



## TABLE OF CONTENTS

ARTICLE 1 .....		1
DEFINITIONS .....		1
1.1	"Annual Assessment" .....	1
1.2	"Architectural Committee" (AC) .....	1
1.3	"Architectural Committee Rules" .....	1
1.4	"Areas of Association Responsibility" .....	1
1.5	"Articles" .....	2
1.6	"Assessment" .....	2
1.7	"Assessment Lien" .....	2
1.8	"Assessment Period" .....	2
1.9	"Association" .....	2
1.10	"Association Rules" .....	2
1.11	"Board" .....	2
1.12	"Bylaws" .....	2
1.13	"Common Area" .....	2
1.14	"Common Expenses" .....	2
1.15	"Declarant(s)(s)" .....	3
1.16	"Declaration" .....	3
1.17	"Developer(s)(s)" .....	3
1.18	"Eligible Insurer or Guarantor" .....	3
1.19	"Eligible Mortgage Holder" .....	3
1.20	"First Mortgage" .....	3
1.21	"First Mortgagee" .....	3
1.22	"Improvement" .....	4
1.23	"Lessee" .....	4
1.24	"Lot" .....	4
1.25	"Maintenance Standard" .....	4
1.26	"Member" .....	4
1.27	"Owner" .....	4
1.28	"Person" .....	4
1.29	"Plat" .....	5
1.30	"Property" or "Project" .....	5
1.31	"Project Documents" .....	5
1.32	"Purchaser" .....	5
1.33	"Recording" .....	5
1.34	"Resident" .....	5

COPY 5/15/15

1.35	<u>"Residential Unit"</u> .....	5
1.36	<u>"Single Family"</u> .....	5
1.37	<u>"Special Assessment"</u> .....	5
1.38	<u>"Visible From Neighboring Property"</u> .....	5
ARTICLE 2	.....	6
PLAN OF DEVELOPMENT	.....	6
2.1	<u>Property Initially Subject to the Declaration</u> .....	6
2.2	<u>Disclaimer of Representations</u> .....	6
ARTICLE 3	.....	7
USE RESTRICTIONS	.....	7
3.1	<u>Architectural Control</u> .....	7
3.2	<u>Temporary Occupancy and Temporary Buildings</u> .....	8
3.3	<u>Nuisances; Construction Activities</u> .....	9
3.4	<u>Diseases and Insects</u> .....	9
3.5	<u>Antennas</u> .....	9
3.6	<u>Mineral Exploration</u> .....	9
3.7	<u>Trash Containers and Collection</u> .....	10
3.8	<u>Clothes Drying Facilities</u> .....	10
3.9	<u>Utility Service</u> .....	10
3.10	<u>Overhead Encroachments</u> .....	10
3.11	<u>Residential Use</u> .....	11
3.12	<u>Animals</u> .....	11
3.13	<u>Machinery and Equipment</u> .....	12
3.14	<u>Signs</u> .....	12
3.15	<u>Restriction on Further Subdivision, Property</u> .....	12
3.16	<u>Trucks, Trailers, Campers, and Boats</u> .....	13
3.17	<u>Motor Vehicles</u> .....	13
3.18	<u>Towing of Vehicles</u> .....	13
3.19	<u>Variances</u> .....	14
3.20	<u>Drainage</u> .....	14
3.21	<u>Garages and Driveways</u> .....	14
3.22	<u>Rooftop Air Conditioners Prohibited</u> .....	14
3.23	<u>Basketball Goals and Backboards</u> .....	14



6.3	<u>Rate of Assessment</u> .....	23
6.4	<u>Obligation of Declarant(s) for Deficiencies</u> .....	23
6.5	<u>Special Assessments</u> .....	23
6.6	<u>Assessment Period</u> .....	24
6.7	<u>Commencement Date of Assessment</u> <u>Obligation</u> .....	24
6.8	<u>Rules Regarding Billing and Collection</u> <u>Procedures</u> .....	24
6.9	<u>Effect of Nonpayment of Assessments;</u> <u>Remedies of the Association</u> .....	24
6.10	<u>Evidence of Payment of Assessments</u> .....	26
6.11	<u>Purposes for which Association's Funds</u> <u>May Be Used</u> .....	26
6.12	<u>Surplus Funds</u> .....	27
6.13	<u>Working Capital Funds</u> .....	27
6.14	<u>Transfer Fee</u> .....	27
ARTICLE 7	.....	27
MAINTENANCE	.....	27
7.1	<u>Areas of Association Responsibility</u> .....	27
7.2	<u>Lots</u> .....	28
7.3	<u>Assessments of Certain Cost of Maintenance</u> <u>and</u> <u>Repair</u> .....	28
7.4	<u>Improper Maintenance and Use of Lots</u> .....	28
7.5	<u>Boundary Walls</u> .....	29
7.6	<u>Maintenance of Walls other than Boundary</u> <u>Walls</u> 30	
7.7	<u>Installation of Landscaping</u> .....	30
ARTICLE 8	.....	31

2004-10-27



10.4	<u>Interpretation</u> .....	38
10.5	<u>Severability</u> .....	38
10.6	<u>Rule Against Perpetuities</u> .....	38
10.7	<u>Change of Circumstances</u> .....	38
10.8	<u>Notice of Violation</u> .....	39
10.9	<u>Laws, Ordinances and Regulations</u> .....	39
10.10	<u>References to this Declaration in Deeds</u> .....	39
10.11	<u>Gender and Number</u> .....	40
10.12	<u>Captions and Titles</u> .....	40
10.13	<u>Notices</u> .....	40
10.14	<u>FHA/VA Approval</u> .....	40
10.15	<u>No Absolute Liability</u> .....	40
10.16	<u>References to VA and FHA</u> .....	41

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

## FOR

## MISSION WEST

This Declaration of Covenants, Conditions and Restrictions for Mission West (the "Declaration") is made this \_\_\_ day of \_\_\_\_\_, 2001, by D. R. Horton, Inc., a Delaware corporation, and Lawyers Title of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. 7886-T.

### ARTICLE 1

#### DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

**1.1** "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

**1.2** "Architectural Committee" (AC) means the committee of the Association to be created pursuant to Section 5.11 of this Declaration.

**1.3** "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.11 of this Declaration, as amended or supplemented from time to time.

**1.4** "Areas of Association Responsibility" means (i) all Common Area; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association; and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way, for which the Association has accepted responsibility in writing and with respect to which the State of

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Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

**1.5**            **"Articles"** means the Articles of Incorporation of the Association, as amended from time to time.

**1.6**            **"Assessment"** means an Annual Assessment or Special Assessment.

**1.7**            **"Assessment Lien"** means the lien created and imposed by Article 6 of this Declaration.

**1.8**            **"Assessment Period"** means the period set forth in Section 6.5 of this Declaration.

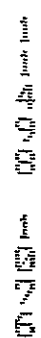
**1.9**            **"Association"** means the Mission West Homeowners Association, an Arizona nonprofit corporation, and its successors and assigns.

**1.10**           **"Association Rules"** means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as amended from time to time.

**1.11**           **"Board"** means the Board of Directors of the Association.

**1.12**           **"Bylaws"** means the Bylaws of the Association, as amended from time to time.

**1.13**           **"Common Area"** means (if any) (i) Tracts of land, designated as Common Areas according to the Plat recorded in Book \_\_\_\_, Page \_\_\_\_, records of Pima County, Arizona; and (ii) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest. Notwithstanding the foregoing, property shall not be considered "Common Area" until such time



as title to such property has been conveyed to the Association pursuant to a deed recorded in the office of Pima County, Arizona Recorder.

**1.14** "**Common Expenses**" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

**1.15** "**Declarant** " means D. R. Horton, Inc., a Delaware corporation, and, Lawyers Title of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. 7886-T, and, any person or entity to whom it may expressly assign any or all of its rights under this Declaration by an instrument recorded with the County Recorder of Pima County, Arizona.

In the event there is more than one (1) Declarant, the following provisions shall apply:

(i) Assessments to be paid by Declarant shall be apportioned based on the number of lots owned by each Declarant to the total number of lots owned by all Declarants.

(ii) Any action of the Declarant pursuant to this Declaration, shall be made based upon a majority vote of all Declarants, with each Declarant being entitled to one (1) vote for each Lot owned by such Declarant. Lots owned by a trust with a Declarant as beneficiary shall be deemed to be owned by such beneficiary Declarant for purposes of this Section 1.15.

(iii) All Declarant appointments, approvals of documents, and amendments to this Declaration shall be made based upon the majority vote of all Declarants, with each Declarant entitled to one (1) vote for each Lots owned by such Declarant.

(iv) Notwithstanding any provision of this Declaration which may be construed to require unanimous approval of the Declarants, only a majority vote of all Declarants shall be required unless a greater vote is required pursuant to Arizona law.

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**1.19**        **"Eligible Mortgage Holder"** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

**1.20**        **"First Mortgage"** means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

**1.21**        **"First Mortgagee"** means a First Mortgage holder or beneficiary.

**1.22**        **"Improvement"** means any building, fence, wall or other structure or any swimming pool, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

**1.23**        **"Lessee"** means the lessee or tenant under a lease, oral or written of any Lot including an assignee of a lease.

**1.24**        **"Lot"** means a portion of the Project intended for independent ownership and use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

**1.25**        **"Maintenance Standard"** means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

**1.26**        **"Member"** means any Person who is a Member of the Association.

**1.27**        **"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 Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property



**"Recorded"** means having been so placed of public record.

1.34 **"Resident"** means each individual occupying any Residential Unit.

1.35 **"Residential Unit"** means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.36 **"Single Family"** means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.37 **"Special Assessment"** means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.

1.38 **"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 at ground level on any part of such neighboring property.

## ARTICLE 2

### PLAN OF DEVELOPMENT

2.1 **Property Initially Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant(s) declares that all of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, rules, and regulations now or hereafter imposed by this

Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant(s), its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

**2.2 Disclaimer of Representations.** Declarant(s) makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; (iii) the use of any Property subject to this Declaration will not be changed in the future.

### ARTICLE 3

#### USE RESTRICTIONS

##### **3.1 Architectural Control.**

3.1.1 No excavation or grading work shall be performed on any Lot without prior written approval of the Architectural Committee.

3.1.2 No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No addition, alteration, repair, change or other work which in





3.1.5 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.6 All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

3.1.7 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvement made by, or on behalf of, the Declarant(s).

3.1.8 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.9 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

### **3.2 Temporary Occupancy and Temporary Buildings.**

No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the





**3.10 Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

**3.11 Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of a business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security of safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The term "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within this Section.

**3.12 Animals.** No animals, bird, fowl, poultry, reptile or livestock may be on a Lot temporarily or permanently, except for a reasonable number of dogs, cats, common domestic birds such as parakeets, cockatiels and parrots, or similar household pets kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats, or other household pets permitted to be kept on a Lot under this Section 3.12 shall be confined to an Owner's Lot, except that a dog, cat

or other pet capable of being walked on a leash may be permitted to leave an Owner's Lot without being confined if such animal is kept at all times on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. It shall be the responsibility of the Owner or Resident to immediately remove any droppings from pets. No household pet permitted on a Lot under this Section 3.12 shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any permitted household pet shall be maintained so as to be Visible from Neighboring Property. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole discretion, whether for the purposes of this Section 3.12, a particular animal constitutes a household pet pursuant to this Section 3.12 or whether such animal is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. The right of the Residents to maintain a reasonable number of house pets pursuant to this section is expressly subject to the right of the Board to prospectively restrict the size and number of dogs or other pets which may be maintained or kept on the Lots.

**3.13 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which Declarant(s) or the Association may require for the operation and maintenance of the Project.

**3.14 Signs.** No signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

3.14.1 Signs required by legal proceedings.

3.14.2 Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee.



3.14.3 One (1) "For Sale" sign provided the size, color, design, message content, location and type has been approved in writing by the Architectural Committee.

3.14.4 Other signs as approved by the ARC.

**3.15 Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant(s), and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant(s), without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant(s) against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than the Declarant(s) unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

**3.16 Trucks, Trailers, Campers, and Boats.** No truck, mobile home, bus, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area or on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee, except for: (i) the temporary parking of any such vehicle or equipment on a Lot or on a street for a period of not more than forty-eight (48) hours within any seven (7) day period; (ii) temporary construction trailers or facilities maintained during and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; (iii) boats and vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; or (iv) motor vehicles not exceeding seven (7) feet height and eighteen (18) feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of



rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

**3.20**            **Drainage.** No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction of flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans of file with the county or municipality in which the Project is located.

**3.21**            **Garages and Driveways.** Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee. Such conversion shall not be permitted if the conversion results in a street parking, or lot parking situation.

**3.22**            **Rooftop Air Conditioners Prohibited.** No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building so as to be Visible From Neighboring Property. No window air conditioners or portable air conditioning units of any kind may be installed in any Residential Unit or other building situated on a Lot so as to be Visible From Neighboring Property.

**3.23**            **Basketball Goals and Backboards.** No basketball goal or backboards shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

**3.24**            **Reflective Materials.** No reflective materials including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed on the outside or inside of any windows which are Visible from Neighboring Property without the prior approval of the Architectural Committee.

**3.25**            **Lighting.** Except as initially installed by



Declarant(s), no spotlights, floodlights, or other high intensity lighting shall be placed or utilized on any Lot which will allow light to be directed or reflected on any other Lot or any public street.

## ARTICLE 4

### EASEMENTS

#### 4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant(s) in Section 4.3 and 4.4 of this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.11 of this Declaration.

(ii) The right of the Association to regulate the use of the Common area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners, Lessees or Residents.

(iii) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area if such Owner is more than thirty (30) days delinquent in the payment of assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within thirty (30) days after the Association Notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common

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Area until the termination or expiration of such lease.

**4.2 Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, 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 or Lots but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed by the Declarant(s) or as approved by the Board.

**4.3 Declarant(s)'s Use for Sales and Leasing Purposes.** Declarant(s) shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned by Declarant(s) while the Declarant(s) and on any portion of the Common Area in such number, of such size and in such locations as Declarant(s) deems appropriate. No provision of this Declaration shall be construed or deemed to limit or prohibit any act of the Declarant(s) or any of its employees, agents or subcontractors with respect to the construction, Marketing, sale or leasing of Lots. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

**4.4 Declarant(s)'s Easements.**

4.4.1 Declarant(s) shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements or Declarant(s) may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant(s) for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

4.4.2 The Declarant(s) shall have the right and an easement upon, over, and through the Areas of Association Responsibility

