

FIDELITY NATIONAL TITLE

WHEN RECORDED MAIL TO:

Funk Family Enterprises LLC
1806 N. Lindsay, Ste 102
Mesa, Arizona 85213

File # 95000070

CAPTION HEADING:

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM AND OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COTTAGES AT ARCADIA SITE CONDOMINIUMS**

This document is being re-recorded for the sole purpose of correcting the name of the subdivision in the caption heading to: **COTTAGES AT ARCADIA SITE CONDOMINIUMS** and for no other purpose.

**DO NOT DETACH THIS PAGE FROM THE ORIGINAL
DOCUMENT RECORDED ***** IN INSTRUMENT *****.**

When recorded, return to:

Funk Family Enterprises LLC
1806 N. Lindsay, Ste. 102
Mesa, Arizona 85213

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20130947708 10/29/2013 03:42
95000070-72-1-1--
ELECTRONIC RECORDING

FIDELITY NATIONAL TITLE

95000070

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM AND
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COTAGES AT ARCADIA SITE CONDOMINIUMS**

Unofficial Document

MARICOPA COUNTY, ARIZONA

**NOTICE: THIS DECLARATION CONTAINS PROVISIONS FOR
THE RESOLUTION OF DISPUTES. SEE ARTICLE 11 HEREIN**

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	2
1.0 GENERAL DEFINITIONS AND DEFINED TERMS	2
1.1 "ACCESS GATE"	2
1.2 "ADJOINING UNIT"	2
1.3 "ADMINISTRATIVE RECORDS FEE"	2
1.4 "APPLICABLE LAWS"	2
1.5 "ARCHITECTURAL COMMITTEE"	2
1.6 "ARCHITECTURAL RULES"	2
1.7 "ARTICLES"	2
1.8 "ASSESSMENTS"	2
1.9 "ASSESSMENT LIEN"	2
1.10 "ASSOCIATION"	2
1.11 "AUTHORIZED ANTENNA"	3
1.12 "BOARD OF DIRECTORS" OR "BOARD"	3
1.13 "BYLAWS"	3
1.14 "CBU"	3
1.15 "CITY"	3
1.16 "CLAIM"	3
1.17 "CLAIM NOTICE"	3
1.18 "COLLECTION COSTS"	3
1.19 "COMMON ELEMENTS"	3
1.20 "COMMON EXPENSES"	4
1.21 "COMMON EXPENSE ASSESSMENT"	4
1.22 "COMMON EXPENSE LIABILITY"	4
1.23 "CONDOMINIUM"	4
1.24 "CONDOMINIUM DOCUMENTS"	4
1.25 "DECLARANT"	4
1.26 "DECLARANT PARTIES"	4
1.27 "DECLARATION"	4
1.28 "DEVELOPMENT RIGHTS"	4
1.29 "DIRECTOR"	5
1.30 "DISPUTE"	5
1.31 "ELIGIBLE INSURER OR GUARANTOR"	5
1.32 "ELIGIBLE MORTGAGE HOLDER"	5
1.33 "ENFORCEMENT ASSESSMENT"	5
1.34 "FHA"	5
1.35 "FIRST MORTGAGE"	5
1.36 "FIRST MORTGAGEE"	5
1.37 "IMPROVEMENT"	5
1.38 "INITIAL CAPITAL CONTRIBUTION"	5
1.39 "INITIAL DISPUTE NOTICE"	5
1.40 "INITIAL USAGE SET-UP FEE"	6
1.41 "INVITEE"	6
1.42 "LESSEE"	6
1.43 "LIMITED COMMON ELEMENTS"	6
1.44 "MANAGING AGENT"	6
1.45 "MEMBER"	6
1.46 "MODIFICATIONS"	6
1.47 "MODIFICATION APPROVAL REQUEST FORM"	6
1.48 "NOTICE OF ASSESSMENT LIEN"	6
1.49 "NOTICE OF COMPLIANCE"	6
1.50 "NOTICE OF VIOLATION"	6

1.51	"PARTY WALL"	6
1.52	"PERIOD OF DECLARANT CONTROL"	7
1.53	"PERMITTED PET"	7
1.54	"PERSON"	7
1.55	"PLANS"	7
1.56	"PLAT" OR "REPLAT"	7
1.57	"PRIVACY WALL"	7
1.58	"PRIVATE YARD"	7
1.59	"PURCHASER"	7
1.60	"RECORDING"	7
1.61	"RESERVE ACCOUNT"	7
1.62	"RESERVE CONTRIBUTION"	7
1.63	"RESIDENT"	8
1.64	"RESIDENTIAL DWELLING"	8
1.65	"RETENTION FACILITIES"	8
1.66	"RULES"	8
1.67	"SINGLE FAMILY"	8
1.68	"SPECIAL ASSESSMENT"	8
1.69	"SPECIAL DECLARANT RIGHTS"	8
1.70	"UNIT"	9
1.71	"UNIT OWNER"	9
1.72	"UTILITY FACILITIES"	9
1.73	"VA"	9
1.74	"VEHICLE"	9
1.75	"VISIBLE FROM NEIGHBORING PROPERTY"	9
1.76	"WATER AND SEWER USAGE FEE"	9
ARTICLE 2 NOTICE OF RESUBMITTAL OF PROPERTY TO THE CONDOMINIUM PURSUANT TO REVISED LEGAL DESCRIPTION OF AND DEVELOPMENT PLAN FOR THE CONDOMINIUM		10
2.0	RESUBMISSION OF PROPERTY TO A CONDOMINIUM	10
2.1	UNIT BOUNDARIES/STATUTORY LIMITED COMMON ELEMENTS	10
2.2	ALLOCATION OF COMMON ELEMENT INTEREST	10
2.3	ALLOCATION OF COMMON EXPENSE LIABILITIES	11
2.4	ALLOCATION OF VOTES IN THE ASSOCIATION	11
2.5	ALLOCATION OF LIMITED COMMON ELEMENTS	11
ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS		11
3.0	UTILITY AND SERVICE COMPANY EASEMENTS	11
3.1	EASEMENTS FOR INGRESS AND EGRESS	12
3.2	UNIT OWNERS' EASEMENTS OF ENJOYMENT	12
3.3	DECLARANT'S EASEMENTS AND RESERVED RIGHTS	13
3.4	EASEMENT FOR SUPPORT	15
3.5	COMMON ELEMENTS EASEMENT IN FAVOR OF UNIT OWNERS	15
3.6	EASEMENTS IN FAVOR OF ASSOCIATION	15
3.7	EASEMENT FOR UNINTENDED OR MINOR ENCROACHMENTS/AS-BUILT CONDITIONS	16
3.8	PLAT EASEMENTS	17
3.9	PROXIMITY TO AIRPORT	17
ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS		17
4.0	SINGLE FAMILY RESIDENTIAL USE/POLITICAL ACTIVITY AND DOOR TO DOOR SOLICITATION	17
4.1	ANTENNAS	18
4.2	UTILITY SERVICE/MAIL SERVICE (CBUs)	19
4.3	MODIFICATIONS	19
4.4	TRASH AND RECYCLING CONTAINERS AND COLLECTION	22
4.5	MACHINERY AND EQUIPMENT	22
4.6	ANIMALS	22

4.7	TEMPORARY OCCUPANCY	23
4.8	COMMUNITY PRIVACY MEASURES	23
4.9	MINERAL EXPLORATION	23
4.10	ENVIRONMENTAL RESTRICTIONS/NOISE ABATEMENT	23
4.11	DISEASES AND INSECTS	24
4.12	GENERAL RESTRICTIONS REGARDING PARKING OF VEHICLES	24
4.13	VEHICLE REPAIR AND TOWING	24
4.14	SIGNS/FLAGS	25
4.15	LAWFUL USE	25
4.16	NUISANCES AND OFFENSIVE ACTIVITY	25
4.17	WINDOW COVERINGS	25
4.18	LEASING OF UNITS	26
4.19	TIME SHARING	26
4.20	VARIANCES	26
4.21	DECLARANT APPROVAL REQUIRED	27
4.22	SAVINGS CLAUSE	27
ARTICLE 5 CONDOMINIUM MAINTENANCE AND REPAIR		27
5.0	DUTIES OF THE ASSOCIATION	27
5.1	DUTIES OF UNIT OWNERS	29
5.2	REPAIR OR RESTORATION CAUSED BY NEGLIGENT OR WRONGFUL ACTS	29
5.3	UNIT OWNER'S FAILURE TO MAINTAIN	29
5.4	PRIVACY WALLS AS PARTY WALLS	30
5.5	NO RESPONSIBILITY OF THE CITY	31
ARTICLE 6 THE ASSOCIATION		31
6.0	RIGHTS, POWERS AND DUTIES OF THE ASSOCIATION	31
6.1	DIRECTORS AND OFFICERS	31
6.2	RULES	32
6.3	COMPOSITION OF MEMBERS	32
6.4	PERSONAL LIABILITY	32
6.5	IMPLIED RIGHTS	33
6.6	ASSOCIATION PROVISION OF UTILITY SERVICES	33
6.7	PROFESSIONAL MANAGEMENT	33
6.8	WATER USAGE FEES AND REMEDIES FOR NON PAYMENT	33
ARTICLE 7 ASSESSMENTS		35
7.0	PREPARATION OF BUDGET	35
7.1	COMMON EXPENSE ASSESSMENT	35
7.2	SPECIAL ASSESSMENT	37
7.3	NOTICE AND QUORUM FOR ANY ACTION UNDER SECTION 7.1 OR 7.2	38
7.4	ENFORCEMENT ASSESSMENT	38
7.5	EFFECT OF NONPAYMENT OF ASSESSMENTS; ASSOCIATION REMEDIES	38
7.6	SUBORDINATION OF ASSESSMENT LIEN TO MORTGAGES	39
7.7	EXEMPTION OF UNIT OWNER	40
7.8	CERTIFICATE OF PAYMENT/RESALE INFORMATION STATEMENT	40
7.9	NO OFFSETS	40
7.10	INITIAL CAPITAL CONTRIBUTION	40
7.11	SURPLUS FUNDS	41
7.12	MONETARY PENALTIES	41
7.13	ADMINISTRATIVE RECORDS FEE UPON TRANSFER	41
7.14	RESERVE CONTRIBUTIONS/RESERVES	42
ARTICLE 8 INSURANCE		43
8.0	SCOPE OF COVERAGE	43
8.1	PAYMENT OF PREMIUMS/DEDUCTIBLES/ANNUAL REVIEW	45

8.2	INSURANCE OBTAINED BY UNIT OWNERS/NON-LIABILITY OF ASSOCIATION.....	46
8.3	PAYMENT OF INSURANCE PROCEEDS	46
8.4	INSURANCE TRUST.....	46
8.5	AUTOMATIC RECONSTRUCTION.....	47
8.6	CERTIFICATE OF INSURANCE.....	47
ARTICLE 9 RIGHTS OF FIRST MORTGAGEES.....		47
9.0	NOTIFICATION TO FIRST MORTGAGEES.....	47
9.1	APPROVAL REQUIRED FOR AMENDMENT TO CONDOMINIUM DOCUMENTS.....	48
9.2	PROHIBITION AGAINST RIGHT OF FIRST REFUSAL.....	48
9.3	RIGHT OF INSPECTION OF RECORDS.....	49
9.4	PRIOR WRITTEN APPROVAL OF FIRST MORTGAGEES.....	49
9.5	LIENS PRIOR TO FIRST MORTGAGE.....	50
9.6	CONDEMNATION OR INSURANCE PROCEEDS.....	50
9.7	LIMITATION ON PARTITION AND SUBDIVISION.....	50
9.8	RESTORATION OR REPAIR OF CONDOMINIUM.....	50
9.9	CONFLICTING PROVISIONS.....	50
ARTICLE 10 ENFORCEMENT.....		51
10.0	GENERAL RIGHT OF ENFORCEMENT.....	51
10.1	ITEMS OF CONSTRUCTION/EQUITABLE RELIEF.....	51
10.2	ENFORCEMENT BY ASSOCIATION.....	51
10.3	LIMITED ENFORCEMENT OBLIGATION.....	52
ARTICLE 11 CONSTRUCTION CLAIMS AND CONDOMINIUM DISPUTE RESOLUTION PROCEDURES.....		53
11.0	DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE.....	53
11.1	NOTICE OF A DISPUTE TO DECLARANT.....	53
11.2	RIGHT TO INSPECT AND RIGHT TO CORRECTIVE ACTION <small>Unofficial Document</small>	53
11.3	NO ADDITIONAL OBLIGATIONS; IRREVOCABILITY AND WAIVER OF RIGHT.....	54
11.4	MEDIATION.....	54
11.5	POSITION MEMORANDA; PRE-MEDIATION CONFERENCE.....	54
11.6	CONDUCT OF MEDIATION.....	54
11.7	EXCLUSION AGREEMENT.....	55
11.8	PARTIES PERMITTED AT SESSIONS.....	55
11.9	EXPENSES.....	55
11.10	ARBITRATION.....	55
11.11	PLACE.....	55
11.12	ARBITRATOR.....	55
11.13	COMMENCEMENT AND TIMING OF PROCEEDING.....	55
11.14	PRE-HEARING CONFERENCES.....	55
11.15	DISCOVERY.....	55
11.16	LIMITATION ON REMEDIES/PROHIBITION ON THE AWARD OF PUNITIVE DAMAGES.....	56
11.17	MOTIONS.....	56
11.18	ARBITRATION AWARD.....	56
11.19	WAIVERS.....	56
11.20	STATUTES OF LIMITATION.....	56
11.21	REQUIRED CONSENT OF DECLARANT TO MODIFY.....	57
11.22	REQUIRED CONSENT OF UNIT OWNERS.....	57
11.23	NOTICE TO MEMBERS.....	57
11.24	NOTIFICATION TO PROSPECTIVE PURCHASERS.....	58
11.25	ARIZONA STATUTORY COMPLIANCE.....	58
ARTICLE 12 GENERAL PROVISIONS.....		58
12.0	CONTRACT LIMITATIONS.....	58
12.1	SEVERABILITY.....	59
12.2	DURATION.....	59

12.3	EMINENT DOMAIN.....	59
12.4	TERMINATION OF CONDOMINIUM	59
12.5	AMENDMENTS TO CONDOMINIUM DOCUMENTS.....	59
12.6	REMEDIES CUMULATIVE	60
12.7	NOTICES.....	60
12.8	BINDING EFFECT	61
12.9	GENDER	61
12.10	TOPIC HEADINGS.....	61
12.11	SURVIVAL OF LIABILITY.....	62
12.12	CONSTRUCTION.....	62
12.13	JOINT AND SEVERAL LIABILITY.....	62
12.14	THIRD PARTY COMPLIANCE.....	62
12.15	ATTORNEYS' FEES	62
12.16	NUMBER OF DAYS	62
12.17	NOTICE OF VIOLATION	63
12.18	DECLARANT'S DISCLAIMER OF REPRESENTATIONS	63
12.19	NO ABSOLUTE LIABILITY.....	63
12.20	FHA/VA APPROVAL.....	63
12.21	REFERENCES TO VA AND FHA	64
12.22	DECLARANT'S RIGHT TO USE SIMILAR NAME.....	64

Unofficial Document

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COTTAGES AT ARCADIA SITE CONDOMINIUMS is made this 25th day of October, 2013 (the “**Effective Date**”) by Funk Family Enterprises, LLC, an Arizona limited liability company (the “**Successor Declarant**” also referred to herein as “**Declarant**”) and is as follows:

RECITALS:

A. On February 22, 2008, Declarant’s predecessor in title, 34th Street Development, LLC, an Arizona limited liability company, caused a Declaration of Condominium and of Covenants, Conditions and Restrictions for West Block 22 at Pinchot to be Recorded at Instrument No. 2008-0157189 and re-recorded on March 26, 2008 at Instrument No. 2008-0265550, in the Official Records of the Maricopa County, Arizona Recorder (collectively, the “**Original Declaration**”). The Original Declaration concerns real property that was previously platted in Book 977 of Maps, page 28, in the Official Records of the Maricopa County Arizona Recorder (the “**Original Plat**”).

B. Successor Declarant is assignee and successor to all Development and Special Declarant Rights and is the sole Owner of all of the real property described in the Original Declaration and desires to amend, supersede, and restate the Original Declaration in its entirety in accordance with the Arizona Condominium Act, A.R.S. §33-1201 et seq. (the “**Condominium Act**”). Declarant has also caused the Original Plat to be replatted and superseded in its entirety by that certain Plat of Cottages at Arcadia Site Condominiums replat of the Condominium Plat for West Block 22 at Pinchot, a condominium Recorded in Book 1163 of Maps, page 27, in the Official Records of the Maricopa County, Arizona Recorder (the “**Replat**”).

C. Successor Declarant as the sole Owner of all of the real property within the Condominium desires to amend the Original Declaration as set forth in this Amended and Restated Declaration to, *inter alia*, to resubmit real property to a Condominium in accordance with this Declaration and to change the Allocated Interests of the Units created accordingly.

NOW, THEREFORE, Declarant hereby amends and restates the Original Declaration in its entirety and declares the Declaration (as defined hereinbelow) shall now read as follows:

ARTICLE I DEFINITIONS

1.0 General Definitions and Defined Terms. Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Condominium Act. The following capitalized terms shall have the general meanings described in the Condominium Act and for purposes of this Declaration shall have the specific meanings set forth in this Article I below:

1.1 "Access Gate" means, collectively, any and all entry/exit gate(s) installed by Declarant at the entry/exit to the Condominium (including crash gates as may be required by the City) as part of the Common Elements and maintained by the Association as part of the Common Expense Liability.

1.2 "Adjoining Unit" means a Unit which shares a common vertical boundary with another Unit.

1.3 "Administrative Records Fee" is defined in Section 7.13 below.

1.4 "Applicable Laws" means the Arizona Condominium Act, A.R.S. §§33-1201 et seq. and all other valid laws, statutes, ordinances, administrative codes, building and safety codes, rules and regulations of all federal, state, county and other governmental agencies having jurisdiction over the Condominium.

Unofficial Document

1.5 "Architectural Committee" means the Committee of the Board that may be formed pursuant to Section 4.3(G) of this Declaration.

1.6 "Architectural Rules" means any rules, design guidelines, standards and procedures adopted by the Board pursuant to Section 4.3 of this Declaration, as amended or supplemented from time to time.

1.7 "Articles" means the Articles of Incorporation of the Association, as they may be amended from time to time.

1.8 "Assessments" means individually or collectively, as the context may require, the Common Expense Assessment, Special Assessments and Enforcement Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

1.9 "Assessment Lien" means the lien granted to the Association by A.R.S. §33-1256 of the Condominium Act to secure the payment of Common Expense Assessments (including any Water and Sewer Usage Fees), Special Assessments, and other charges owed to the Association by a Unit Owner, including certain Enforcement Assessments and Collection Costs.

1.10 "Association" means the Cottages at Arcadia Homeowners Association, an Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein, and its

successors and assigns. All references to the Association, acting by and through its Board, in this Declaration shall also mean and refer to any professional management company or Managing Agent (as further described in Section 6.7 below) to the extent any duties of the Board may be so delegated to such Managing Agent, and as the context may so require. The Association shall Record such contact notice as is required by A.R.S. §33-1256 regarding the Managing Agent or any other relevant contacts.

1.11 “**Authorized Antenna**” shall have the meaning set forth in Section 4.1(A) of this Declaration.

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

1.13 “**Bylaws**” means the Bylaws of the Association, as they may be amended from time to time.

1.14 “**CBU**” means any cluster box unit installed within the Condominium to receive mail delivery from the United States Postal Service (USPS) to Unit Owners and Residents. Any CBU shall be deemed to be an Improvement, and except as may be otherwise provided in this Declaration, shall be deemed to be part of the Common Elements, but at all times subject to the regulations and control of the United States Postal Service.

1.15 “**City**” means the City of Phoenix, Arizona.

1.16 “**Claim**” means any unresolved Dispute for which the Association has given or intends to give a Claim Notice to the Members as further provided in Section 11.23 of this Declaration on its own behalf or on behalf of a group of Unit Owners with a common set of unresolved Disputes.

1.17 “**Claim Notice**” means the written notice of an unresolved Dispute given to the Members pursuant to Section 11.23 of this Declaration by the Association on its own behalf or on behalf of a group of Unit Owners with a common set of unresolved Disputes.

1.18 “**Collection Costs**” means all costs, fees, charges and expenditures (including, without limitation, demand letter fees, attorneys’ fees, court costs, filing fees, lien fees, and Recording fees) incurred by the Association in collecting and/or enforcing payment of any Assessments or other amounts payable to the Association pursuant to this Declaration, without regard to whether a law suit is filed or legal action otherwise undertaken by or on behalf of the Association.

1.19 “**Common Elements**” means all portions of the Condominium other than the Units, as shown on the Plat or any amended site plan on file with the City, including, without limitation, landscaped areas, pool, ramada and barbecue recreational areas, Utility Facilities, Retention Facilities, signage, exterior walls, Access Gate and fences, parking areas, and private drives.

1.20 “**Common Expenses**” means the actual or estimated costs or expenditures incurred or to be incurred by, or financial liabilities of, the Association, together with required allocations to reserves. Common Expenses include, without limitation, the following items: (a) the cost of maintenance, repair and replacement of the Common Elements; (b) the cost of maintenance of other areas of the Condominium which are the responsibility of the Association and/or of other Association real or personal property assets; (c) the cost of utilities, trash disposal, landscaping, professional management, and other services to the Condominium except for those services separately metered or billed to the Unit Owners by the applicable utility or governmental agency or entity; (d) the cost of insurance and surety bonds maintained by the Association pursuant to this Declaration; (e) reserve amounts determined by the Board; and (f) payments for taxes, liens or encumbrances against the Common Elements, if any, except to the extent directly assessed or allocated to individual Units and their proportionate interest therein.

1.21 “**Common Expense Assessment**” means the assessment levied against the Units pursuant to Section 7.1(A) of this Declaration.

1.22 “**Common Expense Liability**” means the total liability for Common Expenses a share of which is allocated to each Unit pursuant to Section 2.3 of this Declaration.

1.23 “**Condominium**” means the real property located in Maricopa County, Arizona, which is described on **Exhibit A** attached to this Declaration and on the Plat, together with all Residential Dwellings and other Improvements located thereon and all easements, rights, and appurtenances belonging thereto. **The legal name of the Condominium created by this Declaration is “Cottages at Arcadia Site Condominiums.”**

1.24 “**Condominium Documents**” means this Declaration, including the Plat, and the Articles, Bylaws, and Rules (including any Architectural Rules).

1.25 “**Declarant**” means **Funk Family Enterprises, LLC**, an Arizona limited liability company, and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument or who succeeds to any Special Declarant Right pursuant to A.R.S. §33-1244 of the Condominium Act. The term “Declarant” shall also mean and refer to Bellago Development, LLC, an Arizona limited liability company, to the extent it acquires any Units from Declarant or develops any Units in the Condominium.

1.26 “**Declarant Parties**” means the Persons described in Section 11.0(B) of this Declaration.

1.27 “**Declaration**” means this **Amended and Restated Declaration and of Covenants, Conditions and Restrictions for Cottages at Arcadia Site Condominiums**, as it may be amended from time to time, and, where appropriate by context, the Plat.

1.28 “**Development Rights**” means any right or combination of rights reserved by or granted to Declarant in this Declaration to do any of the following:

(i) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;

(ii) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(iii) Amend the Condominium Documents during the Period of Declarant Control as provided in Sections 12.5(D) and (E) below.

1.29 **“Director”** shall mean any individual serving on the Board, including those individuals appointed by the Declarant and those elected by the Members after the Period of Declarant Control has expired or terminated.

1.30 **“Dispute”** means any action or claim described in Section 11.0(B) of this Declaration.

1.31 **“Eligible Insurer or Guarantor”** means an insurer or governmental guarantor of a First Mortgage which is held by an Eligible Mortgage Holder as the beneficiary thereof.

1.32 **“Eligible Mortgage Holder”** means a First Mortgagee who has requested notice of certain matters from the Association or is otherwise entitled to notice of such matters in accordance with Section 9.0 of this Declaration. Unofficial Document provided, further, however, that the term Eligible Mortgage Holder shall mean and refer to any other First Mortgagee as the context may require pursuant to the provisions of Section 9.9(B) below.

1.33 **“Enforcement Assessment”** means an Assessment levied pursuant to Section 7.4 of this Declaration.

1.34 **“FHA”** shall have the meaning set forth in Section 12.21 of this Declaration.

1.35 **“First Mortgage”** means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust.

1.36 **“First Mortgagee”** means the holder of any First Mortgage.

1.37 **“Improvement”** means any Residential Dwelling, fence, gate (including the Access Gate), sidewalk, wall, pool, ramada and barbecue recreational areas, road, driveway, mailbox or CBU, permanent signage, statuary, fountain, artistic work or ornamentation of any kind, lighting fixture, play structure, and trees, and landscaping of every type and kind (including plants, shrubs, grass) and any other structure of any type, kind or nature.

1.38 **“Initial Capital Contribution”** is defined in Section 7.10 below.

1.39 **“Initial Dispute Notice”** is defined in Section 11.1 below.

- 1.40 **“Initial Usage Set-Up Fee”** is defined in Section 6.8 below.
- 1.41 **“Invitee”** means any person whose temporary or periodic presence within the Condominium, including any Residential Dwelling, has been solicited, approved by or arranged for by a particular Unit Owner, Lessee, or Resident, including without limitation, his guests, employees, business invitees, licensees, contractors and agents.
- 1.42 **“Lessee”** means any Person who is the tenant or lessee under a written lease of a Unit.
- 1.43 **“Limited Common Elements”** means a portion of the Common Elements specifically designated in this Declaration as a Limited Common Element and/or allocated by this Declaration or by operation of the Condominium Act for the exclusive use of one or more, but fewer than all, of the Units.
- 1.44 **“Managing Agent”** means any professional management company or managing agent retained by the Association to assist the Board with the management of the Condominium as described in Section 6.7 of this Declaration.
- 1.45 **“Member”** means any Person who is or becomes a member of the Association.
- 1.46 **“Modifications”** Unofficial Document means any renovations, additions, alterations or improvements to a Unit or Residential Dwelling thereon after the date that Unit is first conveyed to a Purchaser.
- 1.47 **“Modification Approval Request Form”** shall have the meaning set forth in Section 4.3(A) below.
- 1.48 **“Notice of Assessment Lien”** means the notice that may be Recorded by the Association to give constructive notice of the imposition of an Assessment Lien against one or more Units as described in Section 7.5(B) of this Declaration.
- 1.49 **“Notice of Compliance”** means the notice that may be Recorded by the Association to give constructive notice of the release of a Notice of Violation pertaining to one or more of the Units as described in Section 12.17 of this Declaration.
- 1.50 **“Notice of Violation”** means the notice that may be Recorded by the Association to give constructive notice of a violation of the Condominium Documents pertaining to one or more of the Units as described in Section 12.17 of this Declaration.
- 1.51 **“Party Wall”** means any Privacy Wall (including a portion of the Residential Dwelling structure) located on or adjacent to the vertical boundaries of two Adjoining Units or the boundary of the Unit with adjacent Common Elements.

1.52 “**Period of Declarant Control**” means the time period commencing on the date this Declaration is recorded in the Official Records of the Maricopa County, Arizona Recorder, and ending on the earlier of:

- (i) Ninety (90) days after the conveyance of seventy-five percent (75%) of the Units in the Condominium to Unit Owners other than Declarant;
- (ii) Four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

1.53 “**Permitted Pet**” means a generally recognized household pet or animal permitted to be maintained or kept within a Unit as provided in Section 4.6 below.

1.54 “**Person**” means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, joint venture, government, government subdivision or agency, or other legal or commercial entity, and in the case of a subdivision trust, means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.

1.55 “**Plans**” shall have the meaning set forth in Section 3.7 of this Declaration.

1.56 “**Plat**” or “**Replat**” collectively means the **Plat of Cottages at Arcadia Site Condominiums** Recorded on October 11, 2013 in Book 1163 of Maps, page 27, and any future amendments, supplements, or corrections thereto. Unofficial Document

1.57 “**Privacy Wall**” means any masonry wall or fence (with or without an entry gate) enclosing a Private Yard of a Unit.

1.58 “**Private Yard**” means the portion of the Unit that is completely enclosed by one or more Privacy Walls.

1.59 “**Purchaser**” means any Person, other than Declarant, who becomes a Unit Owner by means of a voluntary transfer subject to an Administrative Records Fee pursuant to Section 7.13 below.

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

1.61 “**Reserve Account**” means the bank account to be maintained by the Board for purposes of segregating reserve funds of the Association as described in Section 7.14(C) of this Declaration.

1.62 “**Reserve Contribution**” means any contribution towards the reserve funds of the Association to be paid by Purchasers as may be required by the Board pursuant to Section 7.14(A) of this Declaration.

1.63 “**Resident**” means any Person actually and lawfully residing on a temporary or permanent basis within a Unit, including a Unit Owner or Lessee of that Unit, and their respective family members.

1.64 “**Residential Dwelling**” means the dwelling structure situated within the boundaries of a Unit and intended for use by a Single Family.

1.65 “**Retention Facilities**” shall mean all pipes, catch basins or retention or detention ponds, and all above and underground water retention or detention facilities and equipment, including any underground vault, storage tank or drywells, serving and providing temporary on-site storm water retention or detention for the Condominium, located within and part of the Common Elements maintained by the Association as described in Article 5 below.

1.66 “**Rules**” means the rules and regulations adopted by the Association, as they may be amended from time to time.

1.67 “**Single Family**” means a group maintaining a common household in a Unit consisting of one or more persons each related to the other by blood, marriage or legal adoption or such a group that includes a maximum of three (3) persons who are all unrelated to each other by blood, marriage or legal adoption.

1.68 “**Special Assessment**” means the assessment which may be levied by the Board against the Units pursuant to Section 7.2 of this Declaration. Unofficial Document

1.69 “**Special Declarant Rights**” means any right or combination of rights reserved by or granted to Declarant in this Declaration or by the Condominium Act to do any of the following:

- (i) Construct and alter Improvements provided for in this Declaration or shown on the Plat;
- (ii) Exercise any Development Right;
- (iii) Maintain sales offices, management offices, model Units and signs advertising the Condominium;
- (iv) Use easements through the Common Elements for the purpose of making Improvements within the Condominium;
- (v) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control;
- (vi) Exercise the rights reserved to Declarant pursuant to Section 3.3 and Section 4.21 of this Declaration.

1.70 “**Unit**” means a portion of the Condominium as described in this Declaration and as shown on the Plat that is designated for separate ownership and occupancy. Declarant intends to construct a single Residential Dwelling within the boundaries of each Unit.

1.71 “**Unit Owner**” means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include (i) Persons having an interest in a Unit merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Unit. The term “Unit Owner” shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title to a Unit under which the seller is obligated to convey to the purchaser the remainder of seller’s title in the Unit, whether legal or equitable, upon payment in full of all monies due under the contract. The term “Unit Owner” shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S., §§33-801 et seq., the Trustor shall be deemed to be the Unit Owner. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of the trust who is entitled to possession or occupancy of the Unit shall be deemed to be the Unit Owner.

1.72 “**Utility Facilities**” means ^{all} Unofficial Document water, waste water and sewer lines, and appurtenant facilities within the Common Elements and maintained by the Association as described in Article 5 below.

1.73 “**VA**” shall have the meaning set forth in Section 12.21 of this Declaration.

1.74 “**Vehicle**” means a motorized vehicle or equipment described in Section 4.12 of this Declaration.

1.75 “**Visible from Neighboring Property**” means, with respect to any given object, that such object is or would be visible to a person six feet tall standing on any part of the Common Elements at an elevation no higher than the elevation of the base of the object being viewed; provided, however, that an object shall not be considered as being Visible from Neighboring Property if the object is visible only through a wrought iron fence or gate and would not be Visible from Neighboring Property if the wrought iron fence or gate were a solid fence or gate.

1.76 “**Water and Sewer Usage Fee**” is defined in Section 6.8 below.

**ARTICLE 2 NOTICE OF RESUBMITTAL OF PROPERTY TO THE
CONDOMINIUM PURSUANT TO REVISED LEGAL DESCRIPTION OF AND
DEVELOPMENT PLAN FOR THE CONDOMINIUM**

2.0 Resubmission of Property to a Condominium. The real property described on Exhibit A, together with all Improvements, easements, rights and appurtenances thereto, is hereby resubmitted to a Condominium in accordance with the provisions of the Condominium Act and this Declaration. The Identifying Numbers of the Units initially submitted to the Condominium pursuant to this Declaration are Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, as further shown on the Plat and on Exhibit A. The Condominium consists of all real property shown on the Plat.

2.1 Unit Boundaries/Statutory Limited Common Elements.

(A) The vertical boundaries of each Unit are vertical planes extending upward and downward from the boundary lines of the Unit as shown on the Plat. The Units do not have any horizontal boundaries, further subject to any Applicable Laws and zoning restrictions for Residential Dwelling building height. All fixtures, lines and equipment (including chutes, flues, wires, conduits heating and air conditioning units, and cable television, water and electric pipes, lines or meters) within the boundaries of a Unit and which serve only the Unit are part of the Unit.

(B) In the event of an inc^(Unofficial Document) or conflict between the provisions of this Section and the Plat with regard to the boundaries of the Unit, this section shall control.

(C) Subject to the provisions of subsection (D) of this Section 2.1, all Improvements within the boundaries of a Unit are part of the Unit.

(D) As provided in A.R.S. §33-1212(2), if any apparatus or other fixture lies partially or wholly outside the boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit and any portion serving more than one Unit is a Limited Common Element allocated to those Units.

(E) Declarant reserves the right to relocate the boundaries between Adjoining Units owned by Declarant and to reallocate each such Unit's Common Element interest, votes in the Association and Common Expense liabilities subject to and in accordance with A.R.S. §33-1222 of the Condominium Act.

(F) All square footages of Residential Dwellings or other Improvements on a Unit referenced by Declarant in marketing materials and brochures or in the Plans are approximate only.

2.2 Allocation of Common Element Interest. The undivided interests in the Common Elements of the Association shall be allocated equally among the Units. Accordingly, each Unit's interest in the Common Elements shall be stated as a fraction or percentage equal to

1/12 or 8.3333%. The percentage interest of each Unit in the Common Elements shall be an undivided interest and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective Common Element Interest. The undivided Common Element Interest allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description of the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit.

2.3 Allocation of Common Expense Liabilities. The undivided interest in the Common Expense Liability of the Association shall be allocated shall be allocated equally among the Units except as provided in Section 6.8 and Section 7.1 of this Declaration. Accordingly, each Unit's Common Expense Liability shall be stated as a fraction or percentage equal to 1/12 or 8.3333% of the total Common Expenses of the Association each fiscal year of the Association.

2.4 Allocation of Votes in the Association. The votes in the Association shall be equal to the number of Units in the Condominium from time to time. The votes shall be allocated equally among all the Units with each Unit having one (1) vote and the total number of votes in the Condominium being twelve (12).

2.5 Allocation of Limited Common Elements. The Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed by the Declarant. After the Declarant no longer owns any Units, the Board of Directors shall have the right, with the approval of Members holding at least sixty-seven percent (67%) of the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act. A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of §33-1218(B) of the Condominium Act.

ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS

3.0 Utility and Service Company Easements. There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, natural gas, water, sewer, telephone, electricity, cable television or other communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or Declarant to erect and maintain the necessary utility lines, pipes, facilities and equipment on the Common Elements, but no sewer, electrical lines, gas or water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed and/or as thereafter approved and constructed by the Board of Directors or as erected or installed by Declarant pursuant to its reserved easements and

Special Declarant Rights. This easement shall in no way affect any other Recorded easements on the Common Elements.

3.1 Easements for Ingress and Egress. There is hereby granted and created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic, including, without limitation, emergency access and utility repair vehicles, over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Unit Owners and Residents and their respective Invitees.

3.2 Unit Owners' Easements of Enjoyment.

(A) Every Unit Owner, Lessee and other Residents shall have a right and easement of enjoyment in and to the Common Elements, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to adopt reasonable Rules governing the use of the Common Elements;

(ii) The right of the Association to suspend the right of a Unit Owner, Lessee or Resident (and their respective Invitees) to use the Common Elements for any period during which the Unit Owner, Lessee or Resident is in violation of the Condominium Documents as further provided in Article 10 below;

(iii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act, subject to the vote or written assent of those Unit Owners representing at least eighty percent (80%) of the votes in the Association, and with the consent of Declarant during the Period of Declarant Control; and, in all events, subject to an easement for ingress and egress if access to a Unit is through the Common Elements to be conveyed or mortgaged;

(iv) The right of the Association to grant non-exclusive easements over all or a portion of the Common Elements if the Board of Directors determines that the granting of the easement is necessary for the development or maintenance of the Common Elements or beneficial to the Unit Owners, Lessees and other Residents;

(v) The rights of Declarant to establish additional Rules regarding operation of the Access Gate while Declarant has any Units for sale (but the Access Gate shall always remain open between 7 a.m. and 7 p.m. local time on weekdays and such other times as may be required by the City of Phoenix to facilitate trash collection);

(vi) The right and obligation of the Association to assign to every Unit Owner one mailbox space in the CBU in accordance with USPS regulations and to provide an access