16 **Diseases and Insects.** No Owner or Occupant shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

5.17 **Single Family Use.** No structure whatsoever, other than one private, detached Single Family residence per Lot, together with such private garage, guest facilities, recreational and storage facilities which may be approved in advance by Declarant or the Board in accordance with this Declaration, shall be erected, placed or permitted on any Lot, and all such permitted Improvements, other than the driveway, shall, unless otherwise in writing approved by Declarant or the Board, be located solely within the approved Lot Development Area. No mobile home, manufactured home, modular home or prefabricated home shall be permitted on any Lot.

5.18 **Yard and House Walls.** All Owners within the Covered Property shall repair and maintain the exterior visible surfaces of any patio wall, rear or side yard wall, or other surface or façade visible within the Covered Property so that such walls are neat and clean, free from graffiti, and otherwise in sound condition meeting all aesthetic standards of the Covered Property. Further, the Covered Property may contain, and subject to applicable zoning and other rules, certain walls lying immediately on or adjacent to the dividing line between a Lot and Common Area. Without limiting the foregoing, no patio walls, rear or side yard walls, or other perimeter walls may be placed beyond an established Lot Development Area.

5.19 **Party Walls.** Except as hereinafter provided, the rights and duties of Owners of contiguous Lots which have shared walls or fences along or immediately adjacent to the dividing property line between such Lots or within or immediately adjacent to the Lot Line Easement Area between such Lots ("**Party Walls**") shall be as follows:

5.19.1 Each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof.

5.19.2 If a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, or Invitees, the Owner shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided in Section 5.19.4 below.

5.19.3 In the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, or Invitees, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots on the damaged or destroyed Party Wall.

5.19.4 In the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Board, whose decision shall be binding and final.

5.19.5 In the case of Party Walls between Common Area and Lots, the Association, as the owner of the Common Area on which a Party Wall is located, shall have the rights and obligations of an Owner of a Lot as set forth in Sections 5.19.1, 5.19.2, and 5.19.3.

5.20 **Perimeter Walls.**

5.20.1 Notwithstanding anything in Section 5.19 to the contrary, and unless otherwise agreed in writing by the Association and any affected Owner, in the case of walls or fences on the exterior

perimeter boundaries of Karma Subdivision or interior perimeter boundaries of Lots facing Common Area ("**Perimeter Walls**"), the Association will repair and repaint the exterior surface of the Perimeter Walls which face the Common Area or outside of Karma Subdivision, and the Owner will be responsible for repairing and repainting that portion which faces into the Lot.

5.20.2 Owners shall be responsible for the landscaping located on their Lots inside the Perimeter Walls, and Owners shall maintain the landscaping in a manner so as not to grow over, under, or through a perimeter wall. Owners shall not allow landscaping to impede or otherwise interfere with the maintenance and repair of a Perimeter Wall. The Association shall be responsible for maintaining the landscaping located on Lots exterior to the Perimeter Walls.

5.21 **Commercial Use.** No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any Lot except as set forth herein. The Declarant may maintain sales offices, construction offices, administrative offices and sales models on the Lots and Common Area within the Covered Property, as well as associated and ancillary services and facilities in connection therewith, including parking areas, and open spaces. An Owner or Occupant may carry on a "**Home Occupation**" as provided below. A "Home Occupation" as permitted hereby means work within the Dwelling Unit (such as the performance of accounting work, creation of artwork, etc.) provided that:

(a) the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;

(b) the business activity conforms to all zoning requirements for the Lot;

(c) in no event shall any employees, customers, or other Invitees of a Home Occupation use or occupy any of the Community Spaces; and

(d) the business activity is lawful and consistent with the residential character of the neighborhood and does not constitute a nuisance or hazard or offensive use within the Covered Property as determined in the discretion of the Board.

If the Board determines that the Home Occupation violates the provisions hereof, then the Board shall have the authority to require that the Home Occupation in question cease immediately. In no event shall any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, be permitted within the Covered Property, except that this prohibition shall not apply to group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.

5.22 **Leasing.** The entire (but not less than all) of a Dwelling Unit may be leased from time to time by the Owner, pursuant to a written lease agreement having a term not less than thirty (30) days, to a Single Family Lessee, subject to the provisions of this Declaration and the Association Rules. To the extent permitted by law, each Owner shall provide to the Association such leasing information concerning any such lease as is deemed important to the Association. Any lease or rental agreement entered into between an Owner and a Lessee shall require compliance by the Lessee with all of the provisions contained in this Declaration, which provisions shall be for the express benefit of the Association and each Owner. Should a Lessee fail to so abide, the Association shall have the right to cause the Owner to declare a default under the lease and to take appropriate action, including eviction of the Lessee. To the extent permitted by law,

Declarant shall have the right to limit or prohibit leasing activity for the initial two (2) year period after an Owner other than Declarant first purchases a Dwelling Unit upon a Lot.

5.23 **Animals.** No animal, livestock, poultry or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any permitted pet shall be visible from within the Covered Property. The Board shall have the right by Association Rule or otherwise to determine what shall constitute a generally recognized house pet, and what a reasonable number of such pets shall, in any instance, constitute.

Notwithstanding the foregoing, no permitted pets may be kept on any Lot which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is a Lessee or Invitee. The Board has the right, after notice and the opportunity for a hearing, to require the removal of any pet which the Board, in its sole discretion, has determined is a nuisance. The Board may adopt further rules governing pets and avoidance of nuisances caused by pets.

5.24 **Trash and Recycle Materials Regulation.** No garbage, trash, or recycle materials ("**Trash and Recycle Materials**") shall be placed or kept on the Common Areas or on a Lot exterior to the Dwelling Unit or enclosed garage. Owners shall place all Trash and Recycle Materials in the designated bins or dumpsters in the common collection locations located on Tract B ("**Bins**"). The Board shall be responsible for subscribing to a trash service for the use and benefit of the Association and all Owners, and to adopt and promulgate Rules regarding Trash and Recycle Materials collection. Owners must bag and deposit all Trash and Recycle Materials in the Bins and completely close the lids to the Bins after deposit. No Trash and Recycle Materials may be visible on a Lot from Common Areas or other Lots. No Resident may place any items in the Bins that will prevent proper removal of such item by the service provider, including any items that would prevent the Bin from fully and properly closing or being used by other Residents for the disposal of reasonable Trash and Recycle Materials. The Rules may identify specific items which may not be placed in the Bins. If any Resident places any items in a Bin that blocks the Bin or prevents the other Residents or the service provider from disposing or retrieving such Trash and Recycle Materials (as applicable), all costs incurred by the Association in unblocking such area shall be assessed to the Owner of the Lot.

5.25 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot, except:

(a) during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a building, appurtenant structures or improvements thereon; or

(b) that which Declarant or the Association may require for the development, operation and maintenance of the Covered Property or portions of the Covered Property.

5.26 **Signs.** No signs of whatever nature may be erected or placed within any portion of the Covered Property, except such signs as are permitted by the City Guidelines, and further except for those signs approved by the Board or by Declarant. Declarant may approve signs without any other consent or approval. The foregoing restriction shall not apply to signs required by legal proceedings or signs which may

be permitted by law, or which may not be prohibited by private covenant, including certain political signs, public safety or public service emergency vehicle signs, and “for sale” signs that are protected by A.R.S. §33-441 or A.R.S. §33-1808. Further, the Board may enact rules limiting or prohibiting “for sale” or “for lease” signs, but only to the extent permitted by law, and the City Guidelines may regulate the nature, number, location, content and design of any sign.

Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon and across all Common Area for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Covered Property, but in no event later than twenty (20) years after the date this Declaration is recorded.

5.27 **Model Homes.** With Declarant’s written approval, which approval may be withheld at Declarant’s sole discretion, model homes of persons in the business of selling custom homes may be permitted, provided same are in compliance with the provisions of this Declaration and ordinances of the City.

5.28 **Variances.** The Board may, at its sole discretion, grant variances from the restrictions set forth in ARTICLE V if the Board determines that the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants and that:

- (a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner’s or Occupant’s acts; or
- (b) a change of circumstances has rendered the particular restriction obsolete; or
- (c) other circumstances warrant a variance in Declarant’s sole and absolute discretion.

The Board shall approve or disapprove of requests promptly and in writing, as the particular circumstances may warrant. All decisions of the Board with respect to variances shall be final and non-appealable.

5.29 **Additional Restrictions by Additional Covenants.** Declarant may require prior to the development of any Lot, the imposition of special conditions in Additional Covenants in any case where deemed appropriate in the sole and absolute discretion of Declarant, and may require adequate provision for assessments and maintenance of the subject property and improvements and such other provisions as are deemed proper. Without limiting the foregoing, The Association Rules may contain additional rules and restrictions applicable to loud, obnoxious, or unreasonable noises and other emissions, whether emanating from a Lot or from the Common Areas, and further regulating, without limitation, the operating of extremely loud Vehicles within the Covered Property.

5.30 **Declarant’s Exemption.** Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant or a Declarant Affiliate or their agents during the period of development and construction on the Covered Property of improvements, landscaping or signs deemed necessary or convenient by Declarant or a Declarant Affiliate, in its sole discretion, for the development or sale of property within the Covered Property, and Declarant shall at all times have an easement over and across all Common Area for all such purposes.

5.31 **Sales Offices, Administrative Offices, and Other Facilities.** Notwithstanding any other provision of this Declaration to the contrary, the Declarant and any Declarant Affiliate may maintain sales offices, construction offices, administrative offices and sales models on the Lots and Common Area within the Covered Property, as well as associated and ancillary services and facilities in connection therewith, including parking areas, open spaces and walking and recreational areas.

5.32 **Savings Clause.** The provisions of this Declaration shall be construed to be consistent with law, and should any provision violate law, then applicable law shall govern. Without limitation, no provision hereof shall be construed to prohibit the placement of solar heating or other such devices or antennae on Lots, provided such placement conforms to such lawful requirements hereof or of the City Guidelines which do not conflict with law, nor shall the provisions hereof prohibit the placement of the American Flag or other flags protected by law from regulation or prohibition by recorded covenants, or the parking of public service or other protected vehicles as provided by law, again subject to the City Guidelines and rules and regulations of the Association not in conflict with such laws.

## ARTICLE VI ORGANIZATION OF ASSOCIATION

6.1 **General Purpose and Charge.** The Association is a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

6.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board shall elect or appoint in accordance with the Articles and the Bylaws. During the period where Declarant is a Class B Member, the Board shall consist of at least one (1) director who shall be a Member or individual designated by a corporate, partnership or other non-individual Member, and all directors may be appointed by the Declarant as the Class B Member during the Declarant Control Period. The initial director appointed by Declarant may serve extended terms as provided in the Bylaws.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by the Class B Members to the Class A Members. The Board may 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 the manager.

6.3 **Association Rules.** By a majority vote of the Board, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property or the Common Area. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein, and may be enforced in the same manner as the provisions of this Declaration. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association. During the period while the Class B Membership continues to exist, the Class B Member may disapprove of actions of the Board to adopt, amend or repeal the Rules.



6.4 **Personal Liability.** No Board member, officer, committee member, employee or representative of the Association, or the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section shall, not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.5 **Mergers or Consolidations.** The Association shall have the right, power and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association.

## ARTICLE VII MEMBERSHIPS AND VOTING

7.1 **Votes of Owners.** Every Owner of a Lot, and Declarant so long as it owns any Lot, shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Class A Member shall have one (1) vote for each Lot owned. The Class B Member shall have eleven (11) votes for each Lot owned. For purposes of voting rights and all rights of Declarant reserved under this Declaration, Declarant shall be deemed to be the Owner of any Lots owned by any Declarant Affiliate. Accordingly, Declarant shall have eleven (11) votes for each Lot owned or deemed to be owned by a Declarant Affiliate, and, furthermore, all rights of Declarant under this Declaration will endure so long as Declarant owns or is deemed to own any Lot by virtue of any ownership by Declarant Affiliate.

7.2 **Membership is Appurtenant to Ownership.** Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only the Memberships for each Lot as are described herein. Joint ownership or ownership of undivided interests in any Lot as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot. Rather, the votes must be cast together in one unit.

7.3 **Declarant.** Declarant shall be a member of the Association for so long as it holds a Class A or Class B Membership.

7.4 **Membership Classes.** The Association shall have two classes of Members:

7.4.1 **Class A Members.** Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1.

7.4.2 **Class B Members.** The Class B Member shall be the Declarant who shall have the number of votes provided in Section 7.1. The Class B Membership shall terminate and be converted to a Class A Membership if Declarant in writing relinquishes its Class B Membership while it still owns any Lot.

Declarant shall have the right to assign its rights and privileges as the Declarant and as the Class B Member in whole or in part. Such assignment may include all special voting and other provisions set forth herein.

Should Declarant elect to relinquish its Class B Membership while it still owns any Lot, Declarant shall be a Class A Member entitled to Class A votes for all Lots which it owns, and no such relinquishment or conversion shall affect any reserved rights of Declarant as otherwise set forth herein.

7.5 **Right to Vote.** Class A votes shall only be cast by the Owner of the Lot to which such vote is attributable. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof, for example, the recorded deed showing the name of the Owner of such Lot. The vote for each Member must be cast as a single unit, and solely by the Owner as and when applicable.

In the event that a Lot for which an Owner may vote is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot all such votes shall be deemed void.

7.6 **Members' Rights.** Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the City Guidelines.

7.7 **Control by Declarant, and Rights of the Class B Member.** Declarant, as the Class B Member has the right to control the Association. Such control shall exist by virtue of the right, at all times during the Declarant Control Period, to appoint all directors of the Association, as well as their replacements in the event of death, removal, resignation or otherwise. Additionally, Declarant may amend this Declaration, may amend the Articles and Bylaws of the Association, and may veto amendments proposed to be made by the Class A Members. The Class B Member and Declarant shall have such additional and other rights and powers as are set forth herein or in other Governing Documents, including the right to disapprove of actions of the Board.

7.8 **Transfer of Membership.** The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a non-approved form of transfer shall be void. Any transfer of ownership in a Lot shall operate to transfer the Membership appurtenant to ownership to the new Owner.

## ARTICLE VIII ASSESSMENTS AND CREATION OF LIEN

8.1 **Creation of Assessment Lien; Personal Obligation of Lot Owner.** Each Owner by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument) is deemed to covenant and agree to pay to the Association the Assessments and the Management Fee (as defined in Section 8.14) when due. The amount and time for payment of the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Assessments, the Board may give such consideration as it determines appropriate to any surplus funds or

other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate.

Assessments, together with interest thereon and late charges and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot at the time when such Assessments become due and payable. This provision shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

**8.2 Annual Assessments.** The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth hereinbelow. The Annual Assessments levied by the Association shall be used to accomplish the duties and purposes of the Association within the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Area, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. The Annual Assessments shall take into account the Common Expenses of the Association.

Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the provisions hereof.

**8.3 Annual Assessment Period.** Except as otherwise provided herein below, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall, unless Declarant determines otherwise, commence upon conveyance of the first Lot from Declarant or any Declarant Affiliate (or from its predecessors) to an Owner other than Declarant or a Declarant Affiliate, and shall terminate on December 31 of the same year. The Annual Assessments shall be prorated for the initial Assessment Period.

If any installment permitted for the payment of Assessments is not paid when due, the Board may accelerate the entire Annual Assessment or other Assessment. Late fees and interest may be added to the Delinquent Amount of any Assessment, as provided herein, and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law. Delinquent payments shall, to the extent permitted by law, apply first to the principal amount of any delinquent Assessments, then to accrued interest, and then to late fees and other sums due. The Owner shall also be liable for attorney fees and legal costs, including litigation related expenses and expert witness fees, if any. Attorney fees and costs incurred shall to the extent permitted by law, be deemed a part of the delinquent Assessment, and shall be secured by the lien therefor. This provision shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

**8.4 Association's Rights in Spending Funds from Year to Year.** The Association shall not be obligated to spend in any year all monies received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year. The Board shall at any time have the right to adjust the Assessment made, and issue invoices for any additional sums due, subject to such limitations as exist at law.

**8.5 Rate of Assessment.** The amount of the Annual Assessments, Maintenance Assessments, and Special Assessments shall be established by the Board, in its sole discretion. In establishing its budget

and creating its plan for Assessments each year, the Board shall establish an Annual Assessment per Lot payable by the Owner of each Lot.

8.6 **Maintenance Assessments.** The Association may assess Maintenance Assessments against a Lot in the event the need for maintenance or repair of areas maintained by the Association is caused through:

(a) the willful or negligent act or omission of any Owner (or of any other person for whom such Owner is legally responsible under applicable state law); or

(b) the maintenance of a Lot by an Owner, or failure to maintain, so as to present a nuisance, or to substantially detract from or negatively affect the appearance or quality of any neighboring Lot or other area; or

(c) the maintenance of a Lot by an Owner, or failure to maintain, so as to violate this Declaration; or

(d) any use of, or activity on, or special condition of any Lot that causes maintenance or repair costs incurred or to be incurred by the Association with respect to Common Area to be substantially greater than those costs which would typically be incurred in relation to such Common Area, whether such use or activity is of a continuing nature or an isolated event.

In any such case, the Board may, depending upon the circumstances, give notice to the Owner of such Lot that unless specified corrective action is taken within a specified time period, the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action.

If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, at the Owner's sole cost, the Board is authorized and empowered, subject to such notice and hearing as may be required by law, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys' fees, shall be charged to the Owner as a Maintenance Assessment.

The Maintenance Assessment shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot is subject, shall be secured by the Assessment Lien, and shall be due fifteen (15) days after written demand or notice by the Board.

In no case may any form of Maintenance Assessment be levied or charged with respect to Lots owned by Declarant. All provisions of this Section are subject to limitations established at law.

8.7 **Fines and Penalties.** If any Owner, its/their family, or any Occupant, Invitee, or Lessee violates the provisions hereof, or any provision of any of the City Guidelines or other rules of the Association, the Board after providing the Owner with notice of the violation and an opportunity for a hearing as required by law, may levy a fine upon the Owner, may suspend the violator's right to use the Common Area (other than private ingress egress easement areas) and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including attorneys' fees and costs incurred. Such violation shall also be grounds for the Association, should it wish, to suspend the said rights of the Owner and its family members and Invitees.

The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within fifteen (15) days of notice of the due date, may be charged to the Owner of the Lot in question, and may be collected as provided by law.

In no event shall any fine be imposed for a default or violation of the Governing Documents, other than a failure to pay Assessments, without first affording the Owner notice and an opportunity for hearing and complying with other applicable provisions of law.

8.8 **Special Assessments.** In addition to the Annual Assessments, the Board may levy a Special Assessment a) for the purpose of constructing improvements to Common Area; b) correcting an inadequacy in the Association's accounts; c) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owned by the Association; or d) defraying other extraordinary expenses or paying other expenses the Board may deem appropriate, including increased expenses encountered by the Association in connection with increased insurance costs, taxes, or new or expanded Common Area amenities or features. The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments shall be approved by the Class B Member so long as such Membership exists.

8.9 **Billing and Collection Procedures.** The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot changes during an Assessment Period. Any successor Owner shall be given credit for any non-refunded prepayments made by a prior Owner.

8.10 **Collection Costs and Interest on Delinquent Amounts.** The Board may impose late charges, either in the form of a fixed amount or percentage of the delinquent amount, and including interest for delinquent amounts not timely paid, all as set forth in the Association Rules. The Owner shall be liable for all costs, including but not limited to attorneys, fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount, and such amounts, to the extent permitted by law, shall be deemed a part of the Assessment Lien.

#### 8.11 **Assessments Upon Transfer.**

8.11.1 **Working Capital Fund.** To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, each purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of a Lot a sum equal to one sixth (1/6) of the then-current Annual Assessment applicable to such Lot ("**Working Capital Fund Contribution**").

A Working Capital Fund Contribution shall continue to be payable upon each subsequent sale of a Lot, and the Working Capital Fund Contribution shall be deemed a covenant touching and concerning the land. Funds paid to the Association as a Working Capital Fund Contribution pursuant to this Section may, without limitation, be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration or the Articles or Bylaws. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.11.2 **Reserve Fund Assessment.** To help ensure that the Association shall have adequate funds reserved for repair and replacement of the Improvements within the Common Areas, each purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a "**Reserve Fund Assessment**" in an amount established by the Board from time to time. A Reserve Fund Assessment shall continue to be payable upon each subsequent sale of a Lot. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.11.3 **Administrative Fee.** Upon each transfer of title to a Lot, a purchaser shall pay to the Association through its managing agent immediately upon becoming the Owner of the Lot, an "**Administrative Fee**" to cover administrative costs of membership transfer in such amount as is established from time to time by the Board, not to exceed the amount permitted under Applicable Law.

8.11.4 **Exempt Transfers.** Notwithstanding the above, no Working Capital Fund Contribution, Reserve Fund Assessment or Administrative Fee shall be levied upon an Exempt Transfer.

8.11.5 **Notice of Transfer.** Owner shall notify the Association of a pending title transfer at least 10 days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and such other information as the Board may reasonably require

8.12 **Declarant's Exemption.** Anything in this Declaration to the contrary notwithstanding, neither the Declarant nor any Declarant Affiliate shall be liable for, nor shall they be required to pay, Assessments of any nature for Lots owned by them. Nor shall Declarant or a Declarant Affiliate be liable for the payment of any Assessments for any Lot that, having been previously sold to a purchaser, has been deeded back to the Declarant by foreclosure or deed in lieu of foreclosure.

8.13 **Payment of Deficiencies.** In consideration for Declarant's and each Declarant Affiliate's exemption from Assessments, and each Owner's Assessment reduction, if applicable, Declarant, each Declarant Affiliate and each Owner paying reduced Assessments shall pay, for any given Assessment Period in which Declarant and such Declarant Affiliates or Owners paying reduced Assessments have paid or contributed to the Association less than the full Annual Assessment for each Lot owned by them, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Area (i.e., only for actual budget deficits), but only in accordance with the terms hereof, and only up to the full Annual Assessment for each such Lot actually owned by Declarant or such Declarant Affiliates or Owners paying reduced Assessments in the Covered Property. A shortfall or deficiency shall exist if current ordinary and budgeted expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that Declarant and any such Declarant Affiliates shall not be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year, which decrease was not approved by Declarant, nor for any shortfall or deficiency incurred after expiration of the Class B Membership.

In the event of a shortfall or deficiency, each Owner then paying reduced Assessments, other than Declarant and each Declarant Affiliate, shall first pay its ratable share of same, based upon the number of Lots owned by each such Owner compared to the total number of Lots owned by all Owners paying reduced Assessments, up to the full amount of the otherwise applicable Annual Assessment for each Lot owned by such Owners, if not already paid. Thereafter, if any shortfall or deficiency remains, Declarant and each

Declarant Affiliate shall pay its ratable share of the same, up to the full amount of the Annual Assessment for each Lot owned by Declarant and any Declarant Affiliates, again based upon Lots owned and Assessments ordinarily payable in the absence of any exemption.

Declarant and any Declarant Affiliate may at any time at their sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay instead up to the full Annual Assessment for each Lot owned by Declarant or by such Declarant Affiliate or Owner paying reduced Assessments. Declarant's, and each Declarant Affiliate's and Owner's, obligation to contribute toward a deficiency as provided herein is supported by a lien on Declarant's Lots and the Lots of each Declarant Affiliate and Owner paying reduced Assessments. Nothing in this Section shall in any way limit or preclude the Board, whether or not at Declarant's instance, from increasing the Annual Assessment to avoid further deficiencies.

8.14 **Management Fee.** Declarant, during the Declarant Control Period, and thereafter the Association, will, to the extent practicable, employ a property manager to manage, repair, replace and operate the Common Areas, prepare budgets, bill and collect Assessments and take similar actions on behalf of the Association and will compensate such third-party manager on a reasonable and customary basis for similar properties in the same market area. In the event that, during the Declarant Control Period, it becomes necessary for Declarant to manage the Common Areas on an interim or temporary basis, due to any delay in contracting with a property manager, Declarant shall be entitled to receive compensation to cover Declarant's overhead and expenses with respect to the management of the Common Areas. Any amount paid to a third party or to Declarant pursuant to this Section 8.14 is referred to herein as the "**Management Fee.**"

8.15 **Savings Clause.** Notwithstanding the provisions of this Article, or any other provision of this Declaration, the extent of any lien of the Association shall be subject to such provisions as are established at law or in equity, including such limitations as are established and imposed by A.R.S. § 33-1807.

## ARTICLE IX ENFORCEMENT OF THE ASSESSMENT LIEN

9.1 **Association Remedies to Enforce Assessments.** If any Owner fails to pay any Assessments when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking any and all action available at law or in equity, including:

(a) Bringing an action against the Owner to recover judgment against the Owner who is personally liable for the Assessments; and,

(b) Foreclosing the Assessment Lien against the appropriate Lot in accordance with then prevailing Arizona law, including such limitations as are established by A.R.S. §33-1801 et seq. Though not required, the Association may record notice of its lien, and all costs of preparation of such notice, recording and releasing same, including attorney fees and costs, shall be paid by the delinquent Owner, with all expense thereof being a part of the lien of the Assessment.

9.2 **Subordination of Assessment Lien.** The Assessment Lien shall have priority from the date of recording of this Declaration, and shall be superior to all charges, liens or encumbrances which hereafter are or may be imposed on any Lot, except as provided by law. Without limitation, the Assessment lien is junior to:

(a) the lien of any First Mortgage encumbering a Lot; and

(b) the lien for taxes or other governmental assessments which are deemed superior hereto by applicable law.

Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, the sale or transfer of any Lot pursuant to any First Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot, or the Owner thereof, for liability from any Assessment theretofore becoming due nor from the Assessment Lien arising in regard thereto. No Event of Foreclosure shall relieve the Owner whose interest was foreclosed from liability for Assessments payable through the date of such Event of Foreclosure.

In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a First Mortgagee obtaining an interest in a Lot through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

## **ARTICLE X MAINTENANCE**

### **10.1 Maintenance Obligations of the Association.**

10.1.1 **Association Duty; Areas of Association Responsibility.** Except as provided below, the Association, or its duly delegated representative, shall maintain and otherwise manage all common streets, roads and paths and areas located within Common Area, including entry way features and landscaping within Common Area, and further including landscaping in right-of-way areas between sidewalks and the street curbs on the Owner's Lot, or other public or easement areas adjacent to the Owner's Lot, including walls, any gatehouse and related Improvements, and including any facilities, landscaping or riparian areas within private rights-of-way, including license or permit areas, for which the Association may be responsible, except that in the event the maintenance of such areas is the responsibility of a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility. The Association, or its duly delegated representative, shall further be responsible for the operation, maintenance (including insurance) and, if necessary, the replacement, restoration or reconstruction of street signs, markers, walls, fences, and curbs and other Improvements originally constructed by Declarant on the Common Areas. Common Area to be maintained by the Association may be identified on recorded subdivision plats approved by Declarant or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto.

10.1.2 **Public Rights of Way.** The Association may also in its discretion elect to maintain landscaping and similar improvements within public rights of way located within the Covered Property (if any) to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity with respect to such public rights of way.

10.1.3 **Private Driveways and Easement Areas.** The streets within the Covered Property are private streets pursuant to the Plat. However, as shown on the Plat, private driveways exist over and across certain Common Area owned by the Association, including driveways which are used by the Owners of Lots 1 and 11. Accordingly, Declarant does hereby grant, establish and reserve, for the benefit of all Owners of Lots served by such driveways traversing Common Area, and for the benefit of the Association,



perpetual easements pursuant to this Declaration for unencumbered vehicular and pedestrian ingress and egress over and across Tracts A, B, E and F, together with easements for maintenance, repair and replacement of driveway improvements thereon ("**Driveway Easements**"). Declarant hereby reserves the right unto itself, and its successors and assigns, and to the Association, to enter upon any Lot where easements exist for the purpose of constructing, using and maintaining such shared access Driveway Easements. The Driveway Easements shall be deemed an adjunct to Common Area, and all cost of maintenance, repair and replacement of the improvements within the Driveway Easements, including reasonable drainage repairs within the Driveway Easements, but not any private gates, if any, shall be the responsibility of the Association, with the cost thereof to be a part of the annual budget of the Association and collected from all Owners as a part of the Assessments. No Owner shall block or obstruct the Driveway Easements, park vehicles along the Driveway Easements, or place improvements or other items on the Driveway Easements (including, without limitation, temporary or permitted improvements or items, including basketball hoops) unless approved by the Board.

10.1.4 **Front Yard Maintenance.** The Association, or its duly delegated representative, shall maintain and otherwise manage all "soft" landscaping (i.e. vegetation) and irrigation located within the front yards of each Lot up to the front outer walls of each Dwelling Unit and side yard gates, fences or walls ("**Front Yard Maintenance Area**"). For purposes hereof, "Front Yard Maintenance Area" shall include (a) the front yards of Lots 1 and 11, which front yards face 13<sup>th</sup> Place, and (b) the side yards of Lots 1 and 11 that face Pomelo Grove Lane.

## 10.2 **Maintenance Obligations of Owners.**

10.2.1 **Owner's Duty of Maintenance.** Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot, including buildings, Improvements, hardscape, private drives, driveways, walkways and walks (including sidewalks adjacent to the roadways) thereon, in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements. Each Owner shall be responsible for the maintenance and repair of all utility lines located within such Owner's Lot, and such maintenance obligation shall include maintenance and repair of all leaching fields and related improvements. Each Owner's and Occupant's maintenance obligations shall further include the repair and maintenance of all utility connections within the Lot and up to the point of connection to and within the public right of way or public easement area, regardless of whether such point of connection is outside of the Owner's Lot.

No Improvement on any Lot shall be permitted to fall into disrepair and each such building and Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first-class appearance of the Improvement. In the event any building or Improvement is damaged or destroyed, then, subject to approval in accordance with ARTICLE IV, such building or Improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs within the time limits established by the Board, the Board and its agents and representatives are empowered to enter on the Lot and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments. Any such entry shall be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

10.2.2 **Maintenance of Landscaping and Driveways.** Each Owner shall be responsible for the proper maintenance of all landscaping on the Owner's Lot (including set back areas); provided,

however, that the Association shall be responsible for the proper maintenance of the Front Yard Maintenance Area in accordance with Section 10.1.4. Owner's maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly materials.

All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately.

All areas shall be kept free of weeds and cultivated periodically as needed. No area shall be over watered so as to create a risk of damage to nearby structures or Improvements. Landscaping may be required to be placed on a Lot and properly completed within certain time frames established by the City Guidelines, and in accordance with standards set forth therein. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways and parking areas, located on the Owner's Lot.

Any Owner who fails to properly maintain the landscaping upon the Lot shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot after receiving notice from the Board to do so, and after such hearing and notice as may be required by law, the Association is empowered to enter upon the Lot, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as Maintenance Assessments.

**10.3 Maintenance of Lot Line Easement Areas.** Each Owner of a Benefited Lot, at such Owner's sole cost and expense, shall be responsible to maintain the Lot Line Easement Area to which such Owner has an easement, including all Improvements thereon, in the same manner as is required for such Owner's Lot in accordance with Section 10.2. Owners of Burdened Lots shall not be responsible for maintenance or repair of the Lot Line Easement Area located on such Owner's Lot unless such maintenance or repair is required as a result of the willful or negligent act of the Owner of the Burdened Lot or the Burdened Lot Owner's Occupants, agents, or Invitees. The Association shall be responsible to maintain each Lot Line Easement Area located on a Burdened Lot to which the Association has an easement, including all Improvements thereon, in the same manner as is required for other Common Area. The Association shall not be responsible for maintenance or repair of the Lot Line Easement Area located on Common Area unless such maintenance or repair is required as a result of the willful or negligent act of the Association.

**10.4 Standard of Care.** The Association and the Owners shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas, Lots and other areas within the Covered Property so that the Covered Property will reflect a high degree of pride of ownership. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Areas.

## ARTICLE XI RIGHTS AND POWERS OF ASSOCIATION

**11.1 Rights, Powers and Duties of the Association.** In addition to the rights and powers of the Association set forth in the Governing Documents, the Association shall have such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association

as set forth herein. A copy of the Governing Documents shall be available for inspection at the office of the Association during reasonable business hours.

11.2 **Rules and Regulations.** In addition to the right to adopt, amend and repeal rules and regulations, including the Association Rules (collectively, the "**Rules**") on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations, as a part of the Rules, with respect to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of the Governing Documents. Upon adoption, the Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

11.3 **Association's Rights of Enforcement.** The Association shall have the right, but not the obligation, to enforce the provisions of this Declaration and all Additional Covenants that shall have been executed pursuant to or subject to the provisions of this Declaration. Whether or not the Association shall fail or refuse to enforce the provisions of this Declaration or the Additional Covenants after receipt of written request to enforce from any Owner, any Owner shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

11.4 **Enforcement Methods and Means.** The Association, after affording such notice and opportunity for a hearing, or to be heard, and subject to all other provisions of law, may enforce the provisions hereof at law or in equity, including, but not limited to:

(a) Imposing reasonable monetary penalties, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her Invitees and Lessees.

(b) Suspending an Owner's right to vote after notice and opportunity to be heard.

(c) Suspending any services provided by the Association to an Owner or the Owner's property if the Owner is more than fifteen (15) days delinquent in paying any Assessment or other charge owed to the Association.

(d) Exercising self-help or taking action to abate any violation of the provisions hereof.

(e) Requiring an Owner at the Owner's expense to remove any offending condition, structure or improvement on the Owner's property, and further requiring the said Owner to restore his or her property to the condition in which it previously existed, without such action being a trespass.

(f) Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee or other Invitee of an Owner who fails to comply with the terms and provisions of the Declaration from continuing to perform and further activities on the Covered Property.

(g) Towing vehicles which are parked in violation of the provisions hereof.

(h) Filing suit at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate.

The Board may weigh financial and other factors, such as possible defenses, legal merit and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to take legal action shall not limit or waive the right of any Owner to pursue proper action, nor the right of the Association to pursue action at a future time should it so desire.

**11.5 Contracts with Others; Bulk Service Agreements.** Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and applicable state law, the Association may enter into contracts with others, including Declarant and Declarant Affiliates, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant Affiliates, provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association shall be for a term not exceeding the maximum term permitted by law.

The Association may, without limitation, provide services and facilities for the Members of the Association and their Lessees and Invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or may be funded as otherwise determined by the Board in accordance with this Declaration. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. If all Lots within the Covered Property are to be served by a particular bulk service agreement, the Board shall have the option either to (a) include the Association's costs under such bulk service agreement in the budget for each applicable fiscal year and thereby include such costs in the Assessments for each such applicable year, or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly).

## **ARTICLE XII**

### **EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA**

**12.1 Eminent Domain.** In the event of a threatened taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Any awards received on account of the taking shall be paid to the Association. In the event of a total taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or

distribute pro rata all or a portion thereof to the Owners, and all holders of liens and encumbrances, as their interest may appear of record.

The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation.

**12.2 Condemnation or Insurance Proceeds; Protections of First Mortgagees.** No Owner, or any other party, shall have priority over any rights of any First Mortgagee pursuant to its mortgage or deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Further, First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Area in the case of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Association.

**12.3 Authority to Purchase Insurance.** The Association shall, as a Common Expense purchase, maintain such property damage and liability insurance upon the Common Area and commercial general liability insurance for all activities of the Association, and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions.

Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers' liability insurance covering all officers and directors of the Association as well as all regular and alternate members of the Board, the Declarant, and, to the extent such insurance is reasonably available, and at the Board's discretion, any property manager under contract with the Association, all in amounts and on terms adequate to permit the Association to indemnify such persons pursuant to the provisions hereof and pursuant to the provisions of the Articles and Bylaws. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

**12.4 Individual Responsibility.** It shall be the sole responsibility of each Owner or Occupant to provide insurance for real or personal property or interests owned or held by such Owners within the Covered Property, including, but not limited to, homeowners insurance, hazard, fire and casualty insurance, liability insurance, and property damage insurance covering all additions and Improvements to Lots and easement areas held by such Owners or Occupants, furnishings and personal property therein, and personal liability.

Each Owner and Occupant shall also provide such other insurance as such Person desires. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the Improvements or fixtures on the Common Area. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

In case of damage or destruction by fire or other casualty, each Owner shall promptly repair and restore the Improvements to the Lot, or shall clear and restore the Lot to an aesthetically acceptable condition, in either case to the satisfaction of the Board.

12.5 **Insurance Claims.** The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association covering Common Area and improvements thereon, property or interests of the Association, liability of the Association, and other such insurance held by the Association.

Each Owner shall execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing.

The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

In the event an Owner (or any other person for whom such Owner is legally responsible under applicable state law) causes any damage or destruction to the Common Area or Improvements thereon for which the Association maintains insurance, such Owner shall, at the sole election of the Board, be responsible for the payment of any deductible portion of the insurance, which amount may be assessed as a Maintenance Assessment against the Owner and the Lot. Alternatively, if commercially reasonable in the discretion of the Board, in lieu of the Association filing an insurance claim, the Association may assess a Maintenance Assessment as provided in Section 8.6 with respect to the full repair and/or replacement expense resulting from the damage or destruction.

### **ARTICLE XIII DISPUTE RESOLUTION**

13.1 **Approval of Association Action.** Except as provided in this Article, the Association may not commence a legal proceeding or an action within the purview of Section 13.4 without the approval of the Board and at least two-thirds (2/3rds) of the Class A Members votes of Members eligible to vote, in addition to such other requirements as exist at law. This Article shall not apply, however, to (i) actions brought by the Association to enforce Governing Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

13.2 **Right to Inspect and Right to Corrective Action.** For Claims governed by A.R.S. §12-1361 through A.R.S. §12-1366 ("**Purchaser Dwelling Act**"), the parties shall proceed in accordance with A.R.S. §12-1363. For Claims not governed by the Purchaser Dwelling Act, the parties shall proceed as follows. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant, and any interested Declarant Party (who is notified of the Claim Notice by Declarant), and the Claimant shall meet at a mutually acceptable place to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant, Declarant's representatives and other Declarant Parties shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by Declarant (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the dispute is resolved as provided in this Section 13.2. The parties shall negotiate

in good faith in an attempt to resolve the claim. If Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Lot and the property which is the subject of the claim to take and complete corrective action.

13.3 **Alternative Method for Resolving Disputes.** Declarant, its beneficiaries, members, partners, officers, directors employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Owners and Members of the Association, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "**Bound Party**") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 13.4 (singularly, "**Claim**," and collectively, "**Claims**") to the procedures set forth in Section 13.5.

13.4 **Claims.** Unless specifically exempted below, all claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of this Declaration, or to the Articles or Bylaws or the rights, obligations and duties of any Bound Party under the Governing Documents; (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of Section 13.5.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 13.5:

(a) any lawsuit by the Association against any Bound Party to enforce the provisions hereof pertaining to assessments, fines or charges;

(b) any lawsuit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions hereof;

(c) any lawsuit between or among Owners, which does not include Declarant, Declarant Affiliate, their beneficiaries, members, partners, officers, directors, employees or agents, or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(d) any lawsuit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above identified in this Section may be submitted to the alternative dispute resolution procedures set forth herein.

### 13.5 **Mandatory Procedures.**

13.5.1 **Notice.** Any Bound Party having a Claim ("**Claimant**") against any other Bound Party ("**Respondent**") (Claimant and Respondent referred to herein being individually, as a "**Party**" or, collectively, as the "**Parties**") shall notify each Respondent in writing ("**Claim Notice**"), stating plainly and concisely:

- the Claim;
- (a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
  - (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
  - (c) the proposed remedy; and
  - (d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

#### 13.5.2 **Negotiation.**

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Claim Notice, the Board may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within thirty (30) days after the date of the Claim Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), the Claim shall be pursued by the Claimant in arbitration.

13.5.3 **Arbitration Required; Binding Arbitration.** Upon Termination of Negotiations, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such claims shall not be decided by or in a court of law. Arbitration shall take place in Pima County, Arizona. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

13.6 **Amendment of Article; Severability.** Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty (20) years from the effective date of this Declaration. The provisions of this Article shall be deemed severable, and should any portion be declared unenforceable by any court of competent jurisdiction, the remaining provisions shall be unaffected.

### **ARTICLE XIV TERM; AMENDMENTS; TERMINATION**

14.1 **Term; Method of Termination.** This Declaration shall be effective upon its recordation and, as amended from time to time, shall continue in full force and effect unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%) of the total votes entitled to be cast by the entire Membership. Upon the recording of a Certificate of Termination executed by the President and Secretary of the Association confirming such vote, this Declaration shall have no further force



and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona. No such termination shall be effective unless approved in writing by Declarant so long as Declarant owns any portion of the Covered Property, and no such termination may occur unless and until adequate arrangements have been made for the care and maintenance of all Common Area.

#### 14.2 **Amendments.**

14.2.1 **By Declarant.** In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may amend this Declaration for any purpose whatsoever, and without the consent or approval of any Owners or Members, or any other Person, regardless of whether any such amendment is uniform in nature, and, without limitation, such amendments may change or impact the provisions hereof regarding voting rights, assessments and use restrictions.

In addition to the foregoing, and without limitation, for so long as Declarant owns any portion of the Covered Property Declarant may of its own volition, and without the consent or approval of any Owners or Members, or any other Person, amend this Declaration for the following purposes: (a) to bring any provision hereof into compliance with applicable law; (b) to satisfy the requirements of any Agency pertaining to lending criteria, or established as conditions for the acceptability or approval of mortgages, mortgage insurance, loan guarantees or other factors; or (c) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof.

Any amendment during such time as Declarant is a Member of the Association or the Owner of any Lot shall require the written approval of the Declarant. Further, so long as Declarant owns any land from within the Covered Property, Declarant may, without any other consent or approval, amend this Declaration to clarify the application of the provisions hereof to any land which may be annexed, or for any other reasonable purpose in connection with any land which may be annexed.

14.2.2 **By Association.** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners, including Declarant, who in the aggregate own more than fifty percent (50%) of the Lots within the Covered Property, and Declarant's consent as well so long as Declarant owns any Lot or is a Member of the Association.

### **ARTICLE XV PROJECT DISCLOSURES**

15.1 **View Impairment.** Neither Declarant, nor the Association guarantees or represents that any view or passage of light and air over and across any portion of the Covered Property, including any Lot, from adjacent Lots or Common Area will be preserved without impairment. Neither Declarant nor the Association shall have the obligation to prune, thin, remove or replace trees or other landscaping except as determined by the Board. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any view which exists at any point in time for a Lot may be impaired or obstructed by further construction, including, without limitation, by construction of Improvements (including without limitation, landscaping) by Declarant or by any third person (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including, without limitation, any

broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

**15.2 Centralized Refuse/Recycle Locations.** Karma Subdivision has been approved by with centralized collection locations which are not directly adjacent to each Dwelling Unit, as shown on the Final Site Plan on file with the City of Phoenix Planning and Development Department. Each Resident is responsible to transport refuse/recycle materials to the approved collection Bins/enclosures. Any modifications to the solid waste collection locations must be approved through the submittal of a site plan amendment to the Planning and Development Department with consent from the Public Works Department. This Section 15.2 may not be modified or removed without express written permission from the Planning and Development Department.

## **ARTICLE XVI MISCELLANEOUS**

**16.1 Additional Covenants.** In furtherance of the orderly sale and development of the Covered Property, and of the protection and enhancement of the value of the Covered Property, Declarant shall have the right, power and authority (but not the obligation), where in Declarant's discretion the circumstances so warrant, to execute prior to, with or after the sale of any portion of the Covered Property by any purchaser, a supplement to this Declaration adding additional covenants or restrictions, qualifying or limiting the application of this Declaration to such land, or entirely excepting such land from the coverage hereof any from all of the restrictions, limitations or other provisions included herein.

**16.2 Enforcement Rights.** Each Owner (including Declarant, so long as Declarant is an Owner) shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

**16.3 Interpretation of the Covenants.** Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions in ARTICLE V hereof. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

**16.4 Assumption of Risk.** Neither the Association, the members of the Board, the officers of the Association, the management company of the Association, nor the Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or Occupant of any Lot or any Lessee, or Invitee of any Owner or Occupant or for any property of any such persons. Each Owner and Occupant of a Lot and each Lessee and Invitee of any Owner or Occupant shall assume all risks associated with the use and enjoyment of the Covered Property, including all Common Area.

Neither the Association, the members of the Board, the officers of the Association, the Association's management company nor the Declarant shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Covered Property. Each Owner and Occupant of a Lot and each Lessee, and Invitee of any Owner or Occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of utility lines or utility sub-stations and further acknowledges that neither the Association, the members of the Board, the officers of the Association, the Association's management

company nor the Declarant have made any representations or warranties, nor has any Owner or Occupant, or any Lessee, or Invitee of any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

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

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

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

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

16.7 **Declarant's Disclaimer of Representations.** Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Covered Property can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect.

No provision or content of any development plan showing or applicable to the Covered Property shall be deemed a representation that any facility, land or feature shall be included either in the Covered Property or the Common Area. Without limitation, nothing herein shall be construed as a covenant or obligation to develop all or any portion of the Covered Property, and Declarant may, in its sole discretion, construct or develop the Covered Property in one or more phases of development.

While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

16.8 **Successors and Assigns.** Any reference in this Declaration to Declarant shall include any successors or assignees of all or a specified portion of Declarant's rights and powers hereunder. Any such

assignment shall be evidenced by a written instrument executed by Declarant whereby such rights and powers (or any specified portion thereof) are specifically assigned.

**IN WITNESS WHEREOF**, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

**DECLARANT:**

BV I – 1317, LLC, an Arizona limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

JASON BOPER  
MANAGER

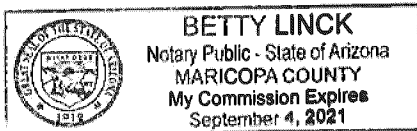
STATE OF ARIZONA )  
COUNTY OF MARICOPA ) ss.

The foregoing instrument was acknowledged before me this 4th day of JUNE, 2021, by JASON BOPER, on behalf of \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, as MANAGER of BV I – 1317, LLC, an Arizona limited liability company.

Betty Linck  
Notary Public

My commission expires:

\_\_\_\_\_



**Exhibit A****Covered Property**

Lots 1 through 11, inclusive, and Tracts A, B, C, D, E and F of Karma Subdivision, a detached single-family planned residential development subdivision subject to single-family design review of Maricopa County, Arizona, recorded in Book 1589 of Maps and Plats at Page 2 thereof, Maricopa County Records.

**Exhibit B**

**Lot Line Easement Areas**

**[See Attached]**

20210624235

**PROJECT**

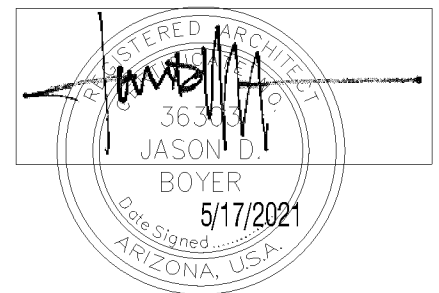
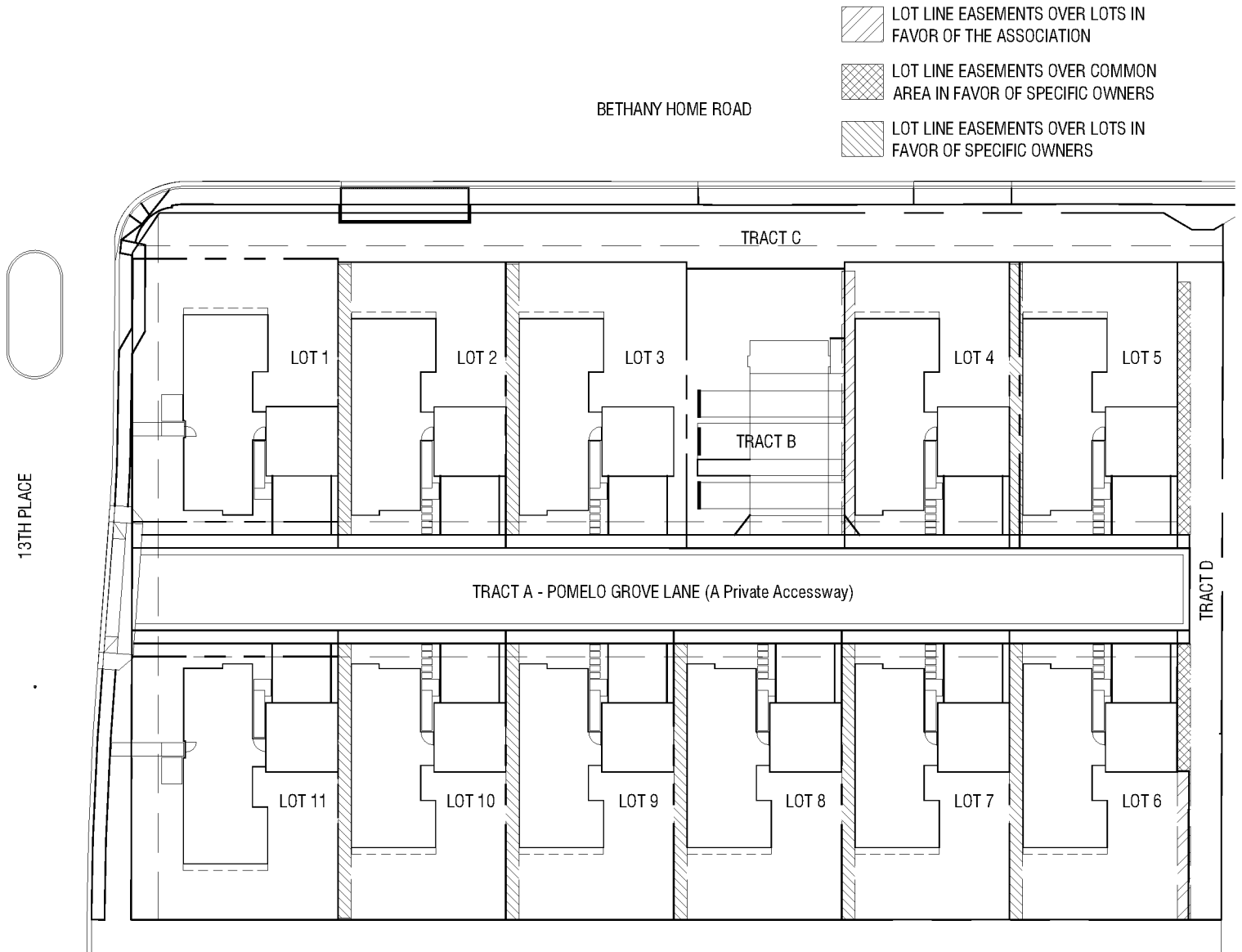
KARMA Subdivision

**LOCATION**

1317 E Bethany Home RD

**\*\*EXHIBIT B\*\***

**LOT LINE EASEMENT AREAS**



Expires 6/30/2022

**APPLICANT**

BOYER VERTICAL, LLC  
(602) 689-0710

**ARCHITECT OF RECORD**

JASON BOYER ARCHITECTS, LLC  
4312 E Colter St  
Phoenix, Arizona 85018  
(602) 689-0710  
jboyer@arthausphx.com

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**EXHIBIT C**

**City Guidelines**

**[See Attached]**





## City of Phoenix

### SINGLE-FAMILY RESIDENTIAL HOUSING DESIGN REVIEW DEVELOPMENT AGREEMENT

This Agreement, ("Agreement") made this 6<sup>th</sup> day of **May 2021**, by and between **the City of Phoenix, Arizona**, an Arizona Municipal Corporation ("City"), and **Boyer Vertical LLC**, an Arizona Limited Liability Company ("Developer").

#### RECITALS

- I. The City Council approved a Single-Family Residential Housing Design Review Ordinance (G-4078 as amended), ("Ordinance") which included certain Development Standards and Design Guidelines ("Development Standards") which must be followed as a condition of subdivision plat/site plan approval and individual building permit approval.

**NOW, THEREFORE, IT IS AGREED BY THE PARTIES HERETO AS FOLLOWS:**

#### AGREEMENT

- I. Developer agrees to submit Development Review documents for City approval and market and/or construct ("develop") single-family homes in the Project in accordance with approved Development Standards a copy of which is attached hereto and incorporated herein by this reference:

**PDD KIVA#: 20-2243**

**SDEV: 2007767**

**PLAT: 210006**

**Subdivision Name: Karma Subdivision**

**Location: SEC of Bethany Home Road and 13<sup>th</sup> Place**

**SCSU: 2100538**

- II. In addition to developing the project is in accordance with approved Development Standards, and approved Development Review documents, Developer shall adhere to the following:
  - A. Developer shall comply with all applicable City codes and ordinances.
  - B. The following development standards and the referenced Diversity Exhibit (Exhibit B) have been offered by the developer and approved by the City for compliance with the requirements of Section 507 Tab A.II.C.8 of the Zoning Ordinance (Single-Family Design Review):

## 1. SUBDIVISION DESIGN

- a. The developer agrees to vary the driveway orientation or location for 25 percent of the lots in each subdivision by providing the following:
  1. Providing side-entry garages for all corner lots, excluding collectors or where prohibited by site visibility regulations.
- b. The relationship between buildings shall be varied by:
  1. Varying the lot width by 5 feet for 10 percent of the lots on each block face.
- c. Street orientation shall be varied by:
  1. Providing street patterns that minimize the impact of sequential garages (e.g. cul-de-sacs, short block lengths, eyebrows, etc.), per the approved Final Site Plan
- b. The Applicant has chosen to use the Alternative Approach for this section. The developer meets the intent of the housing design review guidelines by providing the following elements:
  1. Lots 1 and 11 front on 13<sup>th</sup> Place with a 15' front setback. Lots 2-10 front on the private drive with a 10' front building setback and 18' garage setback.

## 2. HOUSING DESIGN

- a. The applicant shall offer the following different Standard Plans for lots 1 – 11 as designated below and contained in the Diversity Exhibit (Exhibit B).

<i>Model #</i>	<i>C.O.P. Standard Plan #</i>	<i>Restrictions:</i>
A – SIP	RPRS 2102242	(1)
A – Wood Frame	RPRS 2102269	(1)
B – SIP	RPRS 2102268	(2)
B – Wood Frame	RPRS 2102241	(2)
C – SIP	RPRS 2102287	(3)
C – Wood Frame	RPRS 2102250	(3)

(1) *This model can be used on lots 1 and 11.*

(2) *This model can be used on lots 6 – 10.*

(3) *This model can be used on lots 2 – 5.*

- c. One elevation option is provided for each standard plan (as shown in Exhibit B).
- d. One color scheme is provided for all homes in this development (as shown in Exhibit B).
- e. Three roof colors/materials options are provided for all homes in this development (as shown in Exhibit B).
- f. Exterior accent materials are offered (wood siding, metal detailing) on all models.
- g. Three different front yard plant palettes consisting of one accent tree, five shrubs and turf or groundcover, or evidence of a landscaping incentive package is offered, as depicted in the Diversity Exhibit (Exhibit B).
- h. Exterior detailing on all elevations visible from public streets, such as stucco recesses, pop-outs, accent materials, or corbels, are provided as depicted in the Diversity Exhibit (Exhibit B).

- i. The Applicant has chosen to use the Alternative Approach for this section. The developer meets the intent of the housing design review guidelines by providing the following elements:
  - 1. The home designs offer a diverse but compatible housing choice to other single-family homes in the surrounding community. Diversity of exterior finish materials using upgraded roofing, sand finish stucco, wood composite siding accents at entry with three (3) color choices, contrasting garage cladding with two (2) metal panel options, and dark bronze window frames. Lots 1 and 11 provide three (3) 2.5"-caliper trees and densely packed shrubs in each front yard. Lots 2 through 10 provide one 2"-caliper tree with densely packed shrubs in each front yard. All homes have hardscape that is upgraded to exposed aggregate concrete with buyer option for pavers at the driveway.

### 3. GARAGE TREATMENT

- a. Elevations with garage doors not exceeding 50% of the house width for two car garages. No three car garages are provided.
- b. All house designs have setback garages, so there is no garage projection in front of a livable space.
- c. Driveway finish options are exposed aggregate or pavers (as shown in Exhibit B).
- d. Alternative garage locations (e.g., rear or side entry, etc.) will be provided for 10% of the houses. Lots 1 and 11 have side entry garages, since they front on 13<sup>th</sup> Place.
- e. Glass garage doors are offered as an option for all homes (as shown in Exhibit B).

### 4. COMMUNITY SAFETY

- a. Architectural feature are provided which clearly delineates the front entry of the home such as a front porch, entry patio, courtyard, or archway.
- b. All elevations shall provide front entrances which are visible from the street or adjacent open space, and architectural features which clearly delineate the front entry of each home.

C. Prior to building permit issuance of any individual homes on the project parcel, all required Development Review documents and/or development agreements must be submitted for review and approved by the City. Building Plans must clearly indicate and show on the face of the plan compliance with applicable Development Standards and Design Guidelines as required by City approval.

D. Developer agrees that applicable development standards and design review characteristics designated or referenced as "Exhibit B" in City approved Development Review documents shall be on display for public review in the model complex and/or associated sales office prior to individual building permit issuance.

III. This "Agreement" shall remain in force and coincide with the terms of validity for Development Review documents in accordance with Section 507 J. 6.2.a.b. of the Phoenix Zoning Ordinance unless amended or renewed by City approval.

IV. Approved Development Review documents shall be binding upon the applicants and their successors or assignees.


## V. Developer acknowledges that:

- a. In the case of subdivision development, the Planning and Development Department will monitor the build-out of each subdivision approved through the Development Review Process for conformance to approved Development Review documents and exhibits. The Planning and Development Department may withhold the release of building permits within a subdivision if, at the discretion of the Planning and Development Director, the buildings within the subdivision are not conforming to diversity standards set by the approved development review documents.
- b. For Design Review of residential subdivisions or residential architecture, additional provisions of Development Review approval may be applied if the applicant requests modifications to the originally approved Development Review documents. Any modifications to approved development review documents must be reviewed and approved by the City prior to building permit approval/issuance or on-site field inspection of proposed site changes.

**“CITY”**

CITY OF PHOENIX, a municipal corporation

By:

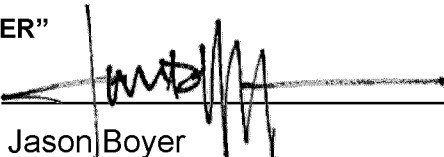
 for  
 Christopher DePerro, Design Advisor

May 12, 2021

Date

**“DEVELOPER”**

Signature:



Print Name: Jason Boyer

Title:

Manager for Boyer Vertical, LLC
05/12/2021

Date

**EXHIBIT C****City Guidelines**

Copies of the City Guidelines (which include, as amended from time to time, the City of Phoenix's Single-Family Residential Housing Design Review Development Agreement between the City of Phoenix and Boyer Vertical LLC dated May 6, 2021, and certain site plans for KARMA Subdivision, pages A1 through A23 and landscape plans, pages L1 through L3) are on file with the City of Phoenix Site Planning Office using the below reference information. The City Guidelines are incorporated herein by reference.

**PDD KIVA#: 20-2243**

**SDEV: 2007767**

**PLAT: 210006**

**Subdivision Name: Karma Subdivision**

**Location: SEC of Bethany Home Road and 13<sup>th</sup> Place**

**SCSU: 2100538**