

WHEN RECORDED RETURN TO:
Vistancia, LLC
c/o Sunbelt Holdings
6720 N. Scottsdale Road, Suite #160
Scottsdale, AZ 85253-4424
ATTN: Julie King

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
ASSESSMENTS, CHARGES, SERVITUDES, LIENS,
RESERVATIONS AND EASEMENTS
for
BLACKSTONE AT VISTANCIA

THIS DECLARATION of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (as further defined in Article I below, the "**Declaration**") is made this 1st day of July, 2005, by VISTANCIA, LLC, a Delaware limited liability company (as further defined in Article I below, the "**Declarant**").

W I T N E S S E T H

WHEREAS, Declarant is the owner and developer of approximately five hundred eighty-eight and fourteen one-hundredths (588.14) acres of land in the City of Peoria, County of Maricopa, State of Arizona, known as "Blackstone at Vistancia", which is a portion of the master-planned community known as "Vistancia" (defined in Section 16.1(a)) and which is subject to the Vistancia Declaration (defined in Section 16.1(a)) pursuant to that certain Supplemental Declaration of Covenants, Conditions and Restrictions Recorded (defined below) concurrently herewith;

WHEREAS, Declarant wishes to subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth that portion of Blackstone at Vistancia containing approximately three hundred seventy-nine and ninety-six one-hundredths (379.96) acres of land as legally described on Exhibit "A" attached hereto (as further defined in Article I below, the "**Subject Property**"); and

WHEREAS, Declarant may, but is not obligated to, annex Additional Property (defined below) to the Subject Property, to become a part thereof and subject to this Declaration; and

WHEREAS, Declarant desires to develop, in stages, the Subject Property and those portions of the Additional Property which may from time to time be annexed pursuant to this Declaration and become part of the Subject Property; and

WHEREAS, as part of the various stages of development of the aforesaid lands, Declarant intends, but is not obligated, to Record various subdivision plats; to dedicate portions of the Subject Property and/or Additional Property to the public for streets, roadways, drainage, flood control, and general public use; and to Record various Tract Declarations (defined below) covering portions of the Subject Property, which Tract Declarations will designate the purposes for which such portions of the Subject Property may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of the Subject Property; and

WHEREAS, Declarant desires to form a non-profit corporation for social and recreational purposes of benefiting the Members (defined below), and for the other purposes set forth herein, which non-profit corporation (as further defined in Article I below, the "Association") will (1) acquire, construct, operate, manage and maintain a variety of Common Areas (defined below) within the Subject Property; (2) establish, levy, collect and disburse the Assessments (defined below) and other charges imposed hereunder; (3) as the agent and representative of the Members, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of the Subject Property; and (4) be a member of Vistancia Maintenance Corporation (defined in Section 16.1(c) below) and administer and comply with the obligations of the Association pursuant to the Vistancia Declaration; and

WHEREAS, in order to cause this Declaration to run with the Subject Property and to be binding upon the Subject Property, the Members, the Owners (defined below) and all other Persons (defined below) from and after the date of the Recording of this Declaration, Declarant hereby makes all conveyances of the Subject Property, whether or not so provided therein, subject to this Declaration and the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements herein set forth; and by accepting Deeds (defined below), leases, easements or other grants or conveyances of any portion of the Subject Property, the Owners, other transferees, and all other Persons acquiring any interest in the Subject Property or any portion thereof, for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the provisions of this Declaration (Including (as defined below) the obligation to pay Assessments (as defined below)) hereinafter set forth except to the extent such Persons are specifically excepted therefrom.

NOW, THEREFORE, DECLARANT hereby declares as follows:

ARTICLE I DEFINITIONS

Initially capitalized words, phrases or terms used but not defined in this Declaration shall have the meanings ascribed to them in the Vistancia Declaration, unless the context otherwise requires. The following initially capitalized words, phrases or terms used in this Declaration shall have the following meanings:

- A. **"Additional Property"** shall mean real property situated in the City of Peoria, State of Arizona, and the Improvements located thereon, described on Exhibit "B" attached hereto. Additional Property may be added to the Subject Property in one or more additional phases by Supplemental Declaration pursuant to the provisions of Article XIII hereof.
- B. **"Annual Assessment"** shall mean the charge levied and assessed each year against each Lot (as defined below) and Parcel (as defined below) pursuant to Section 7.2 hereof, and shall include the amount of the Vistancia Annual Assessment (defined in Section 16.1(d) below).
- C. **"Articles"** shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.
- D. **"Assessable Property"** shall mean any Lot or Parcel within the Subject Property, except such part or parts thereof as may from time to time constitute Exempt Property.
- E. **"Assessment"** shall mean Annual Assessment, Special Assessment, Special Use Fee and/or Maintenance Charge, individually or collectively as the context may require.
- F. **"Assessment Lien"** shall mean the lien created and imposed by Section 7.1 hereof.
- G. **"Assessment Period"** shall mean the time period set forth in Section 7.8 hereof.
- H. **"Association"** shall mean the Arizona non-profit corporation to be organized by Declarant to administer and enforce this Declaration and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the Association "Blackstone at Vistancia Community Association", and hereby reserves the right to use any similar name if, for any legal or other reason, "Blackstone at Vistancia Community Association" cannot or should not be used.

I. **"Association Land"** shall mean such part or parts of the Subject Property, together with the buildings, structures and Improvements thereon, and other real property, which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest; provided, however, that notwithstanding the foregoing, any Community Common Area (as defined in the Vistancia Declaration) which the Association may at any time own in fee shall not be included within the meaning of the term "Association Land".

J. **"Association Rules"** shall mean rules adopted by the Association pursuant to this Declaration, as amended from time to time.

K. **"Blackstone Country Club"** means (i) the real property described on Exhibit "B" attached to this Declaration (subject, however, to annexation of additional real property thereto or withdrawal of portion(s) thereof pursuant to Sections 6.1 and 6.2, respectively, of the Country Club Restrictions), which is adjacent to and contiguous with portions of the Subject Property and which has been or may be developed with an eighteen-hole championship golf course and related amenities, and one or more driving range, clubhouse, tennis court, pool, pro shop, food and beverage facility, maintenance facility, parking lot and any other Improvements or facilities constructed thereon (the **"Club Property"**) in accordance with the Country Club Restrictions; and (ii) where the context so requires, the nonprofit corporation (and any successor to such nonprofit corporation) established or to be established by Declarant to own the Club Property and/or to administer and enforce any membership plan, management, organizational, governance, membership and/or ownership documents and related documents now or hereafter pertaining to the Blackstone Country Club (collectively, as the same may be amended from time to time, the **"Club Documents"**) and to exercise the rights, powers and duties set forth therein, Including the sale of memberships in the Blackstone Country Club and the enforcement of rules and regulations for users of the Blackstone Country Club in accordance therewith.

L. **"Board"** shall mean the Board of Directors of the Association.

M. **"Bylaws"** shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

N. **"Cluster Residential Development"** shall mean Lots limited by a Tract Declaration to Single Family occupancy of those types of residential housing arrangements known as townhouses, clustered housing, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and occupants of the Lots in the Cluster Residential Development.

O. **"Common Area"** and **"Common Areas"** shall mean (a) all Association Land and the Improvements thereon; (b) all land within the Subject Property which the

Declarant, or a Developer (with the written consent of Declarant), by this Declaration or other Recorded instrument, makes available for use by the Members and evidences its intent to convey to the Association at a later date; (c) all land within the Subject Property which the Declarant or a Developer (with the written consent of Declarant) indicates on a Recorded subdivision plat or Tract Declaration is to be used for landscaping, water retention, drainage, and/or flood control for the benefit of the Subject Property, the Additional Property, the general public and/or any property subjected from time to time to the Vistancia Declaration, which is to be dedicated to the public upon the expiration of a fixed period of time, but only until such land is so dedicated; and/or (d) all land within the Subject Property which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance (either pursuant to this Declaration or a separate instrument), and which benefits the Members, the Association and/or any property subjected from time to time to the Vistancia Declaration by limited use, full use, or aesthetic consistency (Including landscaping within dedicated rights-of-way within or adjacent to the Subject Property and/or the Additional Property). Notwithstanding the foregoing, "Common Area" and "Common Areas" shall not include any Community Common Area, whether owned by the Association or by Vistancia Maintenance Corporation or some other Person.

P. **"Condominium Development"** shall mean a condominium established under the laws of the state of Arizona.

Q. **"Condominium Unit"** shall mean a unit, together with any appurtenant interest in all common elements, within a Condominium Development.

R. **"Country Club Owner"** means any Person, Including Vistancia, LLC, a Delaware limited liability company, who owns the fee simple interest to all or any portion of the Blackstone Country Club at the subject point in time.

S. **"Country Club Restrictions"** means the Declaration of Covenants, Conditions, Restrictions and Easements for Blackstone Country Club Recorded concurrently with this Declaration, as amended or supplemented from time to time; and **"Country Club Users"** means Country Club Owner, occupants of the Blackstone Country Club or any portion thereof, and their respective agents, employees, contractors, subcontractors, invitees, guests, tenants, lessees, representatives and customers, and those Persons owning or holding membership rights (however denominated) in the Blackstone Country Club pursuant to the Club Documents, and other Persons permitted by the Club Documents to use or access the Blackstone Country Club.

T. **"County"** shall mean and refer to the County of Maricopa, State of Arizona.

U. **"Declarant"** shall mean VISTANCIA, LLC, a Delaware limited liability company, and the successors and assigns of Declarant's rights and powers hereunder, as set forth by a Recorded instrument.

V. **"Declaration"** shall mean this Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements, as amended or supplemented from time to time.

W. **"Deed"** shall mean a deed or other instrument conveying the fee simple title in a Lot or Parcel.

X. **"Design Guidelines"** shall mean the architectural guidelines and standards promulgated by the Design Review Committee as provided in Section 11.1 hereof (Including specific architectural guidelines and standards for production builders, custom home builders, homeowners and/or other classifications of Owners and Developers), as the same may be amended or supplemented from time to time.

Y. **"Design Review Committee"** shall mean the committee of the Association to be created and appointed pursuant to Section 11.1 hereof.

Z. **"Developer"** means a Person who is engaged in residential or commercial real estate development and who purchases ten or more Lots or one or more Parcels from the Declarant or from an affiliate of the Declarant for the purpose of constructing Improvements thereon for sale or lease, or a landbanking entity which purchases ten or more Lots or one or more Parcels from the Declarant or from an affiliate of Declarant for the purpose of conveying, from time to time, all or any portion thereof to a Person who is engaged in residential or commercial real estate development and acquires such property from such landbanking entity for the purpose of constructing Improvements thereon for sale or lease, and is designated as a Developer hereunder in a Recorded instrument signed by Declarant, and the successors and assigns of such Developer so designated.

Aa. **"Development Master Plan"** shall mean, collectively, those certain Master Plans defined in the Development and Annexation Agreement for White Peak Ranch and Lakeland Village as approved the City of Peoria on October 4, 2001, and Recorded on October 24, 2001, in Instrument No. 2001-0986718, as the same may be amended from time to time.

Bb. **"Dwelling Unit"** shall mean any building or portion of a building situated upon a Lot or Parcel designed and intended for use and occupancy as a residence by a Single Family.

Cc. **"Exempt Property"** shall mean the following parts of the Subject Property: (1) all land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, the City of Peoria, or any political subdivision for so long as such governmental authority is the owner thereof or for so long as said dedication remains effective; (2) all Association Land, for so long as the Association is the owner

or lessee thereof; and (3) all Community Common Areas, whether owned by the Association or Vistancia Maintenance Corporation or some other Person.

Dd. **"Governing Documents"** shall mean this Declaration, any Supplemental Declaration, any applicable Tract Declaration, the Country Club Restrictions, the Articles, the Bylaws, the Association Rules and the Design Guidelines, as they may be amended from time to time.

Ee. **"Improvement"** means any structure or improvement of any type or kind, Including buildings, roads, driveways, levees, dams, channels, basins, parking areas, fences (Including golf ball netting or fencing), walls, spas, gazebos, dwelling units, garages, signs, rocks, hedges, plantings, planted trees and shrubs, planters, grass, watering systems (Including sprinklers and irrigation lines), and all other structures or landscaping improvements of every type and kind. Without limiting the generality of the foregoing, where the context so requires, **"Improvement"** shall Include the improvements and facilities described in Sections 1.2 and 1.12 of the Country Club Restrictions.

Ff. **"Include"** or **"Including"** shall mean include or including, without limitation.

Gg. **"Land Use Classification"** shall mean the classification to be established by the Declarant pursuant to Section 4.1 hereof, which designates the type of Improvements which may be constructed on a Lot, Parcel or Association Land and the purposes for which such Improvements and the Lot, Parcel or Association Land on which they are located may be utilized.

Hh. **"Lessee"** shall mean the lessee under a lease, Including an assignee of a Lease but excluding any Person who has assigned all of his interest in a Lease.

Ii. **"Lot"** shall mean any area of real property within the Subject Property designated as a lot on any subdivision plat Recorded with the approval of the Declarant and/or the Board as required hereby and any Condominium Unit within the Subject Property (but in no event shall Community Common Areas constitute a Lot for purposes hereof).

Jj. **"Maintenance Charges"** shall mean any and all costs assessed pursuant to Section 10.2 and Section 10.3 hereof.

Kk. **"Member"** shall mean any Person holding a Membership in the Association pursuant to this Declaration, Including the Declarant.

Ll. **"Membership"** shall mean a Membership in the Association and the corresponding rights, privileges and responsibilities of the Members pursuant to this Declaration, Including the provisions of Article VI hereof.

Mm. **"Owner"** shall mean 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 in a Lot or Parcel. Owner shall not include (i) Persons having an interest in a Lot or Parcel merely as security for the performance of an obligation, or (ii) a Lessee, Tenant, Resident or other occupant. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of Arizona Revised Statutes § 33-741 et seq. 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 Lots or Parcels subject to the lien of a deed of trust pursuant to Arizona Revised Statutes § 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of Lots or Parcels the fee simple title to which is vested in a trustee pursuant to a dual beneficiary trust agreement, subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

Nn. **"Parcel"** shall mean any area of real property within the Subject Property which (i) is not included within the boundaries of any Recorded subdivision plat or condominium plat, or is designated as a parcel (as opposed to a lot) within the boundaries of any Recorded subdivision plat approved by the Declarant and/or the Board as required hereby; and (ii) is subject to a Tract Declaration; and (iii) is not Association Land or Community Common Area.

Oo. **"Party Wall"** shall mean a wall or fence constructed on or immediately adjacent to the common boundary of Lots and/or Parcels or the common boundary of Common Areas and a Lot or Parcel or the common boundary of a Lot, Parcel or Common Areas and the Community Common Areas, but excluding Country Club Fences (as defined in Section 4.2(p)(ii) hereof).

Pp. **"Permittee"** shall mean a Member's family members, agents, guests and invitees, and the Tenants, Lessees, Residents or other occupants of such Member's Lot or Parcel and their respective family members, agents, guests and invitees, individually or collectively as the context may require.

Qq. **"Person"** shall mean a human being, a corporation, a partnership, a trustee, a limited liability company or other legal entity.

Rr. **"Recording"** (or any derivative thereof) shall mean placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and **"Recorded"** shall mean having been so placed of public record.

Ss. **"Reduced Assessments"** shall mean the reduced assessments described in Section 7.3(c) through Section 7.3(g), inclusive, hereof.

Tt. **"Resident"** shall mean each natural person residing in a Dwelling Unit.

Uu. **"Residential Condominium Development"** shall mean a Condominium Development which is limited by a Tract Declaration to residential use.

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

Ww. **"Single Family Residential Development"** shall mean a Parcel limited by a Tract Declaration for use as a development of Single Family detached housing, each Dwelling Unit being intended for use by a Single Family.

Xx. **"Special Assessment"** shall mean any assessment levied and assessed pursuant to Section 7.5 hereof, and shall Include the amount of any Vistancia Special Assessment (defined in Section 16.1(d) below).

Yy. **"Special Use Fees"** shall mean special fees authorized by this Declaration which an Owner or any other Person is obligated to pay to the Association over, above and in addition to any Annual Assessments, Special Assessments or Maintenance Charges imposed or payable hereunder, levied and assessed pursuant to Section 7.6 hereof.

Zz. **"Sub-Association"** shall mean an owners or similar association created within the Subject Property (other than the Association established under this Declaration), which owners association shall be subject to this Declaration. Each Owner who is a member of a Sub-Association shall also hold Membership in the Association established under this Declaration. A Sub-Association shall not hold a membership in Vistancia Maintenance Corporation.

AA. **"Subject Property"** shall mean the real property situated in the City of Peoria, Arizona, described on Exhibit "A" attached hereto, and the Improvements to be completed thereon, and any Additional Property (and the Improvements thereon) annexed to the Subject Property pursuant to the provisions of Article XIII hereof (but only after annexation is effective), but excluding any Community Common Areas.

BB. **"Supplemental Declaration"** shall mean a written instrument Recorded pursuant to Article XIII hereof.

CC. **"Tenant"** shall mean any Person who occupies property located on the Subject Property under any type of rental or letting arrangement but is not included in the definition of a Lessee.

DD. **"Tract Declaration"** shall mean a declaration Recorded pursuant to Section 4.1 of this Declaration.

EE. Intentionally omitted.

FF. **"Visible From Neighboring Property"** shall mean, with respect to any given object, that such object is or would be visible to a natural person six feet tall, standing at ground level on any part of any street, Lot, Parcel, Common Area, the Blackstone Country Club or Community Common Area.

ARTICLE II PROPERTY SUBJECT TO THE BLACKSTONE AT VISTANCIA DECLARATION

Section 2.1. General Declaration Creating Blackstone at Vistancia. Declarant intends (but is not obligated) to develop the Subject Property and to sell and convey Lots and Parcels. As portions of the Subject Property are developed, Declarant intends, with respect to particular property, to record one or more Tract Declarations covering Lots and Parcels and designating Common Areas which will incorporate this Declaration and which will establish such additional covenants, conditions, and restrictions as may be appropriate for that property. Declarant hereby declares that all of the Subject Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Recorded Supplemental Declaration(s) and Tract Declaration(s) applicable thereto, as amended or modified from time to time; provided, however, property which is not part of a Lot or Parcel and which is dedicated or conveyed to the public or a governmental entity for public purposes shall not be subject to this Declaration and the covenants herein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Members concerning the use and maintenance of such public areas shall at all times apply to the Members, their respective Permittees, and all other Persons occupying or entering upon the Subject Property. This Declaration, any Supplemental Declarations and any Tract Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Subject Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Subject Property and every part thereof. All of this Declaration shall run with the Subject Property and with all Lots, Parcels and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, the Members and their respective successors in interest; and, with respect to the provisions relating to the Vistancia Declarant (defined in Section 16.1(b) below), the Vistancia Declaration, the Vistancia Assessments (defined in Section 16.1(d) below)

and other Vistancia Obligations (defined in Section 8.1 below), the Vistancia Lien (defined in Section 16.1(e) below), the Community Common Areas, Vistancia Maintenance Corporation, the Vistancia Rules (defined in Section 16.1(f) below), any obligations of the Association arising out of or in connection with the Vistancia Declaration, and any obligations of the Members as members of a Village Association (as that term is defined in the Vistancia Declaration) arising out of or in connection with the Vistancia Declaration, shall inure to the benefit of Vistancia Maintenance Corporation and the Vistancia Declarant; and, with respect to the provisions relating to the Blackstone Country Club and the Country Club Owner, shall inure to the benefit of the Country Club Owner. Except as provided herein or in the Vistancia Declaration with respect to the approval rights reserved by the Vistancia Declarant or Vistancia Maintenance Corporation, nothing in this Declaration shall be construed to prevent the Declarant from modifying its plan of development as to any portion of the Subject Property or Additional Property owned by the Declarant, or from Recording any subdivision plats covering any portion of the Subject Property or Additional Property owned by the Declarant, or from dedicating or conveying portions of the Subject Property or Additional Property owned by the Declarant, including streets or roadways, for uses other than as a Lot, Parcel or Association Land.

Section 2.2. Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, this Declaration shall be binding upon and shall benefit the Association.

ARTICLE III EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

Section 3.1. Easements of Enjoyment. Every Member shall have a non-exclusive right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot and Parcel, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other Special Use Fees for the use of any recreational or other facility situated upon the Common Areas, subject to Section 4.5 of the Country Club Restrictions.
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities and other Common Areas (with the exception of any private streets located upon Common Areas that provide access to and from the subject Member's Lot or Parcel) by any Member (i) for any period during which any Assessment against his Lot or Parcel remains delinquent, (ii) for a period not to exceed 60 days for any infraction of this Declaration, a Tract Declaration, the Association Rules or the applicable Design Guidelines, and (iii) for successive suspension periods if any such infraction is not corrected during any prior suspension period.

- (c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility company for such purposes and subject to such conditions as may be agreed to by the Association, subject to and as limited by the Vistancia Declaration. Unless otherwise required by zoning stipulations or agreements with the City of Peoria effective prior to the date hereof or specified on a Recorded subdivision plat approved by the Declarant and/or the Board as required hereby, no such dedication or transfer shall be effective unless approved by the Members representing at least 75% of the votes entitled to be cast by each class of Membership, except that the Board shall have the authority, without obtaining the approval of the Members, to transfer to such public agencies, authorities or utility companies easements and rights-of-way which are intended to benefit the Subject Property and which do not have any substantial adverse effect on the enjoyment of the Common Areas by the Members or the enjoyment of the Country Club Access Easement Areas by the Country Club Users (as defined in the Country Club Restrictions), subject to and as limited by the Vistancia Declaration. Any such dedication or transfer shall be subject to the prior written approval of Vistancia Maintenance Corporation or the Vistancia Declarant, as required hereby or by the Vistancia Declaration, and of the Declarant for so long as the Declarant owns any Lot or Parcel or any other portion of the Subject Property, or owns or holds an option to purchase any part of the Additional Property.
- (d) The right of the Association, subject to Section 4.5 of the Country Club Restrictions, to regulate the use of the Common Areas through the Association Rules and to prohibit access to those Common Areas, such as landscaped rights-of-way and the Country Club Access Tracts, not intended for use by the Members. The Association Rules shall be intended to enhance the preservation of the Common Areas for the safety and convenience of the Members, or otherwise shall serve to promote the best interests of the Members, all as determined in the absolute discretion of the Board (provided that the Association Rules shall not conflict with the provisions of this Declaration or the Country Club Restrictions). Only Members and Permittees to whom such a Member's rights of enjoyment therein have been delegated in accordance with Section 3.2 below shall have the right to use the Common Areas, except as otherwise specifically provided herein, in the Country Club Restrictions or in the Vistancia Declaration.
- (e) If a Recorded Tract Declaration designates a portion of the Common Area as an area which is to be operated, maintained, repaired and replaced by the Association but which is for the sole or primary benefit of the Members owning fewer than all of the Lots and Parcels in the Subject Property, then only the Members owning those Lots and Parcels which are assessed a Special

Use Fee therefor (as designated in such Tract Declaration), and Permittees to whom such a Member's rights of enjoyment therein have been delegated in accordance with Section 3.2 below, shall have the right to use such portion of the Common Area, except as otherwise specifically provided herein or in the Vistancia Declaration.

Section 3.2. Delegation of Use. Any Member may, subject to the Association Rules, this Declaration and any applicable Tract Declaration, (a) delegate his right of enjoyment in the Common Areas to one or more Permittees; or (b) designate another Person to exercise all of his rights (but not liabilities or voting rights), which other Person shall, during the period of such designation, have the sole right to delegate rights of enjoyment pursuant to clause (a) of this sentence. Permittees to whom a Member's rights of enjoyment have been delegated in accordance with this Section 3.2 shall be subject to all restrictions, limitations, covenants, conditions and other provisions of the Association Rules, this Declaration and any applicable Tract Declaration which pertain to the use and maintenance of the Common Areas, and the suspension of any Member's use rights in accordance with Section 3.1(b) hereof shall automatically suspend any right of such Member's Permittees to use the recreational facilities and other Common Areas during the period of such suspension. Each Member shall be accountable hereunder for the acts and omissions of its Permittees as if such acts or omissions had been committed by the Member.

Section 3.3 Construction and Development Easements.

- (a) There is hereby reserved to the Declarant and granted to the Association and to their respective duly authorized employees, agents, representatives, successors, assigns, consultants, contractors, subcontractors, materialmen, suppliers, invitees, permittees, licensees, and Mortgagees, a perpetual, nonexclusive easement on, under, over, through and across Common Areas and any other portions of the Subject Property (excluding Lots), but not through any structures thereon, to the extent reasonably necessary for (i) the construction, maintenance, repair, replacement, operation and management of the Common Areas; and/or (ii) the performance by Declarant or the Association of their respective duties and exercise of their respective rights under this Declaration, any Supplemental Declaration or Tract Declaration, the Association Rules, the Design Guidelines, or other similar instrument and for performance of their duties by authorized emergency personnel. This easement includes, but is not limited to, a right of pedestrian and vehicular access, ingress and egress for surveying, staking, grading, paving, construction of Improvements, tying in and installing utilities, and other activities incidental to the development and maintenance of the Common Areas.

- (b) There is hereby reserved to the Declarant and to its respective duly authorized employees, agents, representatives, successors, assigns, consultants, contractors, subcontractors, materialmen, suppliers, invitees, permittees, licensees, and Mortgagees, a perpetual, nonexclusive easement on, under, over, through and across Common Areas, public utility and multi-use easement areas and tracts identified on any Recorded plat of any portion of the Subject Property, and any private accessways within the Subject Property, but not through any structures thereon, to the extent reasonably necessary for the initial development and construction of Improvements by Declarant on the Subject Property or Additional Property (or by an authorized Developer upon the Lots owned by such Developer, if Declarant elects to delegate any of its rights as provided in the penultimate sentence of this subsection) and upon the Common Areas contained within the boundaries of a Recorded subdivision plat (Including Common Area Improvements and Dwelling Units), Including access for development and construction activities, and access for sales and marketing activities, by Declarant (or by an authorized Developer, if Declarant elects to delegate any of its rights as provided in the penultimate sentence of this subsection). This easement Includes a right of pedestrian and vehicular access, ingress and egress for surveying, staking, grading, paving, construction of roads, for tying in and installing utilities, for constructing Improvements, and for other activities incidental to the initial development, marketing and sale of all or any portion of the Subject Property or Additional Property (but nothing in this Section 3.3 shall modify, alter or affect in any way any requirement in this Declaration, or in any applicable Supplemental Declaration or Tract Declaration, the Association Rules or the applicable Design Guidelines, that the approval of Declarant and/or the Design Review Committee be obtained prior to commencement of any such activities). Declarant may (but shall have no obligation to) delegate to any Developer any or all of the rights and easements reserved or granted to Declarant under this Section 3.3(b), and/or any or all of the rights and easements delegated to Declarant pursuant to Section 10.6(e) and Section 10.6(f) of the Vistancia Declaration, insofar as they relate to initial development of the Lots owned by such Developer and of the Common Areas contained within the boundaries of the Recorded subdivision plat creating such Lots, subject to such restrictions, requirements, limitations and additional terms not inconsistent herewith as may be set forth in any applicable Tract Declaration, and to the extent of such delegation, such Developer shall be deemed an "authorized" Developer for purposes of this Section 3.3(b). Anything in this Section 3.3(b) to the contrary notwithstanding, no easement is reserved or may be created under this Section 3.3(b) which would or would be deemed to prohibit, restrict or require modification of any Improvements built or to be built by Owners or Developers in accordance with the applicable improvement plans for the subject property approved by Declarant and the City of Peoria.

- (c) Declarant also reserves for itself the nonexclusive right and power to reserve, grant and Record such specific easements as may be necessary, in the Declarant's sole discretion, in connection with the orderly development of any portion of the Subject Property or the Additional Property (provided, no easement shall be imposed pursuant to this Section 3.3(c) upon any Lot following Recordation of the approved plat creating such Lot). Declarant also reserves for itself and the Association the nonexclusive right and power to grant nonexclusive, temporary easements and/or revocable licenses as may be necessary or appropriate in connection with the construction of any Improvements on any portion of the Subject Property (Including Common Areas) or the Additional Property (provided, this reservation shall not be applicable to any Lot after the commencement of construction of a Dwelling Unit thereon). The document creating any such easements or licenses shall specify which of the Owners shall have a right and easement of enjoyment in and to such easements, and which of the Owners shall be responsible for the expense of the maintenance, operation, repair or replacement of Improvements made in, upon, on or under the easement area, but no responsibility for any such expense may be imposed upon the Owner of any Lot which may be subjected to any such temporary easement and/or revocable license without the written consent of such Owner. Declarant shall have the right to regulate use of any such easements through the Association Rules.
- (d) Each Owner shall cooperate in the granting of reasonable and customary easements to one another and/or any governmental entity or utility provider for utility facilities to serve the Lot or Parcel of any other Owner, so long as such cooperation does not result in such Owner being prohibited, restricted or hindered in the construction or location upon a Lot of any Improvements built or to be built by such Owner in accordance with the applicable improvement plans for the Owner's property approved by Declarant and the City of Peoria.
- (e) Declarant grants to each Owner and to the Association reciprocal easements of encroachment between adjacent Lots and between any Lot and Common Area, due to the unintentional placement, or settling or shifting, of Improvements constructed, installed or altered thereon (provided such Improvements have been approved by the Declarant or the Design Review Committee as required by this Declaration). Such easement shall extend for a distance not to exceed two (2) feet, as measured from the common boundary. In no event shall an easement of encroachment exist or be created hereby if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

- (f) The exercise of the easement rights granted in this Section are subject to the Vistancia Declaration (Including the easements granted and reserved therein), the Vistancia Rules, this Declaration, any applicable Supplemental Declaration and Tract Declaration, the Association Rules and the applicable Design Guidelines, and to all other applicable covenants, conditions, restrictions, easements, reservations, rights and other matters of Record. All work associated with the exercise of the easements described in this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the portion of the Subject Property burdened by such easement. Upon completion of the work, the Person exercising the easement shall restore, at such Person's sole cost and expense, any portion of the Subject Property damaged in connection with such work, to the extent reasonably possible, to substantially its condition prior to the commencement of the work, Including any paving and landscaping improvements. Except as specifically indicated, the exercise of these easements shall not (i) permit entry into buildings, nor (ii) unreasonably interfere with the use of any portion of the Subject Property, nor (iii) permit entry into the Community Common Areas. Except in an emergency, entry onto any Lot, Parcel or Common Area pursuant to the easement rights granted in this Section shall be made only after reasonable notice to the Owner or the occupant of such Owner's Lot or Parcel, or to the Association with respect to any Common Area.
- (g) Nothing contained in this Declaration shall be deemed to create any implied easements not otherwise expressly provided for herein.

Section 3.4 Gated Entrances; Abutting Blackstone Country Club; Release of Claims.

3.4.1 The Declarant may, but shall not be obligated to, construct gated entrances leading into the Subject Property or portions thereof in order to limit vehicular access and to provide some privacy for some or all of the Owners and Residents. Each Owner, Lessee, Tenant, Resident and Developer (each, an "**Acknowledging Party**", and collectively, the "**Acknowledging Parties**"), for itself and its Permittees, acknowledges and agrees as follows:

- (a) Declarant makes no representations or warranties that gated entrances will provide security and safety to any of the Acknowledging Parties and/or their respective Permittees.
- (b) The gated entrances may restrict or delay entry into the Subject Property by the police, fire department, ambulances and other emergency vehicles or personnel.

Each Acknowledging Party, for itself and its Permittees, assumes the risk that any such gated entrances may not provide security and safety and may restrict or delay entry into the Subject Property by the police, fire department, ambulances and other emergency vehicles and personnel. Neither the Declarant, the Association nor any member, partner, director, officer, agent or employee of any of the foregoing shall be liable to any Acknowledging Party or its Permittees for any claims or damages resulting, directly or indirectly, from the construction, operation, existence or maintenance of the gated entrances (if any).

3.4.2 Portions of the Subject Property about the Blackstone Country Club, which from time to time may Include any or all of the Improvements and facilities described in Sections 1.2 and 1.12 of the Country Club Restrictions. Neither Membership in the Association nor ownership of a Lot or Parcel nor occupancy of a Dwelling Unit shall confer any ownership interest in or right to use the Blackstone Country Club. Each Acknowledging Party, for itself and its Permittees, acknowledges, understands and agrees as follows:

- (a) No representations or warranties have been or are made by Declarant, the Association or any Person acting on behalf of either of the foregoing, with regard to the continuing ownership or operation of the Blackstone Country Club.
- (b) Water hazards, the clubhouse, maintenance facilities and other installations located on the Blackstone Country Club may be attractive nuisances to children.
- (c) The operation, maintenance and use of the Blackstone Country Club will entail the operation and use of (1) noisy power equipment such as tractors, lawn mowers and blowers on various days of the week, Including weekends, during various times of the day, Including early morning and late evening hours; (2) sprinkler and other irrigation systems in operation during the day and at night; (3) electric, gasoline or other power driven vehicles and equipment used by maintenance and operations personnel; (4) application of pesticide and fertilizing chemicals; and (5) refuse removal trucks, delivery trucks and other vehicles entering and exiting the Blackstone Country Club on various days of the week, Including weekends, during various times of the day, Including early morning and late evening hours.
- (d) The golf facilities, clubhouse, pool(s), tennis courts, parking lots and other Improvements and facilities on the Blackstone Country Club are open to the Country Club Users, have exterior lighting and amplified exterior sound, and will be regularly used for entertainment and social events on

various days of the week, Including weekends, during various times of the day, Including early morning and late evening hours.

- (e) Play on the golf course at Blackstone Country Club will be allowed during all daylight hours up to seven (7) days a week (and may be allowed for evening and night-time hours), and golf tournaments may be conducted at any time during the year. The Blackstone Country Club is open to the Country Club Users and large numbers of people will be entering, exiting and using the Blackstone Country Club during all daylight hours (and may Include evening and night-time hours) up to seven (7) days a week.
- (f) Water used to irrigate the Blackstone Country Club and Common Areas and to fill the lakes (if any) within the Subject Property and the Blackstone Country Club may be reclaimed (effluent) or other non-potable water ("**Irrigation Water**") when available for such purposes. The Irrigation Water is not potable (drinkable) water and consumption of such Irrigation Water by humans or animals may cause severe illness.
- (g) The Subject Property is subject to a golf ball easement as set forth in Section 4.2(gg) of this Declaration, and play on the golf course at Blackstone Country Club may result in damage to a Dwelling Unit or other Improvements on Lots, Parcels or Association Land as a result of golf balls leaving the Blackstone Country Club, Including damage to windows and exterior areas of Dwelling Units and other Improvements, damage to automobiles and other personal property of the Acknowledging Parties and their respective Permittees, whether outdoors or within a Dwelling Unit or other building, and injury to persons.
- (h) At the option of the Country Club Owner (subject to any required approval of Declarant and/or the Association hereunder and/or under the Country Club Restrictions), fencing, screening, landscaping and other features may be incorporated into the Country Club Property (Including areas adjacent to Lots, Parcels and Association Land); furthermore, any Improvements within Blackstone Country Club (Including tee boxes, greens, water and sand hazards and course layout) may be relocated, reconfigured, eliminated, added or modified from time to time (subject to any required approval of Declarant and/or the Association hereunder and/or under the Country Club Restrictions) (the "**Country Club Layout Modifications**"), which actions may affect the risk associated with golf balls entering the Subject Property from Blackstone Country Club.
- (i) Certain Lots, Parcels, Association Land and Dwelling Units may be more susceptible to incursions and damage by golf balls than others.

- (j) The Subject Property is subject to certain covenants, conditions, restrictions, easements and benefits contained in the Country Club Restrictions, Including easements for utilities, drainage and access, that may affect the Lots, Parcels and Association Land.

3.4.3 Each Acknowledging Party acknowledges, understands and agrees that the existence of the Blackstone Country Club may cause inconvenience and disturbance and possible injury or damage to property and to the Acknowledging Parties and their respective Permittees. Each Acknowledging Party has considered the location of the Subject Property and the Lot, Parcel, Dwelling Unit or other real property or Improvement being purchased or leased and its proximity to the Blackstone Country Club, Including the golf course and features thereof, clubhouse, driving range, parking lots, pool(s), tennis courts and other Improvements and facilities within the Blackstone Country Club (and the possibility that Country Club Layout Modifications could in the future affect such proximity) before becoming an Owner, Resident, Tenant or Lessee. By acceptance of a deed or by acquiring any interest in any of the Subject Property, each Acknowledging Party acknowledges the risks of the aforesaid nuisance, inconvenience, disturbance and possible injury, death or damage to persons and property.

3.4.4 Each Acknowledging Party hereby releases the Declarant, the Association and the Country Club Owner from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (Including strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury, death or damage to persons and property resulting from activities or occurrences described in this Section 3.4.

ARTICLE IV LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 4.1. Land Use Classifications. As portions of the Subject Property are readied for development, the Land Use Classifications, restrictions, easements, rights-of-way, and other matters, Including new or different uses and restrictions therefor and Including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration which may be Recorded for that portion of the Subject Property (subject to the prior approval rights of the Vistancia Declarant or Vistancia Maintenance Corporation as set forth in the Vistancia Declaration). Any such Tract Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. Except as otherwise provided in Section 12.5 below, the Land Use Classifications for Lots, Parcels and Association Land established by a Tract Declaration shall not be changed except by amendment of the Tract Declaration in the manner set forth in Section 14.2(b) of this Declaration (Including approval thereof by

the Vistancia Declarant or Vistancia Maintenance Corporation, as provided in the Vistancia Declaration). Contemplated Land Use Classifications Include, but are not limited to, the following Land Use Classifications and combinations thereof:

- (a) Single Family Residential Use.
- (b) Residential Condominium Development Use.
- (c) Commercial Condominium Development Use, which may Include Office Condominium Development Use.
- (d) Commercial Office Use.
- (e) Association Use, which may Include Common Areas.
- (f) Cluster Residential Development Use.
- (g) Clubhouse Use.
- (h) Intentionally omitted.
- (i) Public/Private Recreation Use.
- (j) General Public Use.
- (k) Multi-Use Easement and/or Public Utility Easement.

These Land Use Classifications represent an inexhaustive list of potential and possible land uses to be designated at the discretion of Declarant (subject to approval thereof by the Vistancia Declarant or Vistancia Maintenance Corporation, as provided in the Vistancia Declaration), and do not impose on Declarant any mandatory duty regarding Land Use Classifications, or preclude Declarant from employing other land uses. Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such classifications, shall be determined in the Tract Declaration.

Section 4.2. Covenants, Conditions, Restrictions and Easements Applicable to Lots and Parcels within All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels, and the Owners, Tenants, Lessees, Residents and other occupants thereof, regardless of Land Use Classifications:

- (a) Architectural Control. No excavation or grading work shall be performed on any Lot or Parcel without the prior written approval of the Design

Review Committee. Without limiting the generality of the foregoing, after a Lot or Parcel has been graded and improved in accordance with drainage, grading and other improvement plans therefor approved by Declarant and the applicable governmental authorities and utilities, no Owner shall perform any excavation or grading, or take any other action, which would have the effect of impeding or diverting drainage of surface water runoff to or from any portion of Vistancia (Including from the Blackstone Country Club) on and across such Owner's Lot or Parcel. No Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot or Parcel without the prior written approval of the Design Review Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, Including the exterior color scheme, of any part of a Lot or Parcel, or any Improvements located thereon which are Visible From Neighboring Property, from their appearance on the date this Declaration is Recorded or from their appearance as previously approved by the Design Review Committee, shall be made or done without the prior written approval of the Design Review Committee. Only the Owner of the subject Lot may request the approval of the Design Review Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which is or would be Visible From Neighboring Property, and any Owner desiring such approval shall submit to the Design Review Committee a written request for approval in accordance with the submittal requirements set forth in the applicable Design Guidelines, and approval or disapproval of the submittal (and any requirements imposed in connection with an approval) shall be determined in accordance with the review procedures set forth in the applicable Design Guidelines. The approval by the Design Review Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section and the applicable Design Guidelines shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval. Any change, deletion or addition to the plans and specifications approved by the Design Review Committee must be approved in writing by the Design Review Committee. The Design Review 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 as set forth in the applicable Design Guidelines. Notwithstanding the provisions of this Section 4.2(a), the Declarant and any affiliate of Declarant shall be exempt from the provisions of this Section 4.2(a).

- (b) Animals. No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be

maintained on any Lot or Parcel and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry, or livestock 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 animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member, Tenant, Lessee or Resident, or upon the Board's own initiative, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. The Board shall make a finding of nuisance or unreasonableness if so directed by Vistancia Maintenance Corporation in writing with respect to conditions affecting the use and enjoyment of any Community Common Area. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein. Capturing, killing or trapping wildlife is prohibited within the Subject Property unless performed by a government official in the performance of his duties, except in circumstances imposing an imminent threat to the safety of Persons or pets.

- (c) 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 or structures used during the construction of a dwelling or other structure on any property shall be removed immediately after the completion of construction.
- (d) Maintenance of Lawns and Plantings. Each Owner of a Lot or Parcel shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot or Parcel (Including set back areas and Common Areas), (ii) planted public right-of way areas between sidewalks (or bikepaths) and the street curb in front of his Lot or Parcel, if any, (iii) any other public right-of-way or easement area which abuts the Owner's Lot or Parcel and which is located between the boundary line of his Lot or Parcel and the paved area of any street, sidewalk, bikepath or similar area, and (iv) any non-street public right-of-way or easement area adjacent to his Lot or Parcel, neatly trimmed, and shall keep all such areas properly cultivated and maintained and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (1) the Association assumes the responsibility in writing, (2) the Association has been given such

responsibility by a Recorded instrument as provided in Section 10.1 of this Declaration, (3) the City of Peoria or other public agency assumes responsibility, for so long as the Association or the City of Peoria or other public agency assumes or has responsibility as provided in (1), (2), or (3) above, (4) the Association has responsibility under this Declaration, or (5) Vistancia Maintenance Corporation has responsibility under, or has assumed responsibility pursuant to, the Vistancia Declaration.

- (e) Nuisances; Construction Activities. No animal waste, rubbish or debris, shall be placed or permitted to accumulate upon or adjacent to any Lot, Parcel, or Association Land, and no odors or loud noises shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No petroleum products or similar product of any kind or other nuisance shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no horns, whistles, firecrackers, bells or other sound devices, except security devices, shall be used or placed on any such property without prior approval of the Board. Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee, which may also require screening of the storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance, provided, however, that the Board shall make a finding of nuisance if so directed by Vistancia Maintenance Corporation in writing with respect to conditions affecting the use and enjoyment of any Community Common Area.
- (f) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Parcel which shall result in breeding or harboring infectious plant diseases or noxious insects.
- (g) Repair of Building. No building or structure on any Lot or Parcel shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by subsection (a) above, such building or structure shall be immediately repaired or rebuilt or shall

be demolished (and if demolished, the Lot or Parcel shall be promptly cleared of debris and thereafter maintained in a neat, clean and weed-free condition).

- (h) Antennas; Flags. No antenna, satellite dish or other device for the transmission or reception of television or radio (Including amateur or ham radio) signals or any other form of electromagnetic radiation, Including satellite television or radio discs, antennas or equipment, shall be installed, erected, used or maintained outdoors on any Lot or Parcel, whether attached to a building or structure or otherwise, except those devices ("**Permitted Devices**") whose installation and use is protected under federal law or regulations (generally, at the time of Recordation of this Declaration, certain antennas under one meter in diameter). A Permitted Device can only be installed if:

(i) placement of the Permitted Device is in a location on the Lot or Parcel that minimizes to the greatest extent feasible its Visibility From Neighboring Property;

(ii) with respect to any Permitted Device that, after application of the first criterion specified in clause (i) above, is to any extent Visible From Neighboring Property, the Permitted Device shall be screened from view in a manner that is architecturally integrated into the Dwelling Unit on the Lot or the Improvement on the Parcel, in terms of design, size, materials, location, means of attachment, color and other aesthetic considerations; and

(iii) the Owner complies in all respects with any applicable Design Guidelines, rules or other installation restrictions promulgated by the Design Review Committee as set forth in Section 11.1 hereof and/or the decision of the Declarant or the Board upon an appeal in accordance with Section 11.2 hereof.

The Board shall have jurisdiction to enforce the above restrictions and any applicable Design Guidelines, rules or other installation restrictions so promulgated by the Design Review Committee with respect to Permitted Devices to the fullest extent possible within the constraints of applicable federal regulations. By acceptance of a deed conveying title to a Lot or Parcel, each Owner is deemed to have agreed to comply with the above restrictions as well as any applicable Design Guidelines, rules or other installation restrictions promulgated by the Design Review Committee as set forth in Section 11.1 hereof and/or the decision of the Declarant or the Board upon an appeal in accordance with Section 11.2 hereof.

Except as otherwise expressly provided in the immediately following sentence with respect to the American flag, no flag shall be displayed on any Lot or Parcel except in accordance with the flag policy set forth in the Association Rules and/or the applicable Design Guidelines, which may regulate the location, mounting, pole height, lighting, maintenance and other responsibilities of displaying a flag. The Association Rules and/or the applicable Design Guidelines may regulate the placement and manner of display of the American flag, Including the location and size of flagpoles (but shall not prohibit the installation of a conforming flagpole).

- (i) Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind, except for grading and excavation work and the removal of fill material Including gravel, rock and sand, in connection with the construction of Dwelling Units, buildings, structures or other Improvements which have been approved in writing by the Design Review Committee or which are being constructed by, or on behalf of, the Declarant.
- (j) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style which are approved in writing by the Design Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection or for such time as may be specified in the applicable Design Guidelines. All rubbish, trash, or garbage shall be removed by each Owner from its Lot and/or Parcel and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot or Parcel.
- (k) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Parcel unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.
- (l) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon, or adjacent to, any Lot or Parcel except (i) 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; (ii) that which the Declarant or the Association may require for the development, operation and maintenance of the Subject Property or Additional Property, or that which Vistancia Maintenance Corporation may

require for repair, maintenance, or performance of its other responsibilities respecting the Community Common Areas; (iii) that used in connection with any business permitted under a Tract Declaration; or (iv) that which the Vistancia Declarant or Vistancia Maintenance Corporation may require in connection with the exercise of any easement rights reserved or granted in the Vistancia Declaration.

(m) Signs. No signs whatsoever (Including commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel except: (i) signs required by legal proceedings; (ii) no more than two (2) identification signs for individual residences, which are consistent with the Association Rules and the applicable Design Guidelines; (iii) signs the nature, number, location, size, color, design, message content and type of which are consistent with the Association Rules and the applicable Design Guidelines; (iv) promotional and advertising signs of Developers on any Lot or Parcel approved from time to time by Declarant as to number, size, color, design, message content, location and type; (v) such other signs (Including construction job identification signs, builder identification signs, and subdivision and business identification signs) which are in conformance with the requirements of the City of Peoria or other applicable governmental agencies and which have been approved in writing by the Design Review Committee as to size, color, design, message content and location; (vi) signs permitted to be maintained by Vistancia Maintenance Corporation or the Vistancia Declarant pursuant to the Vistancia Declaration; (vii) political signs which are required by applicable law to be permitted, subject to Design Review Committee approval as to the time and manner of posting such signs and as to the number, location and size thereof to the extent the requirement for such approval is not prohibited by applicable law; and (viii) signs permitted or required to be maintained by the Country Club Owner pursuant to the Country Club Restrictions. Notwithstanding any other provision herein, "For Sale" and "For Lease" signs are prohibited in or upon any Lot or Parcel.

(n) Restriction on Further Subdivision, Property Restrictions and Rezoning. Unless otherwise provided in the Tract Declaration applicable to such Lot or Parcel, no Lot or Parcel shall be further subdivided or separated into smaller Lots or Parcels by any Owner other than the Declarant, and no portion less than all of any such Lot or Parcel shall be conveyed or transferred by any Owner other than Declarant, without the prior written approval of the Board (and further subject to approval thereof by the Vistancia Declarant or Vistancia Maintenance Corporation, as provided herein or in the Vistancia Declaration). This provision shall not, in any way, limit Declarant from subdividing or separating into Lots or Parcels any property at any time owned by Declarant (subject to approval thereof by the Vistancia Declarant

or Vistancia Maintenance Corporation, as provided herein or in the Vistancia Declaration). No portion of a Lot other than the entire Lot, together with the Improvements thereon, may be rented, and then only to a Single Family. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner or Person other than the Declarant against any Lot or Parcel or any other portion of the Subject Property without the provisions thereof having been first approved in writing by the Board, by the Declarant so long as Declarant owns any portion of the Subject Property or owns or holds an option to purchase any part of the Additional Property, and by Vistancia Maintenance Corporation, with such approval(s) having been endorsed on such Recorded covenants, conditions, restrictions and easements, and any covenants, conditions, restrictions or easements Recorded without such approval(s) being endorsed thereon shall be null and void.

- (o) Utility Easements. There is hereby reserved to Declarant and granted to the Association and any utility or service company providing utility services to the Subject Property or any portion thereof, a nonexclusive blanket easement in, on, upon, across, over and under Common Areas, public utility and multi-use easement areas and tracts identified on any Recorded plat, and any private accessways within the Subject Property (but not through any structures thereon) for access, ingress and egress and the installation, inspection, operation, replacement, repair and maintenance of, utility and service lines, systems and infrastructure as reasonably necessary in connection with the initial development of any Lot, Parcel or Common Area and/or the construction of the first Dwelling Unit or other Improvement thereon. Pursuant to this easement, and subject to the provisions of Section 4.2(a) hereof, a utility or service company providing utility services, whether public, quasi-public, or private, may install and maintain facilities and equipment on Common Areas and public utility and multi-use easement areas and tracts identified on any Recorded plat (subject to reasonable approval of the Design Review Committee with respect to location, design and aesthetics), have access to read utility meters, and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Improvements on Lots, Parcels and Common Areas (with the consent of the Owner of the subject Improvement and subject to reasonable approval of the Design Review Committee with respect to location, design and aesthetics). No sewers, electrical lines, water lines, or other utility services lines may be installed or relocated on any Lot or Parcel except as initially programmed and approved by the Declarant or in writing by the Design Review Committee, or, if installed after the Recording of the Tract Declaration for a Lot or Parcel, as approved in writing by the Owner of the Lot or Parcel and the Design Review Committee. The exercise of the easement rights granted in this Section are subject to any restrictions,

easements, reservations, rights and other matters of Record (Including the easements granted and reserved in the Vistancia Declaration). This Section 4.2(o) shall not be deemed to prohibit, restrict or require the modification of any Improvements built or to be built by Owners or Developers in accordance with the applicable improvement plans for the subject property approved by Declarant and the City of Peoria.

(p) Party Walls and Country Club Fences.

(i) Except as otherwise provided below with respect to Country Club Fences, the rights and duties of Owners with respect to Party Walls shall be as follows: (a) the Owners of contiguous Lots and/or Parcels who have a Party Wall shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner; (b) in the event that any Party Wall is damaged or destroyed through the act of an Owner or any Permittee of such Owner (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall without cost to the Owner of the adjoining Lot or Parcel, and any dispute over an Owner's liability for such damage shall be resolved as provided in clause (e) of this subsection (p)(i), but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking reimbursement and indemnity therefor from the Persons causing such damage; (c) in the event any Party Wall is destroyed or damaged (Including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner or any Permittee of such adjoining Owner, it shall be the obligation of all Owners whose Lots or Parcels adjoin such Party Wall to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots or Parcels on the Party Wall; (d) notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall without the prior consent of all owners of any interest therein, whether by way of easement or in fee; and (e) in the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall, or with respect to the allocation of the responsibility for the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Anything in the foregoing to the contrary notwithstanding: (f) in the case of Party Walls between Common Areas or Community Common Areas and Lots or Parcels, the Association shall be responsible for painting and maintenance of the portion of the Party Wall facing the Common Area or Community Common Area, subject to the provisions of Sections 10.2 and 10.3, and each Owner of a Lot or Parcel shall be responsible for painting and maintenance of the portion of the Party Wall facing his Lot or Parcel; and

(g) in the case of Party Walls between Common Areas and Community Common Areas, the Association shall be responsible for painting and maintenance of both sides of the Party Wall, subject to the provisions of Sections 10.2 and 10.3. Vistancia Maintenance Corporation shall not have any obligations with respect to Party Walls. The provisions of this subsection (p)(i) shall not apply to any Party Wall which separates the interiors of two (2) Dwelling Units and the rights of the Owners of such Dwelling Units with respect to Party Walls shall be governed by plats and covenants, conditions and restrictions to be Recorded by the Developer of the Dwelling Unit. Maintenance (Including painting with a different color), repair, replacement or modification of a Party Wall shall require the prior approval of the Design Review Committee (which may be required to obtain the consent of the Vistancia Declarant or Vistancia Maintenance Corporation in accordance with Section 9.4 of the Vistancia Declaration).

(ii) Perimeter fencing located upon or near a common boundary line with or upon the Blackstone Country Club, which separates the Blackstone Country Club and any Lot, Parcel, Common Area and/or Community Common Area, is referred to in this Declaration as a "**Country Club Fence**". The Association shall be responsible for the painting, maintenance, repair and replacement of both sides of Country Club Fences separating the Blackstone Country Club and Common Areas or Community Common Areas (but any liability imposed on the Association hereunder shall not prevent the Association from seeking reimbursement and indemnification therefor from any Person causing damage to a Country Club Fence, pursuant to Sections 10.2 and 10.3 or otherwise). In the case of a Country Club Fence separating the Blackstone Country Club and a Lot or Parcel, the Association shall be responsible for painting, maintenance and repair of the side of the Country Club Fence facing the Blackstone Country Club, and the Owner of the Lot or Parcel shall be responsible for the painting, maintenance and repair of the side of the Country Club Fence facing its Lot or Parcel, provided such Owner's maintenance (Including painting with a different color) and repair of such Country Club Fence shall require the prior approval of the Design Review Committee (which may be required to obtain the consent of the Vistancia Declarant or Vistancia Maintenance Corporation in accordance with Section 9.4 of the Vistancia Declaration). To the extent not inconsistent with the express provisions of this subsection (p)(ii), the provisions of subsection (p)(i) shall apply to Owners and the Association with respect to Country Club Fences.

(iii) There is hereby granted to each Person having maintenance, repair and/or restoration obligations or rights under subsection (p)(ii) a non-exclusive, perpetual easement extending five feet (5') on either side of the subject Country Club Fence, for the limited purpose of performing the

maintenance, repair and/or replacement work described in subsection (p)(ii) and access in connection therewith (the "**Country Club Fence Maintenance Easement**"); provided, that any Person exercising the Country Club Fence Maintenance Easement shall promptly repair, at its expense, any damage resulting or arising from entry by such Person pursuant to the Country Club Fence Maintenance Easement, and provided further, that the Person exercising the Country Club Fence Maintenance Easement shall indemnify and hold harmless the Owner of the property entered upon from, for and against any loss, cost, liability, damage or expense arising out of such Person's entry and performance of work pursuant to the Country Club Fence Maintenance Easement.

- (q) Service Lines. Except as otherwise specifically provided in Section 4.2(h) hereof with respect to Permitted Devices, no lines, wires, or other devices for the communication or transmission of electric current or power, Including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved in writing by the Design Review Committee, except for (i) temporary power or telephone structures incident to the construction of buildings or structures approved in writing by the Design Review Committee; or (ii) lines, wires or other devices erected, placed or maintained in connection with the exercise of any rights reserved to the Vistancia Declarant or granted to Vistancia Maintenance Corporation under the Vistancia Declaration; or (iii) major transmission lines.
- (r) Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, the Blackstone Country Club or other area from ground level to a height of eight feet (8') without the prior written approval of the Design Review Committee and, if the encroachment is upon Community Common Area, without the prior written approval of Vistancia Maintenance Corporation and, if the encroachment is upon the Blackstone Country Club, without the prior written approval of the Country Club Owner.
- (s) Trucks, Trailers, Campers and Boats. Except as otherwise required in A.R.S. Section 33-1809, no motor vehicle, mobile home, recreational vehicle, golf cart, travel trailer, tent trailer, camper shell, detached camper, boat, boat trailer, hang glider, ultra lights, or other similar equipment or vehicle may be parked or maintained on any Lot or Parcel or on any street in the Subject Property so as to be Visible From Neighboring Property, except as may be otherwise provided in an Association Rule approved by Declarant.

Certain exceptions to this subsection may be provided for in the Association Rules to accommodate loading and unloading and various other temporary provisions. However, the provisions of this subsection shall not apply to (i) motor vehicles not exceeding seven (7) feet in height measured from ground level and eighteen (18) feet in length which are parked as provided in subsection (u) below and are used on a regular and recurring basis for basic transportation and do not display any commercial name, telephone number, message or attachments that are generally considered commercial in nature, or (ii) trucks, trailers and campers parked in areas designated for parking in non-residential Land Use Classifications in connection with permitted commercial activities conducted in such non-residential Land Use Classifications. The Board shall have the right and power pursuant to Section 5.3 hereof to adopt rules and regulations governing and implementing the provisions of this Section.

(t) Motor Vehicles. No automobile, motorcycle, motorbike, golf cart or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street in the Subject Property or any other street or other property subject to the Vistancia Declaration (Including the Community Common Areas), and no inoperable vehicle, Including vehicles with flat tires, may be stored or parked on any such Lot, Parcel or street, so as to be Visible From Neighboring Property; provided, however, that the provisions of this subsection shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved in writing by the Design Review Committee. No golf carts other than electric-powered golf carts shall be operated, parked or maintained within the Subject Property without the prior written approval of the Board. All golf carts operated, parked or maintained within the Subject Property shall be licensed and registered by the State of Arizona and shall be subject to the restrictions set forth in subsection (s) above and subsection (u) below. The Board shall be entitled to establish additional rules and regulations governing golf carts, Including equipment required to be installed on golf carts.

(u) Parking. Except as otherwise required by A.R.S. Section 33-1809, vehicles of all Owners and their respective Permittees are to be kept in garages, carports, residential driveways of the Owner, designated spaces in commercial areas, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot or Parcel; provided, however, this subsection shall not be construed to permit the parking in the above described areas of any vehicle whose parking on the Subject Property is otherwise prohibited or restricted by subsection (s) above or applicable law, regulation or ordinance, or the

parking in the above described areas of any inoperable vehicle. Except as otherwise required by A.R.S. Section 33-1809, overnight parking on any street within the Subject Property is prohibited, except as may be otherwise provided in an Association Rule approved by Declarant. The Board may further restrict on-street parking through rules and regulations adopted pursuant to Section 5.3 hereof, subject to applicable law.

- (v) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot or Parcel, any member of the Design Review Committee, any member of the Board, or any authorized representative of any of them, shall have the right and license to enter upon and inspect any Lot or Parcel, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration, any applicable Tract Declaration, the applicable Design Guidelines, the Association Rules, the Vistancia Declaration or the Vistancia Rules have been or are being complied with and such Persons shall not be deemed guilty of trespass by reason of such entry.
- (w) Health, Safety and Welfare. Subject to the rights and easements granted and/or reserved in the Vistancia Declaration, in the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Residents and/or their respective Permittees, the Board may make rules restricting or regulating their presence in or on the Subject Property as part of the Association Rules or may direct the Design Review Committee to make rules governing their presence on Lots or Parcels as part of the applicable Design Guidelines.
- (x) Declarant's Use. The provisions of this Declaration which prohibit non-residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the right of Declarant, which is hereby reserved together with an easement therefor, to: (i) construct (subject to approval by the Design Review Committee as to exterior appearance), maintain and operate management offices, construction offices and sales and/or leasing offices on any Lots, Parcels or other property owned by Declarant (or by an authorized Developer, if Declarant elects to delegate any of its rights as provided in the last sentence of this subsection) and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate; and (ii) maintain one (1) or more advertising signs on the Common Area while the Declarant or any Developer is selling Lots, Parcels and other property in the Subject Property. So long as Declarant or any Developer is marketing Lots, Parcels or other property, Declarant shall have the right to restrict the use of the parking spaces on the Common Area.

Such right shall Include reserving such spaces for use by prospective purchasers, Declarant's employees and others engaged in maintenance, construction, sales, leasing or management activities. Declarant may (but shall have no obligation to) delegate to any authorized Developer any or all of the rights granted to Declarant under this subsection, subject to such restrictions, requirements, limitations and additional terms not inconsistent herewith as may be set forth in any applicable Tract Declaration.

(y) Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the right of Declarant, which is hereby reserved, to construct (subject to approval by the Design Review Committee as to location and exterior appearance), maintain and operate model homes and model home complexes (Including sales offices), and parking incidental to the visiting of such model homes, on any Lots, Parcels or other property owned by Declarant (or by an authorized Developer, if Declarant elects to delegate any of its rights as provided in the last sentence of this subsection). The Design Review Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes, so long as such parking and parking areas are in compliance with the ordinances of the City or other applicable governmental agencies and any rules of the Design Review Committee. Declarant may (but shall have no obligation to) delegate to any authorized Developer any or all of the rights granted to Declarant under this subsection, subject to such restrictions, requirements, limitations and additional terms not inconsistent herewith as may be set forth in any applicable Tract Declaration.

(z) Incidental Uses. Subject to the limitations imposed by the Vistancia Declaration, any applicable Tract Declaration, any applicable Recorded subdivision plat and/or the Vistancia Rules, the Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, Including termination of the use, as the Board may wish to impose, in its sole discretion, for the benefit of the Subject Property as a whole. By way of example and not of limitation, the uses which the Board may permit are private roadways and streets within an area having a Land Use Classification of Cluster Residential Use or Condominium Development Use, recreation facilities intended primarily for the benefit of all or certain Owners and their Permittees within areas having a Land Use Classification of Cluster Residential Use or Condominium Development Use, and recreational facilities intended for usage by the Owners of more than a single Lot or Parcel and their Permittees within any area classified for residential use.

- (aa) Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, golf cart, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment (or, if the owner of the vehicle or equipment is a Permittee of a Member, then at the sole cost and expense of such Member). Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment or, when applicable, the responsible Member. If the vehicle or equipment is owned by a Member or his Permittee, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.
- (bb) Firearms. The discharge of firearms within the Subject Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, paint ball guns and other firearms of all types, regardless of size.
- (cc) View Impairment. Declarant, Vistancia Declarant, Vistancia Maintenance Corporation, and the Association make no guarantee or representation that any view over and across the Lots, Parcels, Association Land, Community Common Areas, Blackstone Country Club or any open space within Vistancia will be preserved without impairment. Declarant, Vistancia Declarant, Vistancia Maintenance Corporation and the Association shall not have the obligation to relocate, prune, or thin trees or other landscaping except that Vistancia Maintenance Corporation or the Association, as applicable, shall have such obligation in the performance of its maintenance responsibilities as specifically provided herein or as otherwise set forth in a covenant or agreement binding Vistancia Maintenance Corporation or the Association. The owner of open space areas shall have the right to add trees and other landscaping, and the Country Club Owner shall have the right to construct Improvements on the Blackstone Country Club and make Country Club Layout Modifications as contemplated by Section 3.4.2(h) above, from time to time, subject to applicable law, the Vistancia Declaration, the Vistancia Rules and the Governing Documents, as applicable. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.
- (dd) Right to Designate Sites for Governmental and Public Interests. For so long as Declarant owns any portion of the Subject Property or owns or

holds an option to purchase any portion of the Additional Property, Declarant may designate sites within such property owned by Declarant for government, education, or religious activities and interests, Including fire, police, utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. Subject to the approval requirements set forth in Section 12.4 hereof, Declarant may also designate such sites within Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, Including dedication or conveyance of the site, if so directed by Declarant. The use specified by Declarant for any such designated site shall constitute the Land Use Classification for such site.

(ee) Private Amenities. Access to and use of any private amenity within Vistancia is strictly subject to the rules and procedures of the owner of such private amenity, and no Person gains any right to enter or to use any private amenity by virtue of Membership in the Association, ownership of a Lot or Parcel, or occupancy of a Dwelling Unit. All Persons, Including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association or any Developer, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any private amenities. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument executed by the Record owner of the private amenity. Rights to use the private amenities will be granted only to such Persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective private amenities and to terminate use rights altogether, subject to direct contractual obligations with third parties and the zoning and use regulations of any municipality, county, state or the United States applicable to the private amenity and the land upon which it is located.

(ff) Golf Ball Restriction; Entry onto Blackstone Country Club. No Owner, Resident, Lessee, Tenant, or their respective Permittees shall hit golf balls from any Lot, Parcel, Association Land or Community Common Area onto the Blackstone Country Club. Owners, Residents, Lessees, Tenants and their respective Permittees shall not enter upon the Blackstone Country Club, Including driving any golf cart onto the cart paths or any other area of the Blackstone Country Club, for any purpose, except as a permitted customer/patron of the Blackstone Country Club and then subject to all rules and regulations established by the Country Club Owner, Including the Club Documents and all policies relating to use rights, membership, fees, reservation of tee times and other operating rules and procedures. Owners,

Residents, Lessees, Tenants and their respective Permittees shall not permit any pets to enter the Blackstone Country Club at any time.

(gg) Golf Ball Easement. The Subject Property is hereby burdened with an easement for golf balls which unintentionally enter upon the Subject Property from the Blackstone Country Club. **UNDER NO CIRCUMSTANCES SHALL THE DECLARANT, ANY AFFILIATE OF DECLARANT, THE VISTANCIA DECLARANT, VISTANCIA MAINTENANCE CORPORATION, THE COUNTRY CLUB OWNER, THE ASSOCIATION AND/OR ANY SUCCESSOR IN INTEREST TO ANY OF THE FOREGOING BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY RESULTING FROM ERRANT GOLF BALLS OR THE EXERCISE OF THIS EASEMENT.** Each Owner, Lessee, Tenant and Resident, for itself and its Permittees, recognizes and agrees to the release set forth in Section 3.4.4 of this Declaration.

(hh) Easement for Blackstone Country Club Access and Country Club Entry Monumentation Tracts. Consistent with the provisions of Sections 4.5 and 4.10 of the Country Club Restrictions, (i) all streets within the Subject Property are hereby burdened with a perpetual, non-exclusive easement permitting the Country Club Users to have the right of pedestrian and vehicular access without charge over such streets to permit ingress and egress to and from the Blackstone Country Club (the "**Street Access Easement Area**"), (ii) portions of the Residential Property (but not any Lot following Recordation of the approved plat creating such Lot) designated or identified from time to time in accordance with Section 4.5 of the Country Club Restrictions (the "**Country Club Access Tracts**") are hereby burdened (or will be burdened automatically, at such time as designated or identified) with a perpetual, non-exclusive easement permitting the Country Club Users to have the right of pedestrian and vehicular (limited to golf carts and maintenance, emergency and delivery vehicles) access without charge over such Country Club Access Tracts solely for purposes related to the operation and/or Permitted Uses (as defined in the Country Club Restrictions) of the Blackstone Country Club, and (iii) portions of the Common Area designated by Declarant (and/or designated by the Association if so requested by Declarant, without the approval of the Association, any Lot Owner or other Person being required with respect thereto and without any stipulations, rules, regulations, requirements or charges being imposed by the Association with respect thereto) from time to time (the "**Country Club Entry Monumentation Tracts**") are hereby burdened with a perpetual, non-exclusive easement permitting the Country Club Owner and its employees, agents and contractors to erect and maintain signage for the Blackstone Country Club. The Association shall

maintain the Country Club Entry Monumentation Tracts and the Improvements thereon, subject to reimbursement from the Country Club Owner of a portion of the costs and expenses associated therewith as more particularly set forth in Section 4.11 of the Country Club Restrictions.

Section 4.3. Covenants, Conditions, Restrictions and Easements Applicable to Lots Within Residential Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots restricted by a Tract Declaration to Single Family Residential Use, Residential Condominium Development Use or Cluster Residential Use.

- (a) Residential Use. All Dwelling 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 Dwelling Unit, except that an Owner or Resident of a Dwelling Unit may conduct a business activity within a Dwelling Unit so long as: (i) the business activity conforms to all applicable zoning ordinances or requirements for the subject Lot; (ii) the business activity does not violate any provision of this Declaration, any applicable Tract Declaration, the applicable Design Guidelines, the Association Rules, the Vistancia Declaration or the Vistancia Rules; and (iii) the business activity is consistent with the residential character of the Subject Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of Owners or other Persons in the Subject Property, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this subsection shall be construed to have ordinary, generally accepted meanings, and shall include any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of an entire Dwelling Unit by the Owner thereof to a Single Family shall not be considered a trade or business within the meaning of this Section.
- (b) Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family Lessee from time to time by the Owner, subject to the provisions of this Declaration, any applicable Tract Declaration, the Association Rules, the applicable Design Guidelines, the Vistancia Declaration and the Vistancia Rules. No portion or fraction of a Dwelling Unit may be leased. Notice of any lease, together with such additional information as may be required by the Association, shall be given to the Association or its designee within ten (10) days of execution of the lease.

ARTICLE V
ORGANIZATION OF ASSOCIATION

Section 5.1. Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 5.2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and employ a managing agent who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the managing agent or any other employee of the Association. Unless this Declaration specifically requires a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

Section 5.3. Association Rules. The Board may, from time to time, subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Common Areas Including any recreational facilities situated upon the Common Areas; (ii) minimum standards for maintenance of Lots and Parcels and the exterior of any Improvements thereon; and/or (iii) the health, safety or welfare of the Owners and their Permittees. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

Section 5.4. Personal Liability. To the fullest extent permitted by applicable law, no member of the Board or of any committee of the Association, no officer of the Association, and no other employee or representative of the Association shall be personally liable to any Member, or to any other Person, Including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 5.5. Sub-Association. In the event a Sub-Association is to be formed by the Developer (Including the Declarant) of a Parcel or subdivision in the Subject

Property, the covenants, conditions and restrictions, and the articles of incorporation, bylaws and other governing documents for such Sub-Association, shall not be effective unless the contents thereof have been approved by the Board (and approved by the Vistancia Declarant or the Vistancia Maintenance Corporation board of directors, as applicable, to the same extent that approval is required with respect to amendments to this Declaration and Tract Declarations pursuant to Section 14.4 hereof) and the governing documents specify that (i) such Sub-Association and the rights of its members are subject and subordinate to the provisions of the Vistancia Declaration, this Declaration, any applicable Tract Declaration, the articles of incorporation and bylaws of Vistancia Maintenance Corporation, the Articles and Bylaws of the Association, the Vistancia Rules, the Association Rules, and the applicable Design Guidelines, as any or all of the foregoing may be amended from time to time; (ii) it is acknowledged that such Sub-Association is not a member of Vistancia Maintenance Corporation; and (iii) any lien for assessments levied pursuant to such Sub-Association's governing documents shall be subordinate to the Vistancia Lien and the Assessment Lien; and any covenants, conditions and restrictions Recorded without the required approval(s) being endorsed thereon shall be null and void.

Section 5.6. Membership in Vistancia Maintenance Corporation. The Association shall be a mandatory member of Vistancia Maintenance Corporation, and shall have one Membership in Vistancia Maintenance Corporation, in accordance with the Vistancia Declaration. Furthermore, the acting president of the Association shall automatically be a director on the board of directors of Vistancia Maintenance Corporation and shall cast any and all votes for the membership held by the Association in Vistancia Maintenance Corporation on matters requiring a vote of the Vistancia Maintenance Corporation membership or board of directors (except as otherwise provided in the Vistancia Declaration). The Association shall have the power, authority and duty to perform all obligations of a Village Association under the Vistancia Declaration, and to enforce against the Members all rules, regulations, restrictions, requirements, obligations and all other terms imposed upon or applicable to the members of a Village Association pursuant to the Vistancia Declaration and Vistancia Rules. Any Sub-Association formed by the Developer (Including the Declarant) of a Parcel or subdivision in the Subject Property shall not constitute a Village Association for purposes of the Vistancia Declaration and shall not be a member of Vistancia Maintenance Corporation.

ARTICLE VI MEMBERSHIPS AND VOTING

Section 6.1. Owners of Lots and Parcels. Every Owner (Including the Declarant) of a Lot or Parcel which is Assessable Property shall be a Member of the Association. For the purposes of this Section, Lots and Parcels owned by the Declarant shall be considered Assessable Property even though said Lots and Parcels are not subject to Assessment so long as there is a Class B Membership in the Association. Each such Owner (Including the Declarant) shall have the following number of Memberships:

- (a) One Membership for each Lot owned by the Member which is not covered by any of subsections (b) through (d), inclusive, of this Section 6.1;
- (b) In the case of the Owner of a Parcel restricted by a Tract Declaration to Residential Condominium Development Use, but as to which a condominium plat and declaration has not been Recorded, one Membership for each Dwelling Unit permitted upon the Parcel under the Development Master Plan, the number of such Dwelling Units to be determined on the assumption that the number of Dwelling Units within a density classification on the Development Master Plan will be spread evenly over all land within the density classification. If a site plan for a Parcel is subsequently approved by the Design Review Committee and the City of Peoria for a number of Dwelling Units different from the number of Dwelling Units permitted under the Development Master Plan, the number of Memberships shall be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual number of Dwelling Units authorized by the site plan;
- (c) In the case of the Owner of a Parcel restricted by a Tract Declaration to Single Family Residential Use or Cluster Residential Development Use, one Membership for each Dwelling Unit permitted upon the Parcel under the Development Master Plan. If a subdivision plat or other instrument creating Lots is Recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of Memberships held by the Owner, as Owner of the Parcel, shall be reduced by a number equal to the number of Lots in the Recorded subdivision plat, and the Memberships attributable to the Lots so created shall be determined pursuant to subsection (a) of this Section 6.1. All Memberships attributable to the Parcel shall cease when the land area ceases to be a Parcel because all of the area in the Parcel has been platted (and the Memberships attributable to the Lots so created shall be determined pursuant to subsection (a) of this Section 6.1) or otherwise dedicated to the public and no unplatted Single Family Residential or Cluster Residential Development area remains within the Parcel; and
- (d) In the case of a Lot or Parcel restricted by a Tract Declaration to a Land Use Classification other than Single Family Residential Use, Cluster Residential Development Use, or Residential Condominium Development Use, the number of Memberships shall be determined by Declarant and Included in the applicable Tract Declaration.

Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable.

Section 6.2. Declarant. The Declarant shall have the following number of Memberships in the Association:

- (a) The number of Memberships allocated to the Declarant pursuant to Section 6.1 of this Declaration as the Owner of Lots and Parcels which are Assessable Property; plus
- (b) One Membership for each unit of density allocated by the Development Master Plan to the portions of the Subject Property and Additional Property which are owned by Declarant and are shown on the Development Master Plan as available for residential development, whether or not such property has been annexed and subjected to this Declaration pursuant to the provisions of Article XIII hereof.

Section 6.3. Voting. The Association shall have two classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships, except the Class B Memberships held by the Declarant or for which the Declarant holds Class B votes as provided in the next paragraph. Each Owner shall be entitled to one (1) vote for each Class A Membership held by such Owner.

Class B. Class B Memberships shall be all Memberships held by Declarant and all Memberships held by Developer(s) entitled to a Reduced Assessment hereunder. The Declarant shall be entitled to three (3) votes for each Membership held by the Declarant. Declarant shall also be entitled to three (3) votes for each Membership held by a Developer entitled to a Reduced Assessment, and so long as Declarant is entitled to such votes, such Developer shall not be entitled to any vote for the Membership(s) it holds. The Class B Memberships shall cease and be converted to Class A Memberships on the first to occur of the following events:

- (a) One hundred eighty (180) days after the total votes outstanding in the Class A Memberships equal the total votes outstanding in the Class B Memberships; or
- (b) The first day of January, 2050; or
- (c) At any time by written notice to the Association that the Class B Membership in its entirety wishes to convert all its Class B Memberships to Class A Memberships.

Section 6.4. Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of

such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one Person and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made by another owner of the same Membership at the time the vote is cast, in which case the vote shall not be counted. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

Section 6.5. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and any applicable Tract Declaration and such other rights, duties and obligations as are set forth in the Vistancia Declaration, Vistancia articles of incorporation and bylaws, Vistancia Rules, Association Rules and applicable Design Guidelines, as the same may be amended from time to time.

Section 6.6. Transfer of Class A Membership. The rights and obligations of the owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot or Parcel, as applicable, and then only to the transferee of ownership of the Lot or Parcel. A transfer of ownership of a Lot or Parcel may be effected by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of Record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof.

Section 6.7. Suspension of Voting Rights. Any Member who fails to pay the Annual Assessments, Special Assessments, Special Use Fees, Maintenance Charges or, if and when applicable, its Proportionate Share (as defined in the Vistancia Declaration) of delinquent Vistancia Assessments and Charges (as hereinafter defined) as provided herein within sixty (60) days after the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued Default Interest (defined in Section 7.11 hereof) and Costs (defined in Section 7.11 hereof) are paid in full.

ARTICLE VII COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 7.1. Creation of Lien and Personal Obligation for Assessments and Maintenance Charges.

- (a) The Declarant, for each Lot and Parcel established within the Subject Property, hereby covenants and agrees, and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article VII, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII, (3) Special Use Fees established by this Article VII, (4) Maintenance Charges established by Sections 10.2 and 10.3 hereof, and (5) Default Interest, Costs and all other charges which may become due and payable to the Association by an Owner, all such Assessments and other charges to be established and collected as provided herein. The Annual Assessments, Special Assessments, Special Use Fees and Maintenance Charges, together with Default Interest, Costs and all other charges which may become due and payable to the Association by an Owner, shall be a charge on the Lot or Parcel and shall be a continuing servitude and lien upon the Lot or Parcel against which each such Assessment or other charge is made. The Annual Assessments and Special Assessments against each Lot or Parcel shall be based on the number of Memberships appurtenant to the Lot or Parcel. Each such Annual Assessment, Special Assessment, Special Use Fee and Maintenance Charge, together with Default Interest, Costs and all other charges which may become due and payable to the Association by an Owner, shall also be the personal obligation of the Person who was the Owner of the Lot or Parcel at the time when the Assessment, Default Interest, Cost or other charge fell due. The personal obligation for delinquent Assessments, Default Interest, Costs or other charges shall not pass to the successors in title of the Owner unless expressly assumed by them. However, such exemption does not apply to the obligation of the successor in title of the Owner to correct any violation of the Vistancia Declaration, this Declaration, any applicable Tract Declaration, the Vistancia Rules, the Association Rules or the applicable Design Guidelines by the Owner pursuant to Section 15.17 hereof; and further provided, however, that the transfer of title shall not extinguish any Assessment Lien except a transfer pursuant to foreclosure of a superior lien in which the Assessment Lien has been extinguished by such foreclosure proceeding.
- (b) The Declarant, for itself and for and on behalf of the Association, hereby covenants and agrees, and each Owner by acceptance of a Deed for a Lot or Parcel (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to Vistancia Maintenance Corporation the assessments and charges which are or may become the obligation of such Person under the Vistancia Declaration. The Association is obligated to collect from Members, as part of the Assessments, and timely pay to

Vistancia Maintenance Corporation the Vistancia Assessments (defined in Section 16.1(d) hereof), which will Include the amount of the Contingent Subsidy Obligation (defined in Section 16.6 hereof) if and when applicable, and certain other amounts required by the Vistancia Declaration to be included in the Assessments (the "**Charges**"), and in connection therewith is hereby assigned five hundred eighty-eight and fourteen one-hundredths (588.14) Assessment Units as that term is defined and used in the Vistancia Declaration. In the event that the Association fails to pay (after expiration of applicable notice and cure periods provided in the Vistancia Declaration) any Vistancia Assessment (Including any Contingent Subsidy Obligation (if and when applicable)) or Charges, Vistancia Maintenance Corporation has the right to bill the Members directly for their Proportionate Shares (as defined in the Vistancia Declaration) of the delinquent amount(s), determined in accordance with the terms of the Vistancia Declaration. In addition to being the personal obligation of each Member, payment of such Member's Proportionate Share of delinquent Vistancia Assessments and Charges is secured by the Vistancia Lien against every Lot and Parcel within the Subject Property, subject to enforcement action only in the event of non-payment by the Association of any Vistancia Assessments or Charges, and expiration of all applicable notice and cure periods provided in the Vistancia Declaration, and then only to the extent of each Member's Proportionate Share of the delinquent amount.

- (c) The Blackstone Country Club is not subjected hereby to this Declaration, and Declarant at this time does not intend to annex the Blackstone Country Club. By acceptance of a Deed or by acquiring any interest in any of the Subject Property, each Owner acknowledges that (i) the inclusion of the Blackstone Country Club in the legal description of the Additional Property set forth on Exhibit "B" (as the same may be adjusted from time to time to reflect annexation and de-annexation of property pursuant to Article XIII hereof) is for the sole purpose of determining the acreage of the Village (as defined in the Vistancia Declaration), which is used in calculating the Vistancia Assessments; and (ii) the Vistancia Assessments shall not be allocated to the Country Club Owner even though the Vistancia Assessments are calculated using the total acreage of all property in the Village (Including the Blackstone Country Club and the other Additional Property). However, the Country Club Restrictions provide that the Country Club Owner will reimburse the Association a portion of the Vistancia Assessments attributable to the acreage contained in the Blackstone Country Club, as such acreage may be adjusted in accordance with Article XIII hereof (the "**Country Club Share**"). The Country Club Share will be less than the amount of the Vistancia Assessment attributable to the Assessment Units (as defined in the Vistancia Declaration) assigned

to the Blackstone Country Club acreage. The amount of the Country Club Share shall be as set forth in the Country Club Restrictions, and shall be subject to adjustment from time to time as provided therein. Each Owner acknowledges and agrees that (a) the Vistancia Assessments are calculated based upon the total acres contained in each Village (Including the Subject Property and the Additional Property), and (b) the amount of the Country Club Share to be reimbursed to the Association is reasonable and fair in consideration of the open space preserved within the Subject Property.

Section 7.2. Annual Assessments. In order to provide for the uses and purposes specified in Article IX hereof, Including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which the first Tract Declaration is Recorded, shall assess against each Lot and Parcel which is Assessable Property an Annual Assessment; provided, however, that Annual Assessments shall not be assessed against a Lot or Parcel prior to the commencement date therefor specified in the Tract Declaration for such Lot or Parcel. The amount of the Annual Assessment, subject to the provisions of Section 7.4 hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and the Vistancia Declaration and providing for the uses and purposes specified in Article IX hereof, and must Include the amount of the Vistancia Annual Assessment (which may, at the election of the Vistancia Declarant, Include the amount of the Contingent Subsidy Obligation, if and when applicable).

Section 7.3. Determination of Assessment. The amount of any Annual Assessment or Special Assessment to be levied against each Lot and Parcel shall be determined as follows:

- (a) For purposes of this Section 7.3, the term "**Membership Assessment**" shall mean the total amount of any Annual Assessment or Special Assessment to be levied against all Lots and Parcels which are Assessable Property divided by the total number of Memberships attributable to the Assessable Property.
- (b) Except for Lots and Parcels covered by subsections (c) through (g) of this Section 7.3 and except for Lots and Parcels owned by the Declarant which are exempt from Assessment under subsection (h) of this Section 7.3, each Lot and Parcel shall be assessed an Annual Assessment or Special Assessment, as the case may be, in an amount equal to the Membership Assessment multiplied by the number of Memberships attributable to such Lot or Parcel pursuant to Section 6.1 of this Declaration.

- (c) The Developer of a Lot which is not otherwise covered by subsections (d) or (e) of this Section 7.3 shall be assessed 25% of the amount equal to the number of Memberships attributable to his Lot multiplied by the Membership Assessment until the earliest of (i) the completion of the first Dwelling Unit on the Lot, (ii) six (6) months from the commencement of construction of the first Dwelling Unit on the Lot, or (iii) three (3) years from the date the title to the subject Lot is first transferred from Declarant to a Developer.
- (d) The Owner of a Lot or Parcel restricted under a Tract Declaration to any non-residential use shall be assessed 25% of the amount equal to the number of Memberships attributable to the Lot or Parcel multiplied by the Membership Assessment, until the earliest of (i) the completion of the first building on the Lot or Parcel, (ii) six (6) months from the commencement of construction of the first building on the Lot or Parcel, or (iii) three (3) years from the date the title to the subject Lot or Parcel is first transferred from Declarant to an Owner.
- (e) The Owner of a Lot or Parcel restricted by a Tract Declaration to Condominium Development Use shall be assessed 25% of the amount equal to the number of Memberships attributable to the Lot or Parcel multiplied by the Membership Assessment until the earlier of (i) the date on which a site plan has been approved by the Design Review Committee and the City of Peoria for any portion of the Lot or Parcel and Condominium Development has either been completed on the Lot or Parcel or six (6) months have elapsed since commencement of construction of the Condominium Development, or (ii) three (3) years from the date the title to the subject Lot or Parcel is first transferred from Declarant to an Owner.
- (f) The Developer of a Parcel restricted by a Tract Declaration to Single Family Residential Use or Cluster Residential Use, which is not included within the boundaries of any Recorded subdivision plat, shall be assessed 25% of the amount equal to the number of Memberships attributable to the Parcel multiplied by the Membership Assessment.
- (g) The Reduced Assessments referred to in Sections 7.3(c) through 7.3(f) above, upon approval by the Board, may be continued for unimproved portions of Parcels when Improvements are to be phased. The portions of the Assessments affected by the phasing shall be determined by the Board.
- (h) So long as there is a Class B Membership, Lots and Parcels owned by the Declarant shall not be subject to Assessment, despite the fact that such

Lots and Parcels constitute Assessable Property for purposes of this Declaration. However, Declarant shall be required to pay to the Association, in the form of a subsidy, the difference between the cost of operating and administering the Association, Including funding of reserves and payment of the Vistancia Assessments and Charges, and the income from Assessments paid by Owners to the Association (the "**Declarant Subsidy**"), payable within thirty (30) days after Declarant receives written notice from the Association of the amount of the Declarant Subsidy for the current Assessment Period; provided, that each Developer of any portion of the Subject Property shall be required to pay to the Association within said 30-day period, to reduce the amount payable directly by Declarant under this subsection (h), a portion of the Declarant Subsidy in an amount equal to such Developer's Pro Rata Share multiplied by the amount of the Declarant Subsidy. A Developer's "**Pro Rata Share**" shall be determined based on the ratio that the number of Memberships held by such Developer bears to the total number of Memberships held by all Developers at the subject point in time. A Developer's Pro Rata Share of the Declarant Subsidy shall be paid in addition to any Assessments, other charges and other obligations provided for herein (Including the obligations set forth in Section 16.6 below), but a Developer's Pro Rata Share of the Declarant Subsidy shall not exceed, when added to such Developer's Reduced Assessment, the amount that would be payable by such Developer in the subject Assessment Period if it were subject to a full Annual Assessment and full Special Assessment hereunder. Declarant shall deliver to each Developer written notice of the amount of such Developer's Pro Rata Share of the Declarant Subsidy, and the due date for payment thereof to the Association, promptly following Declarant's receipt from the Association of such information. Each Developer's obligation to pay its Pro Rata Share of the Declarant Subsidy shall be a personal obligation and shall be secured by the Assessment Lien, and shall terminate as to future Assessment Periods at such time as such Developer no longer qualifies for a Reduced Assessment on any property owned by the Developer within the Subject Property. When the Class B Membership ceases in accordance with Section 6.3 hereof, all Parcels and Lots owned by Declarant shall be subject to Assessment in the same way as any other Lot or Parcel, and the Declarant Subsidy obligation set forth in this Section 7.3(h) shall terminate.

- (i) Determination of each Member's "Proportionate Share" as that term is defined and used in the Vistancia Declaration is based on full Assessment obligations hereunder, without attention to any Reduced Assessments and exemptions or exceptions from Assessment that may be given by this Section 7.3.

For the purposes of this Section 7.3, (i) construction of a Dwelling Unit or other building shall be deemed to have commenced when a building permit is issued with respect thereto by the appropriate authority; and (ii) a Dwelling Unit or other building shall be deemed completed when, in the opinion of the Board, the building is ready for occupancy or, in the case of a commercial rental building, is ready for the making of interior tenant improvements. If the rate of Assessment for a Parcel or Lot increases during the period to which an Annual Assessment or Special Assessment is attributable (or if a Developer's obligation for payment of its Pro Rata Share of the Declarant Subsidy shall terminate or change during the period to which such Declarant Subsidy is attributable), the Assessment (and/or Pro Rata Share, if applicable) shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly, quarterly or annual basis, as determined by the Board, and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

Section 7.4. Maximum Annual Assessment. The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "**Maximum Annual Assessment**", which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

- (a) Until January 1 of the year following the Recordation of the first Tract Declaration, the Maximum Annual Assessment against each Owner shall be determined by the Board.
- (b) Commencing with the year immediately following Recordation of the first Tract Declaration, and continuing each succeeding year thereafter, the Maximum Annual Assessment shall be increased effective January 1 of each such year, without a vote of the Membership, by an amount equal to the Maximum Annual Assessment for the immediately preceding calendar year multiplied by twenty percent (20%). Nothing herein shall obligate the Board to establish, in any year, a budget that utilizes the full Maximum Annual Assessment. If the Board elects to establish a budget in any year that does not utilize the full Maximum Annual Assessment, the Board shall not be prevented from establishing a budget in any subsequent year that utilizes the full Maximum Annual Assessment for such year.
- (c) From and after January 1 of the year immediately following the Recordation of the first Tract Declaration, the Maximum Annual Assessment shall be increased above the Maximum Annual Assessment otherwise determined under subsection (b) above only by a vote of a majority of the Members.

Notwithstanding the foregoing, the amount of the Vistancia Annual Assessment shall not be included in determining the amount of the Maximum Annual Assessment, and any increase in the amount of the Vistancia Annual Assessment from the immediately preceding assessment period therefor under the Vistancia Declaration shall not be included in calculating the increase in the amount of the Maximum Annual Assessment hereunder, it being acknowledged that, although the Vistancia Annual Assessment is collected by the Association as part of the Annual Assessment to ensure the availability of the necessary funds to pay the Association's obligation for the Vistancia Annual Assessment, the Vistancia Annual Assessment is subject to a separate determination of the cap on increases thereof as set forth in the Vistancia Declaration. Accordingly, the Annual Assessment for any Assessment Period hereunder shall equal the Maximum Annual Assessment plus the amount of the Vistancia Annual Assessment as the same may be increased pursuant to the Vistancia Declaration.

Section 7.5. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, Including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes. In addition, the Association shall levy, in any Assessment Period, without the consent of any Member being required, a Special Assessment equal to the amount of any Vistancia Special Assessment levied pursuant to the Vistancia Declaration during such Assessment Period (which may, at the election of the Vistancia Declarant, Include the amount of the Contingent Subsidy Obligation, if and when applicable), unless the Association has included the amount of such Vistancia Special Assessment in the Annual Assessment levied for such Assessment Period or has paid such Vistancia Special Assessment from Association reserves.

Section 7.6. Special Use Fees. The Association is authorized to bill for, administer, disburse, collect and sue for Special Use Fees, and the obligation for payment thereof shall be secured by the Assessment Lien and shall be the personal obligation of the Owners against whom they are assessed. Special Use Fees may be used to cover the costs of maintaining particular Common Area Improvements designed to primarily benefit less than all of the Members of the Association. Such Common Area Improvements may Include private streets, security gates and enhanced landscaping. All Special Use Fees collected shall, when imposed in connection with a particular Improvement, be separately accounted for and shall be expended on the particular Improvement to which they pertain. The applicable Tract Declaration for the affected

Lot(s) or Parcel(s), or a resolution of the Board made pursuant thereto, shall further describe the purpose and determination of the amount of the Special Use Fees.

Section 7.7. Notice and Quorum for Any Action Authorized Under Sections 7.4 and 7.5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.4(c) or 7.5 hereof shall be sent to all Members no less than ten (10) days nor more than fifty (50) days in advance of the meeting at the addresses of such Members on the records of the Association. At the first such meeting called, the presence of Members or of proxies entitled to cast twenty-five percent (25%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the initially scheduled meeting.

Section 7.8. Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "**Assessment Period**") shall be the calendar year, except that the first Assessment Period shall commence upon the filing of the first Tract Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by giving notice thereof to the Members of the Association. Notwithstanding the foregoing, the applicable Tract Declaration shall establish when Assessments shall commence for the Lots and/or Parcels covered in such Tract Declaration.

Section 7.9. Date of Commencement of Annual Assessments. The Tract Declaration for each Lot and Parcel shall establish the date of commencement of Annual Assessments as to each Lot and Parcel subject to the Tract Declaration.

Section 7.10. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection thereof, provided that said procedures are not inconsistent with the provisions hereof or of the Vistancia Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period. Successor Owners of Lots or Parcels shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the owner of a

Membership becomes liable for payment of an increased sum pursuant to Section 7.3 hereof during the Assessment Period, he shall notify the Association that the Reduced Assessment is no longer applicable, but his failure to so notify the Association shall not relieve him of the liability for such increased amounts. In the case of Members who become such during an Assessment Period upon the Recording of a Tract Declaration, the amount of the Annual Assessment shall be prorated and any previously levied Special Assessment which is payable in installments shall be prorated, and each new Member shall be liable for its proportionate share thereof. Members shall notify the Association in writing of a change of mailing address within ten (10) days after such change occurs.

Section 7.11. Collection Costs and Interest on Delinquent Assessments. Any Annual Assessment, Special Assessment, Special Use Fee, Maintenance Charge or other monetary obligations arising under this Declaration, or any installment of any of the foregoing, not paid when due shall be deemed delinquent and the Board shall have the right to charge interest ("**Default Interest**") from thirty (30) days after the due date until paid at a rate (the "**Default Rate**") equal to twelve percent (12%) per annum (but in no event in excess of the maximum rate permitted by applicable law), and the Owner shall be liable for all late fees and all taxable and incidental costs, Including attorney's fees, which may be incurred by the Association in collecting the same (collectively, the "**Costs**"). The applicable Default Rate on such delinquent amounts shall be determined on a daily basis or such other basis as the Board may establish from time to time. Late fees may be established by the Board and may be adjusted from time to time, subject to the limitations of applicable law. Payment of Default Interest and Costs shall be the personal obligation of the Owner in default and shall be secured by the Assessment Lien on such Owner's Lot or Parcel. The Board may Record a Notice of Delinquent Assessment against such defaulting Owner's Lot or Parcel and may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 7.12. Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person (Including Vistancia Maintenance Corporation), the Association, within a reasonable period of time thereafter (or within such period as may be required by applicable law), shall issue to such Member or other Person a written certificate stating (a) that all Annual Assessments (Including the Vistancia Annual Assessments), Special Assessments (Including the Vistancia Special Assessments), Special Use Fees and Maintenance Charges (Including Default Interest and Costs, if any) have been paid with respect to any specified Lot or Parcel as of the date of such certificate, or (b) if all Annual Assessments, Special Assessments, Special Use Fees and Maintenance Charges (Including Default Interest and Costs, if any) have not been paid, the amount of such Annual Assessments, Special Assessments, Special Use Fees and Maintenance Charges (Including Default Interest and Costs, if any) due

and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made (provided, in connection with a request for such a certificate by Vistancia Maintenance Corporation, no such charge shall be payable). Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Parcel in question, and as against any requesting escrow agency licensed pursuant to A.R.S. Title 6, Chapter 7, but in no event shall any Owner be entitled to avoid the payment of Assessments, Default Interest or Costs otherwise payable by him on the basis of a certificate issued to a third party which contains a mistake concerning the status of Assessments, Default Interest or Costs payable by the Owner.

Section 7.13. Property Exempted from the Assessments and Assessment Lien. Exempt Property shall be exempted from the assessment of the Annual Assessments, Special Assessments, Special Use Fees, and, except as provided in Section 10.3, from Maintenance Charges and the Assessment Lien; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual Assessment and Special Assessment, Special Use Fees, and, if theretofore exempt therefrom, Maintenance Charges (prorated as of the date such Exempt Property became Assessable Property) and the Assessment Lien. Despite the fact that property may constitute Exempt Property for purposes of this Declaration, it may be included in the determination of "Assessable Property" pursuant to Section 6.2(a) of the Vistancia Declaration.

Section 7.14. Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person who purchases a Lot which is restricted by a Tract Declaration to Single Family Residential Use, Cluster Residential Use or Residential Condominium Development Use shall pay to the Association immediately upon becoming the Owner of the Lot such sum as may be established by the Board from time to time (but which shall in no event be less than the amount of the Vistancia Contribution (defined below)), and each Person who purchases a Lot or Parcel restricted by a Tract Declaration to a use other than Single Family Residential Use, Cluster Residential Use or Residential Condominium Development Use shall pay to the Association at the time such Lot or Parcel no longer qualifies for a Reduced Assessment pursuant to Section 7.3 of this Declaration such sum as may be established by the Board from time to time (but which shall in no event be less than the amount of the Vistancia Contribution) (in either case, a "**Working Capital Fund Payment**"). Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration Including the establishment of reserves and payment of the Vistancia Assessments, and shall be used by the Association to pay to Vistancia Maintenance Corporation the sum of Seventy-Five and

No/100 Dollars (\$75.00) (the "**Vistancia Contribution**") out of each Working Capital Fund Payment, in accordance with the Vistancia Declaration, to ensure that Vistancia Maintenance Corporation shall have adequate funds to meet its expenses or to purchase necessary equipment or services. Working Capital Fund Payments made pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration or any other obligations arising under this Declaration or the Vistancia Declaration.

Section 7.15. Transfer Fee. Each Person other than a Developer who purchases a Lot or Parcel shall pay to the Association immediately upon becoming the Owner of the Lot or Parcel a transfer fee in such amount as is established from time to time by the Board.

ARTICLE VIII

ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND OF ASSESSMENT LIEN

Section 8.1. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration except that, with respect to any provisions relating in any way to the Vistancia Declaration, Including payment of the Vistancia Assessments, the Vistancia Subsidy (as defined in the Vistancia Declaration), the Contingent Subsidy Obligation, the Vistancia Contribution or any other monetary obligations arising under the Vistancia Declaration, violations of the Vistancia Rules or Vistancia Declaration, and use of the Community Common Areas (collectively, the "**Vistancia Obligations**"), and/or enforcement of personal obligations of the Association, the Members of the Association, the Declarant or any other Person for the Vistancia Obligations and/or enforcement of the Vistancia Lien (collectively, the "**Vistancia Remedies**"), Vistancia Maintenance Corporation shall also have the right (but not the obligation) to enforce such provisions pursuant to and in accordance with the Vistancia Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce the provisions of this Declaration (but not the Vistancia Obligations or the Vistancia Remedies) on behalf of the Association by any appropriate action, whether at law or in equity. No enforcement action by the Association or by any Member shall limit in any way, or constitute a condition precedent to, the right of Vistancia Maintenance Corporation to proceed with the exercise of any remedy it may have under the Vistancia Declaration so long as a default thereunder continues, but in the event Vistancia Maintenance Corporation elects to forbear from exercising any right or remedy for any period of time while an enforcement action is being pursued by the Association or a Member, such forbearance shall not constitute a waiver or election of any rights or remedies of Vistancia Maintenance Corporation.

Section 8.2. Association's Remedies to Enforce Payment of Assessments. If any Member fails to pay the Annual Assessments, Special Assessments, Special Use Fees or Maintenance Charges, or installments of any of the foregoing, or Default Interest or Costs, when due, the Association may enforce the payment thereof by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its rights to exercise the other remedy):

- (a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual Assessments, Special Assessments, Special Use Fees, Maintenance Charges, Default Interest or Costs;
- (b) Foreclose the Assessment Lien against the Lot or Parcel in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (Including the right to recover any deficiency) and the Lot or Parcel may be redeemed after foreclosure sale as provided by law. The Association shall have the right to bid at any foreclosure sale.

Section 8.3. Subordination of Assessment Lien to First Mortgage or Deed of Trust and Vistancia Lien; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has lent funds with the Lot or Parcel as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior, and to the Vistancia Lien. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which in any manner may arise or be imposed upon each Lot or Parcel after the date this Declaration is Recorded. Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot or Parcel free of the Assessment Lien for all Annual Assessments, Special Assessments, Special Use Fees, Maintenance Charges, Default Interest and Costs that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior and the Vistancia Lien), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take title subject to all Annual Assessments, Special Assessments, Special Use Fees, Maintenance Charges, Default Interest and Costs accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure, and the Assessment Lien therefor. Nothing herein shall affect or be deemed to affect the continued effectiveness of the Vistancia

Lien or the personal obligation of any Person for the Vistancia Assessments or other Vistancia Obligations, such matters being subject to the terms and provisions of the Vistancia Declaration.

Section 8.4. Costs to be Borne by Member in Connection with Enforcement of Payment of Assessments. In any action taken pursuant to Section 8.2 hereof, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments, Special Assessments, Special Use Fees and Maintenance Charges together with Default Interest and the Association's Costs. The Assessment Lien shall also secure payment of any other sums which may become payable to the Association by an Owner pursuant to this Declaration, Including any sums relating to the Vistancia Obligations (but the foregoing shall not in any way limit or otherwise affect the amount, priority or effectiveness of the Vistancia Lien).

Section 8.5 Provisions for Certain Fees and Charges. Notwithstanding any provision of this Declaration to the contrary, for so long as and only to the extent required by A.R.S. § 33-1807 or other applicable law, the Association has a lien for fees, charges, late charges, monetary penalties or interest thereon, other than for Assessments and charges for late payment of Assessments and for reasonable attorneys' fees and costs incurred with respect to Assessments, after the entry of a judgment in a civil suit therefor from a court of competent jurisdiction and the Recording of that judgment as provided by law, and such lien may not be foreclosed and is effective only on conveyance of any interest in the subject Lot or Parcel.

ARTICLE IX USE OF FUNDS; BORROWING POWER

Section 9.1. Purposes for which Association's Funds May be Used. The Association shall apply all funds and property collected and received by it (Including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Subject Property and the Members by devoting said funds and property, among other things, to payment of the Vistancia Assessments as and when due, and to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or outside of the Subject Property which may be necessary, desirable or beneficial to the general common interests of the Subject Property and the Members (provided, however, that Special Use Fees shall be expended only on the particular Improvements to which they pertain). The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Areas, public rights of way and drainage areas within the Subject Property, recreation, liability insurance, communications, education, transportation, health, utilities, public services, safety and indemnification of officers

and directors of the Association. The Association also may expend its funds for any purposes for which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

Section 9.2. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate.

Section 9.3. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Assessments, fees or otherwise), and 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 and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 9.4. Insurance. The Association shall obtain and maintain in full force and effect at all times insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage. In addition, the Board shall, in its own discretion, determine other appropriate or increased limits of coverage as well as types of coverage. Additionally, the Association shall obtain and maintain in full force and effect at all times a policy or policies of insurance insuring Improvements, fixtures, furnishings, equipment and other personal property located in or upon the Common Areas, against loss or damage by hazards insured under an "ALL RISK" policy providing fire and extended coverage and additional risks covered by such policy, with a deductible in such amount as may be determined by the Board from time to time. The proceeds from any such policy or policies of hazard insurance shall be used for the repair or replacement of the fixtures, furnishings, equipment, other personal property and Improvements so insured, unless otherwise determined by the vote of a majority of the Board. The amount of any deductible shall be levied as a Special Assessment or Special Use Fee, in the same manner as the premiums for such insurance are allocated.

ARTICLE X MAINTENANCE

Section 10.1. Common Areas and Public Right of Way. The Association, or its duly appointed representatives, shall maintain all landscaping located within rights-of-way dedicated to the City of Peoria within the Subject Property, except for landscaping which is Community Common Area and therefore the responsibility of Vistancia Maintenance Corporation. The Association, or its duly appointed representatives, shall

maintain and otherwise manage all Common Areas, Including the landscaping, private streets, gated entrances, open space, washes, specialty paving, lighting, trails/bikeways, drainageways, walkways, paths, parking areas, drives and recreational facilities located upon the Common Areas, and the roofs, interiors and exteriors of the buildings and structures located upon the Common Areas. Notwithstanding the foregoing, the Association shall not be responsible for providing or maintaining the landscaping, structures or other Improvements on any Common Areas which are part of Lots or Parcels unless (i) such landscaping, structures or other Improvements are available for use by all Owners and occupants of the Subject Property or are within easements intended for the general benefit of the Subject Property, or (ii) the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth herein or in a Recorded instrument as hereinafter provided. The Association shall not maintain areas which (i) the City of Peoria or a governmental entity is maintaining, or (ii) are Community Common Areas for which Vistancia Maintenance Corporation is responsible pursuant to the Vistancia Declaration, or (iii) are to be maintained by the Owners of a Lot or Parcel pursuant to Section 4.2(d) of this Declaration unless the Board determines, with respect to the areas described in clauses (i) or (iii) above, that maintenance thereof by the Association is in the best interests of the Subject Property and the Members. Specific areas to be maintained by the Association may be identified on subdivision plats Recorded or approved by the Declarant, in Tract Declarations and in Deeds from the Declarant to a transferee of a Lot or Parcel, or by other Recorded document. Failure to so identify such specific areas to be maintained by the Association shall not affect the Association's rights and responsibilities. The Board shall use a standard of reasonable care in providing for the repair, management and maintenance of the Common Areas so that the Subject Property will reflect a high pride of ownership. In this connection the Association may, in the discretion of the Board:

- (a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon Association Land;
- (b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of the Common Area used as a road, street, walk, driveway, or parking area, except that no permanent Improvements shall be made by the Association on any Common Area that is not Association Land and the Association shall provide only maintenance on Common Areas which are not Association Land;
- (c) Replace injured and diseased trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

- (d) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. In the event any subdivision plat, Tract Declaration or this Declaration permits the Board to determine whether or not Owners of certain Lots or Parcels will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Members for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article X and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 10.2. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of Common Areas or other areas maintained by the Association, or of Community Common Areas, is caused through the willful or negligent act of any Member or its Permittees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot or Parcel is subject and shall be secured by the Assessment Lien (and, with respect to Community Common Areas, shall be added to and become a part of the Vistancia Annual Assessment to which the Association is subject and shall be secured by the Vistancia Lien). The decision of the Board shall be final and binding as to whether any need for repair is caused by any willful or negligent act of any Member or its Permittees (except with respect to Community Common Areas, in which case the decision of Vistancia Maintenance Corporation shall be final and binding). Any charges or fees to be paid by the Owner of a Lot or Parcel pursuant to Section 10.1 hereof in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 10.3. Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots and Parcels or other areas of the Subject Property or Community

Common Areas which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner which violates the Vistancia Declaration, this Declaration or any Tract Declaration applicable thereto, the Vistancia Rules, the Association Rules or the applicable Design Guidelines, or in the event the Owner of any Lot or Parcel is failing to perform any of its obligations under the Vistancia Declaration, this Declaration or any Tract Declaration applicable thereto, the Vistancia Rules, the Association Rules or the applicable Design Guidelines with respect to the maintenance, repair or replacement of the Improvements located on such Lot or Parcel, the Board may (or shall, if so directed by Vistancia Maintenance Corporation) by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written notice thereof to the Owner by mail to the mailing address of the Lot or Parcel and make demand that corrective action be taken with fourteen (14) calendar days of the date of the notice. If at the expiration of the said fourteen (14) day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to (and with respect to any resolution required by Vistancia Maintenance Corporation, shall) cause such action to be taken (and the Board and its agents shall have the right and license to enter upon the Lot and Parcel in connection therewith), Including the hiring of an attorney to take action on behalf of the Board, whether by informal pre-suit action or by formal legal proceedings. The Costs of any action taken by the Board as set forth herein, together with any fines assessed against said Owner, shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. No corrective or enforcement action by the Association shall limit in any way, or constitute a condition precedent to, the right of Vistancia Maintenance Corporation to proceed with the exercise of any remedy it may have under the Vistancia Declaration so long as a default thereunder continues, but in the event Vistancia Maintenance Corporation elects to forbear from exercising any right or remedy for any period of time while a corrective or enforcement action is being pursued by the Association, such forbearance shall not constitute a waiver or election of any rights or remedies of Vistancia Maintenance Corporation.

ARTICLE XI DESIGN REVIEW COMMITTEE

Section 11.1. Establishment. The Declarant shall establish a Design Review Committee to perform the functions of the Design Review Committee set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the Design Review Committee, Including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration or any Tract Declaration. The Design Review Committee shall consist of such number of regular members and alternate members as the Declarant may designate and such members shall be appointed by the Declarant subject to the provisions of Section 11.4 hereof. The appointees need not be architects, Owners, or Residents and do not need to possess any special qualifications of any type except such

as the Declarant may, in its discretion, require. The Design Review Committee shall hold regular meetings, and a quorum (which shall consist of a majority of the regular members) shall be necessary for any decision of the Design Review Committee. An alternate member, approved by the Declarant, may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Design Review Committee shall have the authority to promulgate the Design Guidelines applicable to the Subject Property (Including the authority to promulgate separate architectural guidelines and standards for production builders, for custom home builders, for homeowners and for other classifications of Owners), provided that the Design Guidelines are not inconsistent with any architectural plans approved for the Subject Property by the Vistancia Declarant prior to Recordation of this Declaration. The Design Guidelines shall interpret and implement this Declaration by setting forth the procedures for Design Review Committee review and the standards for development within the Subject Property, Including architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials, signage, wall design and similar matters (but limited by and subject to the right of the Vistancia Declarant or Vistancia Maintenance Corporation, as applicable, to control the paint color of and any modifications to perimeter walls and fences and walls and fences fronting on arterial streets irrespective of what Person is the legal owner thereof or has responsibility for the maintenance thereof; and further limited by any improvement plan, landscape plan, design approvals or architectural plans approved for the Subject Property by the Vistancia Declarant prior to Recordation of this Declaration, which may not be modified without the prior written consent of the Vistancia Declarant). The Design Guidelines may also include provisions requiring the establishment of landscaping on Lots and Parcels pursuant to specific timetables. Subject to the limitations set forth above and to the provisions of Section 11.2 hereof, the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

Section 11.2. Appeal. Any Owner aggrieved by a decision of the Design Review Committee may appeal the decision (i) to Declarant, if Declarant at the time of such decision has the right to appoint the members of the Design Review Committee pursuant to Section 11.4 hereof, or (ii) to the Board in accordance with procedures to be established by the Board, if at the time of such decision Declarant does not have the right to appoint the members of the Design Review Committee pursuant to Section 11.4 hereof. Such procedures would Include the requirement that the appellant has modified the requested action or has new information which would in the opinion of the Declarant or Board, as applicable, warrant reconsideration. If the Board or Declarant, as applicable, fails to allow an appeal or, after appeal, again rules in a manner aggrieving the appellant, the decision of the Board or Declarant, as applicable, is final. In the event the decision of the Design Review Committee is overruled by the Board or the Declarant, as applicable, on any issue or question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board or

Declarant, as applicable, and, for purposes of this Declaration, such decision, as so modified, shall thereafter be deemed the decision of the Design Review Committee. In this regard, the Board or the Declarant, as applicable, shall have the authority to modify or overrule the decision of the Design Review Committee on any matter presented to it.

Section 11.3. Fee. The Design Review Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted. The Design Review Committee may employ an architect and other design professionals and the fees for such services shall be included in the processing fee. The processing fee imposed by this Section 11.3 shall not apply to the processing of a Developer's standard house plans for Design Review Committee approval.

Section 11.4. Appointment of Design Review Committee Members. Design Review Committee members are appointed by the Declarant and may be replaced at the discretion of the Declarant. The number of members shall be in the sole discretion of the Declarant. Declarant's right to appoint Design Review Committee members shall cease and the Board shall be vested with that right and all other rights of the Declarant pertaining to the Design Review Committee as stated in this Article XI, two (2) years after the date on which the Class B Membership is extinguished or when such right is expressly relinquished by Declarant to the Board in writing, whichever condition occurs first.

Section 11.5. Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, but the Design Review Committee takes no responsibility for engineering design or for compliance with zoning and building ordinances, and by approving any plans and specifications neither the Association, the Design Review Committee or any member thereof, any Member, the Board, nor the Declarant or any officer, director, employee, agent or affiliate of Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee or any member thereof, the Association, any Member, the Board nor the Declarant or any officer, director, employee, agent or affiliate of Declarant shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (c) the development, or manner of development, of any property within the Subject Property. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty, whether express or implied, that said plans or specifications comply with applicable governmental ordinances or regulations including zoning ordinances and building codes, or industry standards for design or construction.

ARTICLE XII
RIGHTS AND POWERS OF ASSOCIATION

Section 12.1. Association's Rights and Powers as Set Forth in Articles and Bylaws.

In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws or as provided by Arizona common law or statute. Such rights and powers, subject to the approval thereof by any agencies, institutions or other Persons deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration or the Vistancia Declaration, and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours. In addition to all other rights and remedies granted to the Association by this Declaration, the Association shall have the power to impose reasonable fines against an Owner for any violation of the Vistancia Declaration, this Declaration, any applicable Tract Declaration, the Vistancia Rules, the Association Rules or the applicable Design Guidelines by the Owner or its Permittees.

Section 12.2. Association's Rights of Enforcement of Provisions of This and Other Instruments. The Association, as the agent and representative of the Members, shall have the right to enforce this Declaration (Including the covenants set forth in this Declaration) and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association and that the Association or Declarant consented thereto.

Section 12.3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, Including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any

such contract, transaction or approval with like force and effect as if he were not so interested.

Section 12.4. Change of Use of Association Land and Procedure Therefor. Subject to Section 12.5 hereof, upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Areas is no longer in the best interests of the Members, and (b) the approval of such resolution by a majority of the votes of those Class A Members having use rights in and to the subject Common Area and a majority of the votes of the Class B Members, who are voting in person or by proxy at a meeting duly called for such purpose, and (c) the approval of such resolution by the Declarant so long as the Declarant owns any Lot or Parcel or any other portion of the Subject Property or owns or holds an option to purchase any part of the Additional Property, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and other Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Members, and (ii) shall be consistent with any deed restrictions (or zoning regulations), or applicable Tract Declaration.

Section 12.5. Conversion/Conveyance by Declarant. Notwithstanding the provisions of Section 12.4 hereof, the Declarant shall have the right, at any time and from time to time, without the consent of the Developer of the subject Parcel, the Board or of any other Owner, Member or other Person being required, to cause: (i) any or all of the Common Areas on the subject Parcel, or any portion thereof, to be converted to a Tract that is subject to a Special Use Fee and thereafter maintained by the Association in accordance with Section 7.6 hereof and the applicable Tract Declaration ("**Special Use Fee Tracts**"); and/or (ii) any or all of the Special Use Fee Tracts on the subject Parcel, or any portion thereof, to be conveyed to any Sub-Association formed by the Developer of the subject Parcel and thereafter owned and maintained by such Sub-Association, in accordance with the applicable Tract Declaration. Furthermore, prior to the date on which any Class A Membership in the Association exists with respect to the subject Parcel or any Lot within the subject Parcel, Declarant shall have the right, at any time and from time to time, subject to the consent of the Developer of the subject Parcel but without the consent of the Board or of any other Owner, Member or other Person being required, to cause any or all of the Special Use Fee Tracts on the subject Parcel, or any portion thereof, to be converted to Common Area available for use by all Members that will be maintained thereafter by the Association without the imposition of a Special Use Fee. After the date on which any Class A Membership in the Association exists with respect to the subject Parcel or any Lot within the subject Parcel, the conversion described in the immediately preceding sentence may occur only in accordance with the applicable requirements for amendment of a Tract Declaration set forth in Section 14.2(b)(ii) (Including the consent requirements set forth therein). In connection with any conversion or conveyance made pursuant to this Section 12.5, an amendment to the applicable Tract Declaration,

executed and acknowledged by Declarant (and by the Developer of the subject Parcel if such Developer's consent is required hereby or by the applicable Tract Declaration) shall be Recorded; provided, that the effectiveness of any conveyance pursuant to clause (ii) of this Section 12.5 shall not be affected by the failure to Record such an amendment with respect thereto. In the event of any conflict between the provisions of Section 12.4 hereof or Section 14.2 hereof, and the provisions of this Section 12.5, the provisions of this Section 12.5 shall control. Any conversion or conveyance made pursuant to this Section 12.5 shall not require the payment of any additional consideration (Including a Working Capital Fund Payment pursuant to Section 7.14 or a transfer fee pursuant to Section 7.15 herein) by or to the Developer of the subject Parcel, the Declarant or the Association, other than payment of any Special Use Fee or Assessment payable to the Association which is otherwise applicable thereto.

ARTICLE XIII ANNEXATION OF ADDITIONAL PROPERTY

Section 13.1. Annexation Without Approval. All or any part of the Additional Property may be annexed to the Subject Property and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Board, the Association, any Member or Owner, or any other Person being required other than as described in Section 13.4 below, by the execution and Recording of a Supplemental Declaration by Declarant describing the part of the Additional Property to be annexed. No Supplemental Declaration shall be so executed and Recorded pursuant to this Section more than fifteen (15) years after the later of: (i) the Recording of this Declaration or (ii) the most recent Recording of a Supplemental Declaration. Thereafter, or at such earlier time as the Declarant no longer owns any part of the Subject Property and no longer owns or holds an option to purchase any part of the Additional Property, the Board shall have the right to annex and subject to this Declaration all or any part of the Additional Property by executing and Recording a Supplemental Declaration. The Recording of said Supplemental Declaration shall constitute and effectuate the annexation of said portion of the Additional Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said property shall be part of the Subject Property and all of the Owners of Lots or Parcels in said property shall automatically be Members of the Association. Although Declarant or the Board shall have the ability to so annex all or any portion of the Additional Property, neither Declarant nor the Board shall be obligated to annex all or any portion of such Additional Property and such Additional Property shall not become subject to this Declaration unless and until a Supplemental Declaration shall have been so executed and Recorded. Notwithstanding anything to the contrary, if at the time of the Recordation of the Supplemental Declaration, the Additional Property described therein is owned by a Person other than Declarant, then that owner must join with Declarant (or the Board, as applicable) in the execution of the Supplemental Declaration.

Section 13.2. Supplemental Declarations. Any Supplemental Declaration may contain such complementary additions to and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additional Property so annexed and as are not inconsistent with the plan of this Declaration or the Vistancia Declaration. In no event, however, shall any such Supplemental Declaration revoke or modify the covenants established by this Declaration, the Vistancia Declaration or any applicable Tract Declaration within the existing Subject Property.

Section 13.3. De-Annexation. Notwithstanding any other provision of this Declaration with the exception of Section 13.4 hereof, Declarant shall have the right from time to time, at its sole option and without the consent of the Board, the Association, any Member or Owner or any other Person being required (except as provided in this Section 13.3 and in Section 13.4), to delete from the Subject Property and remove from the effect of this Declaration one or more portions of the Subject Property, provided, however, that: (a) a portion of the Subject Property may not be so deleted and removed unless at the time of such deletion and removal such portion is either owned by Declarant, or Declarant executes and Records an instrument approving such deletion and removal; (b) a portion of the Subject Property may not be so deleted and removed unless at the time of such deletion and removal no Dwelling Units or Common Area recreational facilities have been constructed thereon (unless the de-annexation is for the purposes of accomplishing minor adjustments to the boundaries of one or more Lots, any Common Area or another portion of the Subject Property); and (c) a portion of the Subject Property may not be so deleted and removed if such deletion and removal would deprive Owners and Residents of other parts of the Subject Property of access or other easements or rights-of-way necessary to the continued use of their respective parts of the Subject Property (unless at the same time provision is made for reasonable adequate replacement easements or rights-of-way). Declarant may exercise its rights under this Section 13.3 in each case by executing and causing to be Recorded an instrument which identifies the portion of the Subject Property to be so deleted and removed and which is executed by each Owner of such portion (if other than Declarant), and the deletion and removal of such portion of the Subject Property shall be effective upon the later of: (i) the date such instrument is Recorded; or (ii) the effective date specified in such instrument, if any, whereupon, except as otherwise expressly provided in this Section 13.3, the portion of the Subject Property so deleted and removed shall thereafter for all purposes be deemed not a part of the Subject Property and not subject to this Declaration, and the Owner(s) thereof (or of interests therein) shall not be deemed to be Owners or Members with respect to the deleted portion of the Subject Property except as members of the general public. No such deletion and removal of a portion of the Subject Property shall act to release such portion from the Assessment Lien for, or the personal obligation of the Owner for, Assessments, Costs, Default Interest or other charges hereunder which have accrued prior to the effective date of such deletion and removal, but all such Assessments, Costs, Default Interest or other charges shall be appropriately prorated to the effective

date of such deletion and removal, and no Assessments, Costs, Default Interest or other charges shall thereafter accrue hereunder with respect to the portion of the Subject Property so deleted and removed. Each portion of the Subject Property deleted and removed pursuant to this Section 13.3 shall thereafter be deemed to be a part of the Additional Property unless otherwise expressly provided to the contrary in the instrument Recorded by Declarant to effect such deletion and removal. Without limiting the generality of the foregoing, and notwithstanding any provision herein to the contrary, at or after such time as all portions of the Subject Property designated for residential use and facing on the Blackstone Country Club have been subjected to a subdivision plat Recorded with the approval(s) as required hereby, Declarant shall have the right, at its sole option and without the consent of the Board, the Association, any Member or Owner or any other Person being required, to execute and Record an instrument which deletes from the Subject Property the land located between the boundaries of such platted residential areas and the boundary of the Blackstone Country Club as initially established by Exhibit "B" hereto (the "**Additional Blackstone Country Club Property**") and removes the Additional Blackstone Country Club Property from the property subjected to this Declaration, and the Additional Blackstone Country Club Property shall thereafter be deemed to be a part of the "Additional Property" and of the "Blackstone Country Club", as such terms are used herein, and subject to the Country Club Restrictions.

Section 13.4. Vistancia Declarant Approval Required. Notwithstanding any provision of this Article XIII to the contrary, no action shall be taken to annex or de-annex property or to Record a Supplemental Declaration pursuant to this Article without the prior written approval of the Vistancia Declarant, so long as the Vistancia Declarant owns or holds an option to purchase any portion of Vistancia, and thereafter without the prior written approval of Vistancia Maintenance Corporation, which may be given or withheld by the Vistancia Declarant (or Vistancia Maintenance Corporation, when applicable) for any reason in its sole and absolute discretion. The approval of the Vistancia Declarant or Vistancia Maintenance Corporation, as applicable, shall be evidenced on the Supplemental Declaration or other Recorded instrument effecting such annexation or de-annexation, and any such Supplemental Declaration or other instrument Recorded without the approval of the Vistancia Declarant or Vistancia Maintenance Corporation, as applicable, evidenced thereon shall be void and of no force or effect.

ARTICLE XIV TERM; AMENDMENTS

Section 14.1. Term. This Declaration shall be effective upon the date of Recording hereof and, as amended from time to time, shall continue in full force and effect in perpetuity. In the event that such perpetual duration is determined, by nonappealable judgment of a court of competent jurisdiction, to violate the Rule Against Perpetuities or any related statute or rule of law that may now or hereafter be in effect,

then this Declaration, as amended, shall have an initial term of the maximum number of years which would not violate the Rule Against Perpetuities or such statute or rule (using the "lives in being" computation set forth in Section 15.3), and thereafter shall be automatically extended for successive periods of ten (10) years each. In the event that the Association shall be dissolved pursuant to the terms set forth in its Articles, each and every Owner shall automatically assume, in addition to any direct obligations it may have to Vistancia Maintenance Corporation pursuant to the Vistancia Declaration or this Declaration, its Proportionate Share of the obligations and liabilities of the Association to Vistancia Maintenance Corporation pursuant to the Vistancia Declaration, and shall remain so obligated and liable until the Vistancia Declaration has terminated in accordance with its terms. Such assumption of obligations and liabilities shall be effective without the necessity of any further writing or Recording, and each Owner's Proportionate Share of such obligations and liabilities, together with any direct obligations it may have to Vistancia Maintenance Corporation pursuant to the Vistancia Declaration or this Declaration, shall be the personal obligation of such Owner and payment thereof shall be secured by the Vistancia Lien against such Owner's Lot or Parcel.

Section 14.2. Amendments.

(a) This Declaration may be amended only in accordance with the following provisions:

(i) During the Class B Membership, by the Declarant without the consent of the Board or any Member, subject only to approval of such amendment by the other necessary parties as required by Section 14.4 below.

(ii) Except as provided in clause (i) above, in subsections (b) and (c) below and in Section 14.3 hereof, and subject to approval of the subject amendment by the necessary parties as required by Section 14.4 hereof, at an election duly called and held pursuant to the provisions of the Articles and Bylaws, the Members casting ninety percent (90%) of the authorized votes of each Class of Memberships at the election vote affirmatively, either in person or by proxy, for the adoption of the amendment; provided, however, after twenty (20) years from the date of the Recording of this Declaration, the affirmative vote of Members casting only seventy-five percent (75%) of the votes of each Class of Memberships at the election, either in person or by proxy, shall be necessary to amend this Declaration.

(b) Notwithstanding the provisions of subsection (a) above, a Tract Declaration may be amended in accordance with Section 12.5 hereof, when applicable, or otherwise only in accordance with the following provisions:

- (i) At any time prior to the date on which any Class A Membership in the Association exists with respect to the Parcel covered by the subject Tract Declaration, only the approval of the Developer of the subject Parcel and of the necessary parties other than the Board as required by Section 14.4 hereof shall be required for any amendment to a Tract Declaration; the consent of the Board or any Member shall not be required.
- (ii) From and after the foregoing date, a Tract Declaration may be amended only as follows: (1) at an election duly called and held pursuant to the provisions of the Articles and Bylaws, seventy-five percent (75%) of the Class A Members who own a Lot or Parcel within the affected Tract vote affirmatively, either in person or by proxy, for the adoption of the amendment; (2) the subject amendment is approved by the necessary parties as required by Section 14.4 hereof; and (3) the subject amendment is approved by the Developer designated in the subject Tract Declaration so long as the Developer owns any property subject to the Tract Declaration.
- (c) Notwithstanding the foregoing, all amendments to Section 8.3 hereof affecting lienholder priority must be approved by the holders of any and all first mortgages and deeds of trust affected thereby.
- (d) Except as otherwise provided in Section 12.5 hereof with respect to an amendment pursuant to that Section, if the necessary votes and consents are obtained for any amendment to this Declaration or to a Tract Declaration, the Board shall cause to be Recorded a Certificate of Amendment, duly signed by the President or vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 14.3 below, shall certify that the events required by this Section 14.2 and by Section 14.4 hereof for such amendment have occurred.

Section 14.3. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant, so long as the Declarant owns any Lot or Parcel or other portion of the Subject Property or owns or holds an option to purchase any portion of the Additional Property, and thereafter, the Board, may amend all or any part of this Declaration to such an extent and with such language as may be requested by or may be necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots or Parcels; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loan to make, purchase, insure or guarantee mortgage loans on the Lots or Parcels; provided, that the Vistancia Obligations, the rights of and

obligations to the Vistancia Declarant and Vistancia Maintenance Corporation, the Community Common Areas, and any other provision relating to the Vistancia Declaration are not affected thereby. Any such amendment shall be effected by the Recording, by Declarant, if made by the Declarant, or by the Board, if made by the Board, of a Certificate of Amendment, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment (if any) and setting forth the amendatory language that was requested by such agency or institution or is otherwise necessary to comply with the requirements of such agency or institution. The Recording of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment or of the necessity therefor to comply with the requirements of such agency or institution, and such Certificate of Amendment, when Recorded, shall be binding upon all of the Subject Property and all Persons having an interest therein.

Section 14.4. Declarant and Other Required Approvals. Notwithstanding any provision to the contrary other than Section 14.3 above: (i) any amendment of this Declaration and/or any Tract Declaration must be approved in writing by the Declarant to be effective so long as the Declarant or an affiliate of Declarant owns any Lot or Parcel or any other portion of the Subject Property, or owns or holds an option to purchase any part of the Additional Property, and thereafter by the Board (except as specifically provided to the contrary with respect to Board approval in subsections (a)(i) and (b)(i) of Section 14.2); and (ii) so long as the Vistancia Declaration remains in force and effect, any amendment to this Declaration and/or any Tract Declaration which in any way affects or purports to affect any provision relating to the rights of or obligations to Vistancia Maintenance Corporation, any provision relating to Community Common Areas, or any provision relating to the Vistancia Declarant and/or the Vistancia Declaration, must be approved in writing by the Vistancia Declarant so long as the Vistancia Declarant owns or holds an option to purchase any portion of Vistancia, and thereafter by Vistancia Maintenance Corporation, to be effective; and (iii) any amendment of this Declaration and/or any Tract Declaration which in any way affects or purports to affect any provision relating to the Blackstone Country Club, the Country Club Fences, the Country Club Restrictions or the Country Club Owner must be approved in writing by the Country Club Owner; and (iv) any amendment of this Declaration and/or any Tract Declaration which in any way affects or purports to affect any easement granted or reserved herein must be approved in writing by all of the parties, and all of the owners of properties, benefited by such easement (collectively, the **"Benefited Parties"**). When required by this Section, the approval of the Declarant or the Board, as applicable, of the Vistancia Declarant or Vistancia Maintenance Corporation, as applicable, of the Country Club Owner, as applicable, and/or of the Benefited Parties, as applicable, shall be evidenced on the Recorded instrument effecting such amendment, and any such instrument Recorded without the approval of the Declarant or the Board, as applicable, the Vistancia Declarant or Vistancia Maintenance Corporation, as applicable, the Country Club Owner, as

applicable, and/or the Benefited Parties, as applicable, evidenced thereon, to the extent such approval(s) are required by this Section, shall be void and of no force or effect.

ARTICLE XV GENERAL PROVISIONS

Section 15.1. Interpretation of the Declaration. The Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration except that, with respect to provisions relating in any way to the Vistancia Declaration, the Vistancia Obligations or the Vistancia Remedies, Vistancia Maintenance Corporation shall have the exclusive right to construe and interpret such provisions of this Declaration. 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 and provisions hereof except that, with respect to provisions relating in any way to the Vistancia Declaration, the Vistancia Obligations or the Vistancia Remedies, the construction or interpretation thereof by Vistancia Maintenance Corporation shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

Section 15.2. Severability. Any determination by any court of competent jurisdiction that any portion of any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of the remainder of such provision, the validity or enforceability of such provision in any other circumstances, or the validity or enforceability of any of the other provisions hereof.

Section 15.3. Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related statute or rule of law, the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest; and, except as otherwise provided in Section 14.1, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest.

Section 15.4. 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.

Section 15.5. Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and

regulations are not inconsistent with the provisions of this Declaration, the Vistancia Declaration or the Vistancia Rules.

Section 15.6. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Recorded plat or other Recorded instrument, Declarant makes no warranties or representations whatsoever that (i) the plans presently envisioned for the complete development of the Subject Property can or will be carried out, or (ii) any of the Additional Property or other land now owned or hereafter acquired by it will be subjected to this Declaration, or (iii) any such land (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 (iv) if such land is once used for a particular use, such use will continue in effect, or (v) the Blackstone Country Club will be completed in accordance with any proposed plans or continue to be used for any particular purpose.

Section 15.7. References to the Covenants in Deeds. Deeds to and instruments affecting any Lot or Parcel or any part of the Subject Property may contain the covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the covenants shall be binding upon the grantee-Owner or other Person claiming through any instrument and his heirs, executors, administrators, trustees, personal representatives, successors and assigns.

Section 15.8. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder as set forth in a Recorded instrument.

Section 15.9. Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall Include the feminine and neuter genders; words used in the neuter gender shall Include the masculine and feminine genders; words in the singular shall Include the plural; and words in the plural shall Include the singular.

Section 15.10. Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Section 15.11. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Member or any of its Permittees, then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City of Peoria or the Subject Property. This

Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 15.12. Conveyance or Encumbrance of Association Land. Except as otherwise expressly provided herein, the Association Land shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B Membership and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes in Class A Membership.

Section 15.13. Attorney's Fees. In addition to any other remedies set forth in this Declaration regarding Costs, in the event the Association employs an attorney to enforce any lien or other right granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation of or noncompliance with the Vistancia Declaration, this Declaration, any applicable Tract Declaration, Articles, Bylaws, Vistancia Rules, Association Rules, or applicable Design Guidelines, the offending Owner or other Person shall pay to the Association, upon demand, all attorney's fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be included within the meaning of the term "Costs" as used herein and shall be secured by the Assessment Lien.

Section 15.14. Remedies Cumulative. Each remedy afforded the Association herein is cumulative and not exclusive.

Section 15.15. Waiver. Any right or remedy provided for in this Declaration shall not be deemed to have been waived by any act or omission, Including any acceptance of payment or partial performance or any forbearance, except by an instrument in writing specifying the waiver of such right or remedy and executed by the Person against whom enforcement of such waiver is sought.

Section 15.16. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Arizona. Any action brought to enforce or interpret the terms of this Declaration shall be brought in the Superior Court of the State of Arizona in and for the County of Maricopa.

Section 15.17. Responsibility of Successors in Interest to Owner's Violations. Successors in title of an Owner to a Lot or Parcel are obligated to correct any violation of the Vistancia Declaration, this Declaration, any applicable Tract Declaration, the Vistancia Rules, the Association Rules or the applicable Design Guidelines by any preceding Owner of the Lot or Parcel.

Section 15.18. Indemnification/Acknowledgement. The Owners acknowledge that: (1) the property subject to this Declaration contains Common Areas; (2) the

Common Areas are intended solely for aesthetic purposes and limited recreational use; (3) the Common Areas possess certain inherent dangers from which the Owners must take precautions to protect themselves, their Permittees and others; (4) no safety personnel will patrol the Common Areas and the Owners assume the risk and the responsibility of protecting themselves, their Permittees or others; and (5) the Owners will indemnify, defend and hold harmless the Declarant, the Association, the Board and the Developers, and the respective officers, directors, members, employees, agents or affiliates thereof, and their respective successors and assigns from, for and against any and all loss, claims and causes of action (Including claims and actions for damages for injury to persons or property), liabilities, injuries, damages, expenses and costs (Including interest and attorneys' fees), incurred by or claimed against such indemnified parties arising in any way and under any laws from or in connection with the Common Areas.

ARTICLE XVI
VISTANCIA DECLARATION AND VISTANCIA MAINTENANCE CORPORATION

Section 16.1 Vistancia Definitions. The following words, phrases or terms used in this Declaration shall have the following meanings, provided that in the event of any conflict between the provisions of this Section 16.1 and the provisions of the Vistancia Declaration, the Vistancia Declaration shall control:

- (a) **"Vistancia Declaration"** shall mean that certain Declaration of Covenants, Conditions and Restrictions for Vistancia dated July 9, 2003, Recorded July 9, 2003, in Instrument No. 2003-0898772, as amended or supplemented from time to time, respecting subjected and annexable land comprising approximately seven thousand one hundred (7,100) acres located in the City of Peoria, County of Maricopa, State of Arizona (collectively, **"Vistancia"**), of which the Subject Property is a part.
- (b) **"Vistancia Declarant"** shall mean VISTANCIA, LLC, a Delaware limited liability company, and the successors and assigns of its rights and powers under the Vistancia Declaration as set forth in a Recorded instrument.
- (c) **"Vistancia Maintenance Corporation"** shall mean the Arizona non-profit corporation organized by the Vistancia Declarant to administer and enforce the Vistancia Declaration and to exercise the rights, powers and duties set forth in the Vistancia Declaration, its successors and assigns.
- (d) **"Vistancia Assessments", "Vistancia Annual Assessments" and "Vistancia Special Assessments":**
 - (i) **"Vistancia Assessments"** shall mean, collectively, "Annual Assessment Allocations", "Special Assessment Allocations", "Default

Interest", "Costs" and "other charges" (as those terms are defined and used in the Vistancia Declaration) and the Contingent Subsidy Obligation (if and when applicable) levied and assessed by Vistancia Maintenance Corporation each "Assessment Period" (as defined in the Vistancia Declaration) against the "HOA Members" (as defined in the Vistancia Declaration), together with the Vistancia Contribution and any other amounts payable by the HOA Members to Vistancia Maintenance Corporation pursuant to Article VI or any other provision of the Vistancia Declaration.

(ii) **"Vistancia Annual Assessment"** shall mean the charge levied and assessed by Vistancia Maintenance Corporation each Vistancia Assessment Period against the HOA Members of Vistancia Maintenance Corporation and against the Non-Residential Owners (as defined in the Vistancia Declaration) pursuant to Section 6.1 of the Vistancia Declaration. **"Annual Assessment Allocation"** shall mean each HOA Member's allocation of the Vistancia Annual Assessment pursuant to Section 6.2(a) of the Vistancia Declaration.

(iii) **"Vistancia Special Assessment"** shall mean any assessment levied and assessed by Vistancia Maintenance Corporation against the HOA Members of Vistancia Maintenance Corporation and against the Non-Residential Owners pursuant to Section 6.4 of the Vistancia Declaration. **"Special Assessment Allocation"** shall mean each HOA Member's allocation of any Vistancia Special Assessment pursuant to Section 6.4 of the Vistancia Declaration.

- (e) **"Vistancia Lien"** shall mean the "Assessment Lien" as defined in the Vistancia Declaration, which is a charge upon each Member's Lot or Parcel and all Subject Property and Additional Property owned by Declarant.
- (f) **"Vistancia Rules"** shall mean the rules and regulations promulgated by Vistancia Maintenance Corporation pursuant to the Vistancia Declaration pertaining to the management, operation and use of the Community Common Areas.
- (g) **"Vistancia Obligations"** is defined in Section 8.1 of this Declaration.

Section 16.2. Vistancia Right to Collect from Owners. This Declaration and each and every provision hereof are subject and subordinate in all respects to the Vistancia Declaration, irrespective of whether specific reference thereto is made in any provision of this Declaration. In the event of any conflict between the terms and provisions of this Declaration and the terms and provisions of the Vistancia Declaration, the terms and provisions of the Vistancia Declaration shall control. The Vistancia Declaration

contains provisions which affect the rights of Owners of Lots and Parcels within the Subject Property and of the Declarant and the Association, and the Association constitutes a "Village Association" for purposes of the Vistancia Declaration. Without limiting the generality of the foregoing, Section 6.8 of the Vistancia Declaration is set forth below for ease of reference to give Owners further notice of the Vistancia Lien (initially capitalized terms in the following provision shall have the meanings ascribed to them in the Vistancia Declaration):

"Section 6.8 Right to Collect from Village Association Members. In the event of non-payment of any Annual Assessment Allocation or Special Assessment Allocation (including without limitation any Vistancia Subsidy obligation which may have been included therein pursuant to Section 6.2(b) above) by an HOA Member which remains delinquent thirty (30) days after the due date therefor, Vistancia Maintenance Corporation shall have the right to bill the members of the Village Association (i.e., each Owner of a Lot or Parcel within the subject Village) for their proportionate share of the subject Annual Assessment Allocation or Special Assessment Allocation, determined on the same basis as their membership rights and responsibilities under the organizational documents of the Village Association ("Proportionate Share") (in the event such organizational documents provide for reduced assessment obligations for any Person for any period of time, or for exemption of the declarant thereunder from assessment for any portion of the Subject Property it owns, such Person and declarant shall nevertheless be treated as having full assessment obligations thereunder for purposes of determining its Proportionate Share as provided herein). Each Person who is a member of the Village Association shall be liable for its Proportionate Share of the Annual Assessment Allocations and Special Assessment Allocations of such Village Association as well as such member's Proportionate Share of all Default Interest, Costs and other charges owed by such Village Association and/or which may be incurred by Vistancia Maintenance Corporation in collecting such amounts from the Village Association and/or such member thereof, and payment of such amounts shall be a charge on the Lot or Parcel of each member of the Village Association and shall be a continuing servitude and lien upon the Lot or Parcel of each member of the Village Association (such lien may be referred to herein as, and is included as part of, the Assessment Lien). The Village Common Areas and Community Common Areas owned by a Village Association shall not be subject to any such lien. The Board may Record a Notice of Delinquent Assessment against any member of a Village Association who fails to pay its Proportionate Share of any amount owed by such Person's Village Association within thirty (30) days after receipt of written notice that such obligation is due, and may establish a fixed fee to reimburse Vistancia Maintenance Corporation for Vistancia Maintenance Corporation's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a Cost of Vistancia Maintenance Corporation secured by the Assessment Lien."

In the event that notice and cure periods relating to the same matter are set forth in both the Vistancia Declaration and this Declaration, such periods shall run concurrently and notice need be given pursuant to the Vistancia Declaration or this Declaration, but not both.

Section 16.3. No Exemptions from Vistancia Obligations. Declarant hereby acknowledges that, although Lots and Parcels owned by Declarant are excluded from Assessment under this Declaration so long as there is a Class B Membership, they are not exempt insofar as determination of obligations and liabilities under the Vistancia Declaration is concerned, and are subject to the Vistancia Lien. Furthermore, although the Owners of some Lots and Parcels are benefited by the Reduced Assessments provided for in this Declaration, such Owners and such Lots and Parcels are not entitled to any reduced rate of assessment insofar as determination of obligations and liabilities under the Vistancia Declaration is concerned, and such Lots and Parcels are subject to the Vistancia Lien.

Section 16.4. Easements Reserved by Vistancia Declarant. The Subject Property and Additional Property are subject to easements reserved and granted by the Vistancia Declarant in the Vistancia Declaration, and any easements and rights granted herein are subject and subordinate thereto.

Section 16.5. Use of Community Common Areas. The Vistancia Declaration permits changes in the use of and conveyances of Community Common Areas upon the terms and conditions set forth therein. Community Common Areas may be owned by Vistancia Maintenance Corporation or the Vistancia Declarant, or may be owned by the Association pursuant to deeds Recorded by Vistancia Maintenance Corporation and/or the Vistancia Declarant as provided in the Vistancia Declaration, without the consent of the Association or the Members being required. Any Community Common Area conveyed to the Association shall maintain its status as Community Common Area, and shall be a Vistancia Maintenance Corporation Area of Responsibility to be maintained and operated by Vistancia Maintenance Corporation. Members and the members of all other Village Associations are granted a non-exclusive right and easement of enjoyment in and to the Community Common Areas which shall be appurtenant to and pass with the title to every Lot and Parcel, subject to and regulated by the provisions of the Vistancia Declaration and of the Vistancia Rules.

Section 16.6. Vistancia Subsidy. Declarant is subject to, and hereby covenants and agrees to pay, the Vistancia Subsidy (as defined in the Vistancia Declaration) obligations of Declarant arising under the Vistancia Declaration, payment of which is the personal obligation of Declarant and secured by the Vistancia Lien against all Assessable Property (as defined in the Vistancia Declaration) of Declarant; provided, that after Declarant is no longer a Member, such Vistancia Subsidy obligations shall automatically become the personal obligation of the Association (the "**Contingent Subsidy**

Obligation") and shall be included in the amount of the Vistancia Assessments as set forth in the Vistancia Declaration. For so long as Declarant is liable for payment of the Vistancia Subsidy obligations, each Developer of any portion of the Subject Property shall be required to timely pay to Vistancia Maintenance Corporation, to reduce the amount payable directly by Declarant under the Vistancia Declaration, a portion of the Vistancia Subsidy obligation from time to time owed by Declarant, in an amount equal to such Developer's Pro Rata Share (determined as provided in Section 7.3(h) above) multiplied by the amount of the Declarant's Vistancia Subsidy obligation. A Developer's Pro Rata Share of Declarant's Vistancia Subsidy obligation shall be paid in addition to any Assessments, other charges and other obligations provided for herein (Including the obligations set forth in Section 7.3(h) of this Declaration). Declarant shall deliver to each Developer written notice of the amount of such Developer's Pro Rata Share, and the due date for payment thereof to Vistancia Maintenance Corporation, promptly following Declarant's receipt from Vistancia Maintenance Corporation of such information. Each Developer's obligation to pay its Pro Rata Share of Declarant's Vistancia Subsidy obligations shall be in addition to any Assessments, Pro Rata Share of the Declarant Subsidy, and any other amounts payable by such Developer under this Declaration. Each Developer's obligation to pay its Pro Rata Share of Declarant's Vistancia Subsidy obligations shall be a personal obligation enforceable by Declarant and shall be secured by a lien in favor of Declarant (subject and subordinate to the Vistancia Lien and the Assessment Lien) upon all property owned by such Developer within the Subject Property, enforceable by Declarant in the same manner as provided herein with respect to enforcement of the Assessment Lien by the Association. Each Developer's obligation to pay its Pro Rata Share of Declarant's Vistancia Subsidy obligations shall terminate with respect to future allocations of the Vistancia Subsidy obligation when the Declarant's liability for the Vistancia Subsidy obligations terminates as a result of Declarant no longer being a Member, but Developer shall not thereby be released from liability for, and the Declarant's lien shall continue to secure, any payments of Developer's Pro Rata Share of Declarant's Vistancia Subsidy obligations of which Developer had received written notice prior to such termination date. Notwithstanding the obligation of Developers to pay their respective Pro Rata Shares of Declarant's Vistancia Subsidy obligations as set forth herein, Declarant shall not be released from its responsibility for payment to Vistancia Maintenance Corporation of the Vistancia Subsidy obligation, and Declarant shall remain personally liable and subject to levy of the Assessment Lien as provided in the Vistancia Declaration in the event any such Developer fails to timely pay its Pro Rata Share of Declarant's Vistancia Subsidy obligation to Vistancia Maintenance Corporation.

Section 16.7. Subsidy Obligations Separate and Distinct. The obligations of Declarant (and Developers, on behalf of Declarant) to subsidize the Association under Section 7.3(h) above, and the obligations of Declarant (and Developers, on behalf of Declarant) to subsidize Vistancia Maintenance Corporation under Section 16.6 above and the Vistancia Declaration, are separate and distinct obligations, and the termination

of liability with respect to one of such subsidy obligations shall not, in and of itself, terminate liability with respect to the other subsidy obligation.

Section 16.8. Additional Obligations Set Forth in Vistancia Declaration. This Article XVI is not, and is not intended to be, a complete reiteration of all obligations of the Association, Declarant and/or the Members arising under the Vistancia Declaration, and all Persons are referred to Section 7.1(b) hereof and to the Vistancia Declaration for more detailed and additional information regarding the Vistancia Assessments, the other Vistancia Obligations, the Vistancia Lien, the Vistancia Remedies and other provisions affecting the rights and obligations of Declarant, the Association and all Owners of any portion of the Subject Property and of the Additional Property. In the event of any conflict between the terms and provisions of this Article XVI or any other provision of this Declaration and the terms and provisions of the Vistancia Declaration, the terms and provisions of the Vistancia Declaration shall control. Notwithstanding any provision of this Declaration to the contrary, the rights and powers of Declarant set forth herein are subject and subordinate in all respects to the Vistancia Declaration.

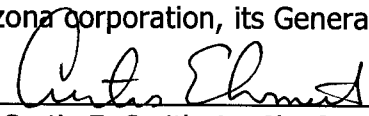
IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the date first set forth above.

VISTANCIA, LLC, a Delaware limited liability company

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Managing Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: 
Curtis E. Smith, its Chief Operating Officer

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 1st day of July, 2005, by Curtis E. Smith, Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, General Partner of Sunbelt PP, LLLP, an Arizona limited liability limited partnership, Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, Managing Member of VISTANCIA, LLC, a Delaware limited liability company, on behalf thereof.

Julie M. King
Notary Public

My Commission Expires:

3/14/2009



VISTANCIA DECLARANT CONSENT

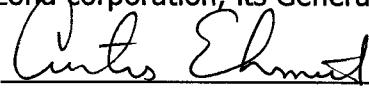
VISTANCIA, LLC, a Delaware limited liability company (the "**Vistancia Declarant**") hereby approves of the form and content of the foregoing Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Blackstone at Vistancia ("**Declaration**"), and declares that: (i) the foregoing Declaration, the Association established pursuant thereto, and the Members of such Association, shall be subject and subordinate in all respects to the provisions of the Vistancia Declaration, the Vistancia Rules and the provisions of the articles of incorporation and bylaws of Vistancia Maintenance Corporation (collectively, the "**Vistancia Project Documents**"), and in the event of any conflict or inconsistency between the terms or provisions of the foregoing Declaration and the terms or provisions of the Vistancia Project Documents, the Vistancia Project Documents shall control; (ii) the Subject Property and the Additional Property are and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to the Vistancia Declaration, and further subject to any applicable Tract Declaration(s) and Supplemental Declaration(s) Recorded prior to the Recordation of the foregoing Declaration; (iii) in the event of the assignment of the rights and powers of the original Declarant named in the foregoing Declaration as set forth in a Recorded instrument, such assignee shall be deemed to be an "authorized" Developer for purposes of Section 10.6(e) of the Vistancia Declaration; (iv) neither the Vistancia Declarant nor Vistancia Maintenance Corporation shall be subject to or bound by the release set forth in Section 3.4.4 of the foregoing Declaration, and (v) the Country Club Fence Maintenance Easement created pursuant to Section 4.2(p)(iii) of the Declaration is hereby ratified and affirmed.

VISTANCIA, LLC, a Delaware limited liability company

By: Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, its Managing Member

By: Sunbelt PP, LLLP, an Arizona limited liability limited partnership, its Manager

By: Sunbelt Holdings Management, Inc., an Arizona corporation, its General Partner

By: 
Curtis E. Smith, its Chief Operating Officer

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 1st day of July, 2005, by Curtis E. Smith, Chief Operating Officer of Sunbelt Holdings Management, Inc., an Arizona corporation, General Partner of Sunbelt PP, LLLP, an Arizona limited liability limited partnership, Manager of Sunbelt Pleasant Point Investors, L.L.C., an Arizona limited liability company, Managing Member of VISTANCIA, LLC, a Delaware limited liability company, on behalf thereof.

Julie M. King
Notary Public

My Commission Expires:

3/14/2009



LENDER CONSENT

The undersigned is the holder of all right, title and interest of the Beneficiary under that certain Construction Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases, Rents, Proceeds and Agreements (the "**Deed of Trust**") recorded on December 23, 2002, in Instrument No. 2002-1387293, Official Records of Maricopa County, Arizona, as amended, which has been assigned to RFC CONSTRUCTION FUNDING CORP., A DELAWARE CORPORATION. The undersigned hereby consents to the foregoing Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Blackstone at Vistancia ("**Declaration**"), and agrees that the Declaration shall continue in full force and effect, even in the event of foreclosure or trustee's sale pursuant to such Deed of Trust or any other acquisition of title by the undersigned, its successors, or assigns, of all or any portion of the real property covered by such Deed of Trust.

RFC CONSTRUCTION FUNDING CORP.,
a Delaware Corporation

By:

Its:

[Signature]
ASST VICE PRESIDENT

STATE OF CALIFORNIA)
County of LOS ANGELES) ss.

On this 30TH day of JUNE, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared ROBERT J. PLAVCHAK, personally known to me (or ~~proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the within instrument, acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal.

Sonia E. Garcia
Notary Public

My Commission Expires: MAY 9, 2007

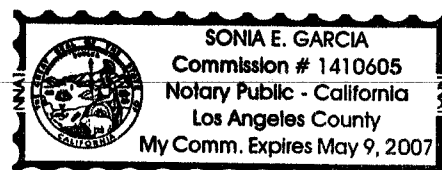


EXHIBIT "A"

Legal Description of Subject Property

The following described real property, but excepting therefrom the property described on Exhibit "B" attached to this Declaration:

see attachment

PARCEL DESCRIPTION

**Vistancia
Proposed Village B**

A parcel of land lying within Sections 14, 23 and 24, Township 5 North, Range 1 West, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the north quarter corner of said Section 23, a G.L.O. brass cap, from which the northeast corner of said section, a G.L.O. brass cap, bears South 89°42'39" East (basis of bearing), a distance of 2641.10 feet, said north quarter corner being the **POINT OF BEGINNING**;

THENCE along the north line of said Section 23, South 89°42'39" East, a distance of 2641.10 feet, to the northeast corner of said Section 23;

THENCE leaving said north line, along the north line of the northwest quarter of said Section 24, South 89°38'17" East, a distance of 2637.11 feet, to the north quarter corner of said Section 24;

THENCE along the north line of the northeast quarter of said section, South 89°38'12" East, a distance of 1238.50 feet;

THENCE leaving said north line, South 00°09'41" West, a distance of 3079.00 feet, to the beginning of a curve;

THENCE southerly along said curve, having a radius of 3920.00 feet, concave westerly, through a central angle of 21°55'44", a distance of 1500.31 feet, to a point of intersection with a non-tangent line;

THENCE South 26°08'02" West, a distance of 42.67 feet;

THENCE South 22°06'10" West, a distance of 222.82 feet;

THENCE South 67°06'10" West, a distance of 49.50 feet;

THENCE North 67°53'50" West, a distance of 1438.15 feet;

THENCE North 23°00'55" West, a distance of 35.62 feet;

THENCE North 73°18'13" West, a distance of 12.35 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said curve, having a radius of 134.50 feet, concave northwesterly, whose radius bears North 74°36'51" West, through a central angle of 04°15'41", a distance of 10.00 feet, to a point of intersection with a non-tangent line;

THENCE North 73°18'13" West, a distance of 95.55 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 110.50 feet, concave northwesterly, whose radius bears North 72°56'42" West, through a central angle of 05°11'27", a distance of 10.01 feet, to a point of intersection with a non-tangent line;

THENCE North 73°18'13" West, a distance of 12.58 feet;

October 11, 2004

WP # 031828

Page 2 of 5

See Exhibit "A"

THENCE South $66^{\circ}41'36''$ West, a distance of 19.28 feet;

THENCE North $67^{\circ}53'50''$ West, a distance of 838.56 feet, to the beginning of a curve;

THENCE northwesterly along said curve, having a radius of 2915.00 feet, concave northeasterly, through a central angle of $27^{\circ}36'00''$, a distance of 1404.19 feet, to a point of intersection with a non-tangent line;

THENCE North $05^{\circ}35'41''$ East, a distance of 47.80 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 220.50 feet, concave southeasterly, whose radius bears South $38^{\circ}40'51''$ East, through a central angle of $05^{\circ}28'13''$, a distance of 21.05 feet, to a point of intersection with a non-tangent line;

THENCE North $35^{\circ}48'35''$ West, a distance of 8.01 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said curve, having a radius of 228.50 feet, concave southeasterly, whose radius bears South $33^{\circ}18'05''$ East, through a central angle of $02^{\circ}30'30''$, a distance of 10.00 feet, to a point of intersection with a non-tangent line;

THENCE North $35^{\circ}48'35''$ West, a distance of 43.00 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 271.50 feet, concave southeasterly, whose radius bears South $35^{\circ}48'35''$ East, through a central angle of $02^{\circ}06'39''$, a distance of 10.00 feet, to a point of intersection with a non-tangent line;

THENCE North $35^{\circ}48'35''$ West, a distance of 8.01 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said curve, having a radius of 279.50 feet, concave southeasterly, whose radius bears South $33^{\circ}45'33''$ East, through a central angle of $05^{\circ}17'22''$, a distance of 25.80 feet, to the curve's end;

THENCE South $50^{\circ}57'05''$ West, a distance of 10.58 feet;

THENCE North $83^{\circ}41'37''$ West, a distance of 31.07 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said curve, having a radius of 2915.00 feet, concave northeasterly, whose radius bears North $51^{\circ}57'56''$ East, through a central angle of $03^{\circ}36'52''$, a distance of 183.89 feet, to the curve's end;

THENCE North $34^{\circ}25'12''$ West, a distance of 624.78 feet, to the beginning of a curve;

THENCE northwesterly along said curve, having a radius of 3285.00 feet, concave southwesterly, through a central angle of $39^{\circ}30'23''$, a distance of 2265.07 feet, to a point of intersection with a non-tangent line;

THENCE North $29^{\circ}55'06''$ West, a distance of 37.48 feet;

THENCE North $81^{\circ}49'20''$ West, a distance of 16.42 feet;

THENCE South $14^{\circ}44'12''$ West, a distance of 10.07 feet;

THENCE North $81^{\circ}49'20''$ West, a distance of 80.02 feet;

THENCE North $14^{\circ}44'12''$ East, a distance of 10.07 feet;

THENCE North $81^{\circ}49'20''$ West, a distance of 20.59 feet;

THENCE South $59^{\circ}12'18''$ West, a distance of 18.70 feet, to a point of intersection with a non-tangent curve;

October 11, 2004

WP # 031828

Page 3 of 5

See Exhibit "A"

THENCE westerly along said curve, having a radius of 3285.00 feet, concave southerly, whose radius bears South 13°21'27" West, through a central angle of 22°02'07", a distance of 1263.38 feet, to a point of intersection with a non-tangent line;

THENCE South 86°48'48" West, a distance of 21.28 feet;

THENCE South 82°39'11" West, a distance of 175.72 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said curve, having a radius of 3297.00 feet, concave southeasterly, whose radius bears South 12°06'03" East, through a central angle of 04°18'21", a distance of 247.77 feet, to a point of intersection with a non-tangent line;

THENCE North 61°59'08" West, a distance of 40.30 feet;

THENCE North 17°00'00" West, a distance of 32.72 feet;

THENCE North 07°36'24" West, a distance of 40.32 feet;

THENCE North 17°00'00" West, a distance of 18.17 feet;

THENCE North 73°00'00" East, a distance of 5.00 feet;

THENCE North 17°00'00" West, a distance of 52.78 feet;

THENCE North 39°30'50" West, a distance of 51.13 feet;

THENCE North 17°00'00" West, a distance of 82.04 feet, to the beginning of a curve;

THENCE northerly along said curve, having a radius of 2424.00 feet, concave easterly, through a central angle of 21°19'05", a distance of 901.90 feet, to the curve's end;

THENCE North 04°19'05" East, a distance of 722.49 feet, to the beginning of a curve;

THENCE northerly along said curve, having a radius of 1426.00 feet, concave westerly, through a central angle of 20°58'41", a distance of 522.11 feet, to a point of intersection with a non-tangent line;

THENCE North 12°07'38" West, a distance of 91.89 feet;

THENCE North 15°56'29" West, a distance of 59.50 feet;

THENCE North 11°10'40" West, a distance of 144.50 feet;

THENCE North 15°56'29" West, a distance of 73.13 feet;

THENCE North 29°03'31" East, a distance of 32.34 feet;

THENCE North 74°03'31" East, a distance of 398.74 feet, to the beginning of a curve;

THENCE northeasterly along said curve, having a radius of 1267.00 feet, concave northwesterly, through a central angle of 23°47'04", a distance of 525.96 feet, to the curve's end;

THENCE North 50°16'27" East, a distance of 300.29 feet, to the beginning of a curve;

October 11, 2004

WP # 031828

Page 4 of 5

See Exhibit "A"

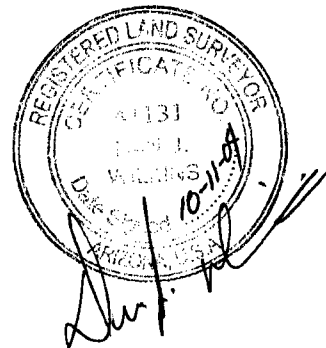
THENCE northeasterly along said curve, having a radius of 1107.00 feet, concave southeasterly, through a central angle of $39^{\circ}57'49''$, a distance of 772.13 feet, to the north-south mid-section line of said Section 14 and a point of intersection with a non-tangent line; **THENCE** along said north-south mid-section line, South $00^{\circ}13'08''$ West, a distance of 2540.43 feet, to the **POINT OF BEGINNING**.

Containing 588.1434 acres, or 25,619,529 square feet of land, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Amended Results of Survey recorded in Book 632, page 24, Maricopa County Records and other client provided information. This parcel description is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of December, 2002 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\031828 Village B at Vistancia Proposed Village B.doc



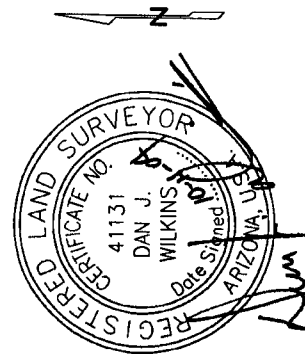
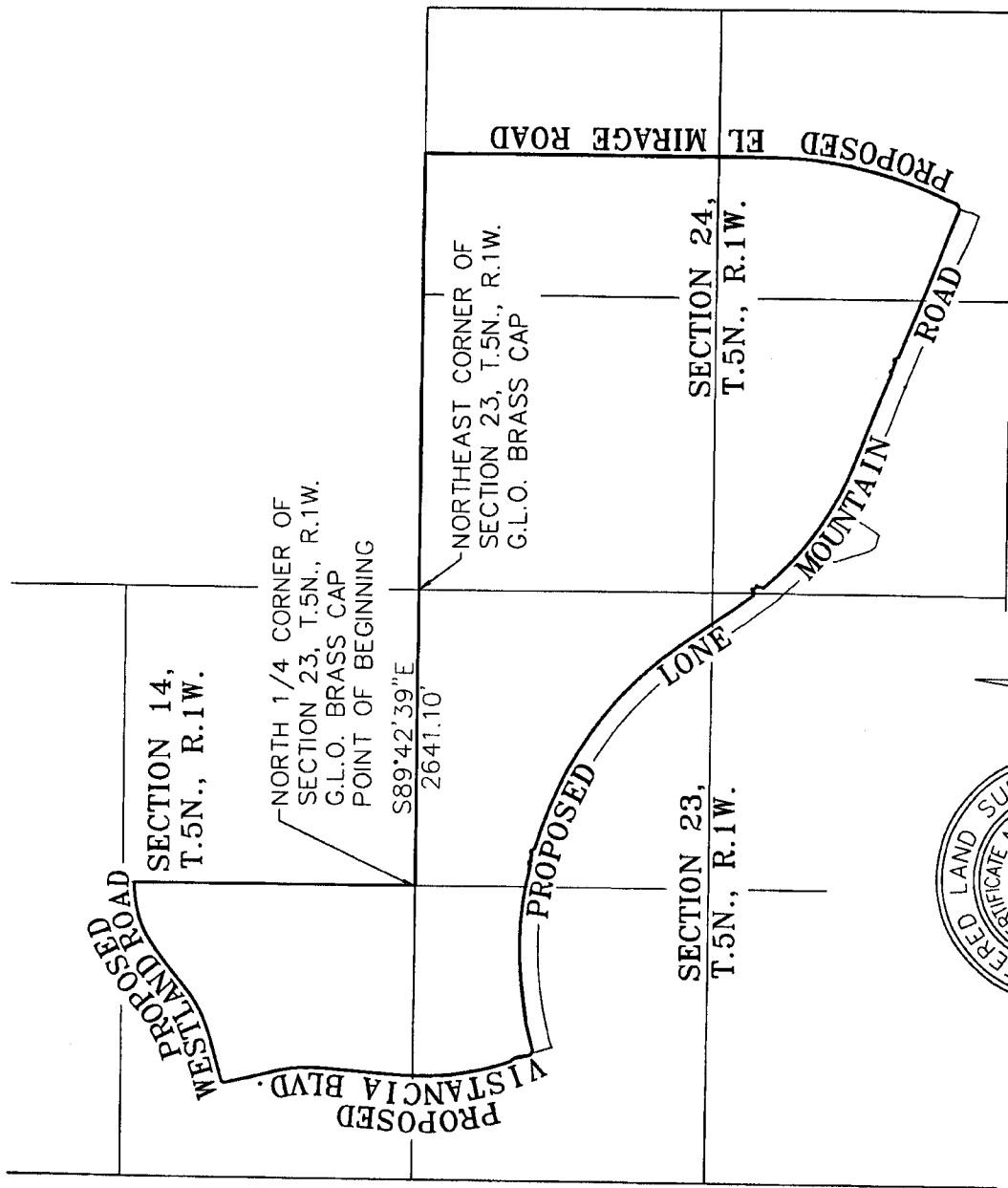


EXHIBIT "A"

VISTANCIA
PROPOSED VILLAGE B

10-11-04

WP #031828

PAGE 5 OF 5

NOT TO SCALE

T: \2003\031878\LEGAL\1878L04-DB\DWG\1878L04

WOOD/PATEL

2051 West Northern

Phoenix, AZ 85021

Phone: (602) 335-8500

Fax: (602) 335-8580

EXHIBIT "B"

Legal Description of Additional Property
(Blackstone Country Club Legal Description)

see attachment



Darrel E. Wood, P.E., R.L.S.
Ashok C. Patel, P.E., R.L.S.
Gordon W. R. Wark, P.E.
James S. Campbell, P.E.
Thomas R. Gettings, R.L.S.
Timothy A. Huval, P.E.
Michael T. Young, P.E.

November 24, 2004

WP # 031828

Page 1 of 3

See Exhibit "A"

PARCEL DESCRIPTION**Village B at Vistancia
Proposed Clubhouse**

A parcel of land lying within Section 24, Township 5 North, Range 1 West, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the northwest corner of said Section 24, a G.L.O. brass cap, from which the north quarter corner of said section, a rebar with tag #12218 and cap #18214, bears South 89°38'17" East (basis of bearing), a distance of 2637.11 feet;

THENCE along the north line of said section, South 89°38'17" East, a distance of 1186.94 feet;

THENCE leaving said north line, South 00°21'43" West, a distance of 118.72 feet, to the **POINT OF BEGINNING**;

THENCE South 03°04'10" East, a distance of 21.32 feet, to the beginning of a curve;

THENCE southerly along said curve, having a radius of 437.00 feet, concave westerly, through a central angle of 03°36'19", a distance of 27.50 feet, to a point of intersection with a non-tangent curve;

THENCE southerly along said curve, having a radius of 100.00 feet, concave easterly, whose radius bears South 68°31'10" East, through a central angle of 67°12'15", a distance of 117.29 feet, to a point of intersection with a non-tangent line;

THENCE South 45°48'17" East, a distance of 315.14 feet;

THENCE South 59°05'40" East, a distance of 585.46 feet;

THENCE South 84°32'52" East, a distance of 147.23 feet;

THENCE South 05°30'16" West, a distance of 29.10 feet;

THENCE South 33°19'08" West, a distance of 342.46 feet;

THENCE South 26°44'42" West, a distance of 237.36 feet;

THENCE North 84°57'59" West, a distance of 120.72 feet;

THENCE North 03°16'02" East, a distance of 24.17 feet, to a point of intersection with a non-tangent curve;

THENCE westerly along said curve, having a radius of 186.05 feet, concave southerly, whose radius bears South 88°40'53" West, through a central angle of 168°55'03", a distance of 548.51 feet, to a point of intersection with a non-tangent line;

THENCE North 78°37'57" West, a distance of 444.65 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 107.00 feet, concave northwesterly, whose radius bears North 28°29'32" West, through a central angle of 40°06'45", a distance of 74.91 feet, to a point of reverse curvature;

THENCE northeasterly along said curve, having a radius of 53.00 feet, concave southeasterly, through a central angle of 12°19'03", a distance of 11.39 feet, to a point of reverse curvature;

THENCE northeasterly along said curve, having a radius of 46.00 feet, concave northwesterly, through a central angle of 56°10'39", a distance of 45.10 feet, to a point of reverse curvature;



**Parcel Description
Village B at Vistancia
Proposed Clubhouse**

November 24, 2004
WP # 031828
Page 2 of 3
See Exhibit "A"

THENCE northerly along said curve, having a radius of 201.00 feet, concave easterly, through a central angle of $51^{\circ}59'50''$, a distance of 182.41 feet, to a point of reverse curvature;
THENCE northeasterly along said curve, having a radius of 152.00 feet, concave northwesterly, through a central angle of $19^{\circ}57'08''$, a distance of 52.93 feet, to a point of reverse curvature;

THENCE northeasterly along said curve, having a radius of 171.00 feet, concave southeasterly, through a central angle of $50^{\circ}42'51''$, a distance of 151.36 feet, to a point of reverse curvature;

THENCE northeasterly along said curve, having a radius of 98.00 feet, concave northwesterly, through a central angle of $49^{\circ}25'23''$, a distance of 84.53 feet, to the curve's end;

THENCE North $10^{\circ}52'17''$ East, a distance of 67.43 feet, to the beginning of a curve;

THENCE northwesterly along said curve, having a radius of 75.00 feet, concave southwesterly, through a central angle of $48^{\circ}09'38''$, a distance of 63.04 feet, to the curve's end;

THENCE North $37^{\circ}17'21''$ West, a distance of 31.08 feet, to the beginning of a curve;

THENCE northerly along said curve, having a radius of 210.00 feet, concave easterly, through a central angle of $62^{\circ}34'41''$, a distance of 229.36 feet, to a point of reverse curvature;

THENCE northerly along said curve, having a radius of 319.00 feet, concave westerly, through a central angle of $28^{\circ}21'30''$, a distance of 157.89 feet, to the curve's end;

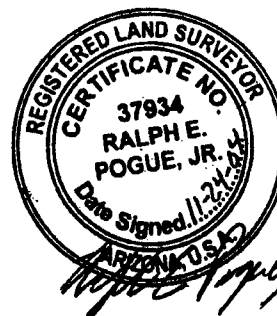
THENCE North $03^{\circ}04'10''$ West, a distance of 21.36 feet;

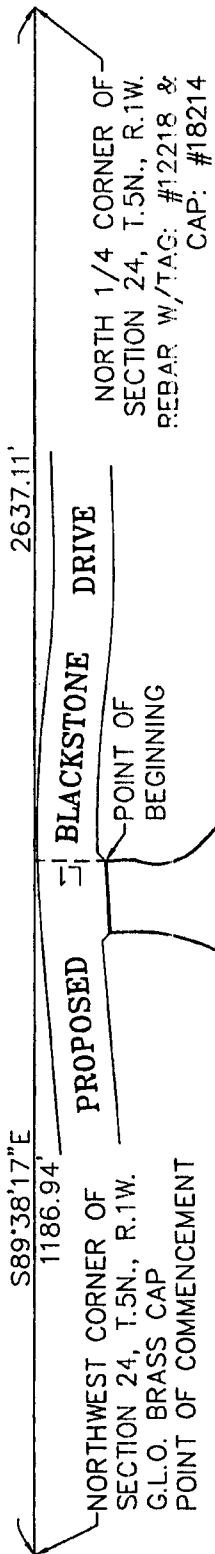
THENCE North $86^{\circ}56'51''$ East, a distance of 118.00 feet, to the **POINT OF BEGINNING**.

Containing 16.4712 acres, or 717,485 square feet of land, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Amended Results of Survey recorded in Book 632, page 24, Maricopa County Records and other client provided information. This parcel description is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of September, 2002 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.





LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°21'43"W	118.72

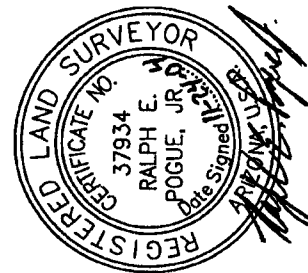
GOLF COURSE

PROPOSED CLUBHOUSE

PROPOSED
PARCEL B10

GOLF COURSE

PROPOSED
PARCEL B2



WOOD/PATEL
 2051 West Northern
 Phoenix, AZ 85021
 Phone: (602) 335-8500
 Fax: (602) 335-8580

EXHIBIT "A"
 VILLAGE B AT VISTANCIA
 PROPOSED CLUBHOUSE
 11-24-04
 WP#031828
 PAGE 3 OF 3
 NOT TO SCALE

T:\2003\031828\LEGAL\1878L06-DB\DWG\1878L06

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

Revised February 17, 2005
November 24, 2004
WP # 031828
Page 1 of 3
See Exhibit "A"

PARCEL DESCRIPTION
Blackstone at Vistancia
Proposed Maintenance Facility

A parcel of land lying within Sections 23 and 24, Township 5 North, Range 1 West, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the west quarter corner of said Section 24, a G.L.O. brass cap, from which the southwest corner of said section, a G.L.O. brass cap, bears South 00°21'54" West (basis of bearing), a distance of 2641.62 feet;

THENCE along the west line of said section, South 00°21'54" West, a distance of 88.38 feet, to the **POINT OF BEGINNING**;

THENCE leaving said west line, South 54°26'23" East, a distance of 34.25 feet;

THENCE South 13°52'02" East, a distance of 249.39 feet;

THENCE South 23°34'31" East, a distance of 122.78 feet;

THENCE South 07°07'33" East, a distance of 46.73 feet;

THENCE South 47°45'41" West, a distance of 33.95 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said curve, having a radius of 2915.00 feet, concave northeasterly, whose radius bears North 47°45'41" East, through a central angle of 01°56'28", a distance of 98.76 feet, to a point of intersection with a non-tangent line;

THENCE North 05°35'41" East, a distance of 39.38 feet;

THENCE North 54°38'31" West, a distance of 85.15 feet;

THENCE North 83°41'37" West, a distance of 7.15 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said curve, having a radius of 2915.00 feet, concave northeasterly, whose radius bears North 51°57'56" East, through a central angle of 03°36'52", a distance of 183.89 feet, to the curve's end;

THENCE North 34°25'12" West, a distance of 74.61 feet;

THENCE North 23°59'18" East, a distance of 55.47 feet;

THENCE North 55°34'48" East, a distance of 109.14 feet;

Parcel Description
Blackstone at Vistancia
Proposed Maintenance Facility

Revised February 17, 2005
November 24, 2004
WP # 031828
Page 2 of 3
See Exhibit "A"

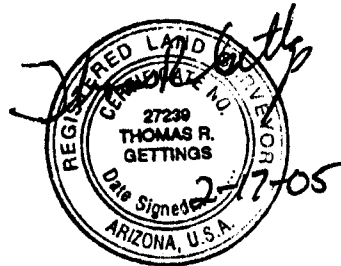
THENCE South 54°26'23" East, a distance of 72.15 feet, to the **POINT OF BEGINNING**.

Containing 1.3930 acres, or 60,678 square feet of land, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Amended Results of Survey recorded in Book 632, page 24, Maricopa County Records and other client provided information. This parcel description is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of September, 2002 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\031828 Blackstone at Vistancia Proposed Maintenance Facility.doc



SECTION 23
EAST-WEST MID-SECTION LINE

SECTION 24
EAST-WEST MID-SECTION LINE

WEST 1/4 CORNER OF
SECTION 24, T.5N., R.1W.
G.L.O. BRASS CAP
POINT OF COMMENCEMENT

POINT OF
BEGINNING

PROPOSED
MAINTENANCE FACILITY

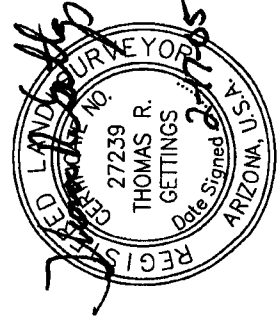
SECTION 23
T.5N., R.1W.

SECTION 24
T.5N., R.1W.

PROPOSED LONE MOUNTAIN
ROAD

WEST LINE
SECTION 24, T.5N., R.1W.

SOUTHWEST CORNER OF
SECTION 24, T.5N., R.1W.
G.L.O. BRASS CAP



WOOD/PATEL
2051 West Northern
Phoenix, AZ 85021
Phone: (602) 335-8500
Fax: (602) 335-8580

EXHIBIT "A"
BLACKSTONE AT VISTANCIA
PROPOSED MAINTENANCE FACILITY
02-17-05
WP#031828
PAGE 3 OF 3
NOT TO SCALE

T:\2003\031878\LEGAL\1878L07-DB\DWG\1878L07R



Darrel E. Wood, P.E., R.L.S.
Ashok C. Patel, P.E., R.L.S.
Gordon W. R. Wark, P.I.
James S. Campbell, P.I.
Thomas R. Gettings, R.L.S.
Timothy A. Huval, P.I.
Michael T. Young, P.I.

Revised November 24, 2004
November 11, 2004
WP # 031877.04
Page 1 of 10
See Exhibit "A"

PARCEL DESCRIPTION
Village B at Vistancia
Proposed Golf Course

Parcel 1
Golf Holes 1, 2, 7, 8, 9, 18, and Driving Range

A parcel of land lying within Sections 23 and 24, Township 5 North, Range 1 West, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the west quarter corner of said Section 24, a G.L.O. brass cap, from which the northwest corner of said section, a G.L.O. brass cap, bears North 00°05'29" East (basis of bearing), a distance of 2640.68 feet;

THENCE along the west line of said section, North 00°05'29" East, a distance of 589.73 feet, to the **POINT OF BEGINNING**;

THENCE leaving said west line, North 35°16'59" West, a distance of 283.15 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 185.00 feet, concave southeasterly, whose radius bears North 53°50'59" East, through a central angle of 112°34'46", a distance of 363.50 feet, to a point of intersection with a non-tangent line;

THENCE North 22°38'33" West, a distance of 488.11 feet;

THENCE North 05°07'39" West, a distance of 472.37 feet;

THENCE South 51°51'36" West, a distance of 108.33 feet;

THENCE South 64°40'10" West, a distance of 281.00 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said curve, having a radius of 100.00 feet, concave northeasterly, whose radius bears North 24°41'06" West, through a central angle of 151°57'05", a distance of 265.21 feet, to a point of intersection with a non-tangent line;

THENCE North 31°48'39" East, a distance of 271.39 feet;

THENCE North 46°59'16" East, a distance of 238.80 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 185.00 feet, concave southeasterly, whose radius bears South 40°38'37" East, through a central angle of 66°39'06", a distance of 215.21 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 100.00 feet, concave southeasterly, whose radius bears South 86°28'34" East, through a central angle of 154°19'43", a distance of 269.35 feet, to a point of intersection with a non-tangent line;

THENCE South 18°08'29" East, a distance of 322.79 feet;

THENCE South 06°17'34" East, a distance of 492.10 feet;

THENCE South 22°38'56" East, a distance of 256.72 feet;

THENCE North 16°21'29" East, a distance of 199.74 feet;

THENCE North 36°59'25" East, a distance of 728.05 feet, to a point of intersection with a non-tangent curve;



**Parcel Description
Village B at Vistancia
Proposed Golf Course**

Revised November 24, 2004
November 11, 2004
WP # 031877.04
Page 2 of 10
See Exhibit "A"

THENCE northeasterly along said curve, having a radius of 51.34 feet, concave southeasterly, whose radius bears South 42°45'54" East, through a central angle of 41°01'14", a distance of 36.76 feet, to a point of intersection with a non-tangent line;

THENCE South 78°36'41" East, a distance of 312.68 feet, to a point of intersection with a non-tangent curve;

THENCE southeasterly along said curve, having a radius of 210.00 feet, concave northeasterly, whose radius bears North 59°50'56" East, through a central angle of 07°08'17", a distance of 26.16 feet, to the curve's end;

THENCE South 37°17'21" East, a distance of 31.08 feet, to the beginning of a curve;

THENCE southeasterly along said curve, having a radius of 75.00 feet, concave southwesterly, through a central angle of 48°09'38", a distance of 63.04 feet, to the curve's end;

THENCE South 10°52'17" West, a distance of 67.43 feet, to the beginning of a curve;

THENCE southwesterly along said curve, having a radius of 98.00 feet, concave northwesterly, through a central angle of 49°25'23", a distance of 84.53 feet, to a point of reverse curvature;

THENCE southwesterly along said curve, having a radius of 171.00 feet, concave southeasterly, through a central angle of 50°42'51", a distance of 151.36 feet, to a point of reverse curvature;

THENCE southwesterly along said curve, having a radius of 152.00 feet, concave northwesterly, through a central angle of 19°57'08", a distance of 52.93 feet, to a point of reverse curvature;

THENCE southerly along said curve, having a radius of 201.00 feet, concave easterly, through a central angle of 51°59'50", a distance of 182.41 feet, to a point of reverse curvature;

THENCE southwesterly along said curve, having a radius of 46.00 feet, concave northwesterly, through a central angle of 56°10'39", a distance of 45.10 feet, to a point of reverse curvature;

THENCE southwesterly along said curve, having a radius of 53.00 feet, concave southeasterly, through a central angle of 12°19'03", a distance of 11.39 feet, to a point of reverse curvature;

THENCE southwesterly along said curve, having a radius of 107.00 feet, concave northwesterly, through a central angle of 40°06'45", a distance of 74.91 feet, to a point of intersection with a non-tangent line;

THENCE South 78°37'57" East, a distance of 444.65 feet, to a point of intersection with a non-tangent curve;

THENCE easterly along said curve, having a radius of 186.05 feet, concave southerly, whose radius bears South 80°14'10" East, through a central angle of 168°55'03", a distance of 548.51 feet, to a point of intersection with a non-tangent line;

THENCE South 03°16'02" West, a distance of 115.54 feet;

THENCE South 12°01'56" West, a distance of 477.82 feet;

THENCE South 15°49'57" West, a distance of 212.72 feet;

THENCE South 22°17'47" West, a distance of 153.27 feet;

THENCE South 22°01'25" West, a distance of 358.39 feet;

THENCE South 31°19'18" West, a distance of 288.62 feet;

**Parcel Description
Village B at Vistancia
Proposed Golf Course**

Revised November 24, 2004
November 11, 2004
WP # 031877.04
Page 3 of 10
See Exhibit "A"

THENCE South 45°22'44" West, a distance of 72.85 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said curve, having a radius of 100.00 feet, concave northwesterly, whose radius bears North 56°02'44" West, through a central angle of 29°21'07", a distance of 51.23 feet, to a point of intersection with a non-tangent curve;

THENCE westerly along said curve, having a radius of 332.00 feet, concave southerly, whose radius bears South 00°34'49" West, through a central angle of 09°51'25", a distance of 57.12 feet, to a point of reverse curvature;

THENCE southwesterly along said curve, having a radius of 168.00 feet, concave northwesterly, through a central angle of 05°58'49", a distance of 17.54 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said curve, having a radius of 100.00 feet, concave northeasterly, whose radius bears North 17°05'10" East, through a central angle of 81°54'42", a distance of 142.96 feet, to the curve's end;

THENCE North 08°59'53" East, a distance of 266.42 feet;

THENCE North 75°59'51" West, a distance of 332.75 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said curve, having a radius of 184.72 feet, concave northeasterly, whose radius bears North 38°41'05" West, through a central angle of 132°40'14", a distance of 427.71 feet, to a point of intersection with a non-tangent curve;

THENCE westerly along said curve, having a radius of 100.00 feet, concave northerly, whose radius bears North 64°06'28" West, through a central angle of 133°53'45", a distance of 233.69 feet, to a point of intersection with a non-tangent line;

THENCE North 35°16'59" West, a distance of 290.11 feet, to the **POINT OF BEGINNING**.

Containing 70.7810 acres, or 3,083,221 square feet of land, more or less.

**Parcel 2
Golf Holes 3 and 6**

Commencing at the north quarter corner of said Section 23, a G.L.O. brass cap, from which the northeast corner of said section, a G.L.O. brass cap, bears South 89°42'39" East, a distance of 2641.10 feet;

THENCE along the north line of said section, South 89°42'39" East, a distance of 782.47 feet;

THENCE leaving said north line, South 00°17'21" West, a distance of 137.49 feet, to the **POINT OF BEGINNING**;

THENCE South 68°15'23" East, a distance of 297.35 feet;

THENCE South 56°18'30" East, a distance of 566.96 feet;

THENCE South 45°15'06" East, a distance of 210.45 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said curve, having a radius of 183.08 feet, concave northwesterly, whose radius bears South 45°01'23" West, through a central angle of 104°21'56", a distance of 333.48 feet, to a point of intersection with a non-tangent line;

**Parcel Description
Village B at Vistancia
Proposed Golf Course**

Revised November 24, 2004
November 11, 2004
WP # 031877.04
Page 4 of 10
See Exhibit "A"

THENCE South 47°36'04" East, a distance of 335.68 feet;
THENCE South 31°54'04" East, a distance of 334.01 feet, to a point of intersection with a non-tangent curve;
THENCE southwesterly along said curve, having a radius of 100.03 feet, concave northwesterly, whose radius bears South 59°48'37" West, through a central angle of 155°54'27", a distance of 272.20 feet, to a point of intersection with a non-tangent line;
THENCE North 62°51'28" West, a distance of 275.41 feet;
THENCE North 48°07'08" West, a distance of 565.84 feet;
THENCE North 49°05'40" West, a distance of 589.61 feet;
THENCE North 54°21'32" West, a distance of 254.56 feet, to a point of intersection with a non-tangent curve;
THENCE northeasterly along said curve, having a radius of 185.00 feet, concave southeasterly, whose radius bears North 33°40'50" East, through a central angle of 126°33'23", a distance of 408.62 feet, to a point of intersection with a non-tangent curve;
THENCE northeasterly along said curve, having a radius of 100.43 feet, concave southeasterly, whose radius bears North 61°13'52" East, through a central angle of 148°44'10", a distance of 260.72 feet, to the **POINT OF BEGINNING**.

Containing 21.1537 acres, or 921,454 square feet of land, more or less.

**Parcel 3
Golf Holes 4 and 5**

Commencing at the north quarter corner of said Section 23, a G.L.O. brass cap, from which the center of said section, a rebar with tag #12218 and cap #18214, bears South 00°15'28" West, a distance of 2640.11 feet;
THENCE along the north-south mid-section line of said section, South 00°15'28" West, a distance of 110.56 feet, to the **POINT OF BEGINNING**;
THENCE leaving said north-south mid-section line, North 89°24'52" East, a distance of 269.30 feet, to a point of intersection with a non-tangent curve;
THENCE southeasterly along said curve, having a radius of 185.00 feet, concave southwesterly, whose radius bears South 03°23'55" East, through a central angle of 163°42'09", a distance of 528.57 feet, to a point of intersection with a non-tangent curve;
THENCE southwesterly along said curve, having a radius of 101.00 feet, concave northwesterly, whose radius bears South 73°47'13" West, through a central angle of 95°06'35", a distance of 167.65 feet, to a point of intersection with a non-tangent line;
THENCE South 75°22'58" West, a distance of 303.56 feet;
THENCE South 88°16'29" West, a distance of 633.53 feet;
THENCE North 66°13'36" West, a distance of 437.39 feet, to a point of intersection with a non-tangent curve;
THENCE northerly along said curve, having a radius of 184.53 feet, concave easterly, whose radius bears North 22°25'47" East, through a central angle of 130°38'15", a distance of 420.74 feet, to a point of intersection with a non-tangent line;

**Parcel Description
Village B at Vistancia
Proposed Golf Course**

Revised November 24, 2004
November 11, 2004
WP # 031877.04
Page 5 of 10
See Exhibit "A"

THENCE North 68°30'58" East, a distance of 2.70 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 100.00 feet, concave southeasterly, whose radius bears North 84°35'52" East, through a central angle of 92°36'24", a distance of 161.63 feet, to a point of intersection with a non-tangent line;

THENCE North 88°11'31" East, a distance of 509.38 feet;

THENCE South 79°45'04" East, a distance of 337.66 feet;

THENCE North 89°24'52" East, a distance of 136.77 feet, to the **POINT OF BEGINNING**.

Containing 19.3716 acres, or 843,825 square feet of land, more or less.

**Parcel 4
Golf Hole 10**

A parcel of land lying within Section 24, Township 5 North, Range 1 West, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the northwest corner of said Section 24, a G.L.O. brass cap, from which the north quarter of said section, a rebar with tag #12218 and cap #18214, bears South 89°38'17" East, a distance of 2637.11 feet;

THENCE along the north line of said section, South 89°38'17" East, a distance of 1304.49 feet;

THENCE leaving said north line, South 00°21'43" West, a distance of 106.01 feet, to the **POINT OF BEGINNING**;

THENCE South 74°32'48" East, a distance of 317.90 feet;

THENCE South 60°45'45" East, a distance of 506.91 feet;

THENCE South 85°03'42" East, a distance of 345.19 feet, to a point of intersection with a non-tangent curve;

THENCE southerly along said curve, having a radius of 185.00 feet, concave easterly, whose radius bears South 01°27'25" West, through a central angle of 180°53'45", a distance of 584.09 feet, to a point of intersection with a non-tangent line;

THENCE North 84°32'52" West, a distance of 446.72 feet;

THENCE North 59°05'40" West, a distance of 585.46 feet;

THENCE North 45°48'17" West, a distance of 315.14 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 100.00 feet, concave southeasterly, whose radius bears North 44°16'35" East, through a central angle of 148°54'56", a distance of 259.91 feet, to the **POINT OF BEGINNING**.

Containing 11.2204 acres, or 488,761 square feet of land, more or less.

**Parcel Description
Village B at Vistancia
Proposed Golf Course**

Revised November 24, 2004
November 11, 2004
WP # 031877.04
Page 6 of 10
See Exhibit "A"

**Parcel 5
Golf Holes 11, 12, 13, 14, and 15**

Commencing at the north quarter corner of said Section 24, a rebar with tag #12218 and cap #18214, from which the center of said section, a rebar with cap #26409, bears South 00°11'52" West, a distance of 2639.93 feet;

THENCE along the north-south mid-section line of said section, South 00°11'52" West, a distance of 697.06 feet;

THENCE leaving said north-south mid-section line, South 89°48'08" East, a distance of 56.63 feet, to a point of intersection with a non-tangent curve, also being the **POINT OF BEGINNING**;

THENCE northeasterly along said curve, having a radius of 100.00 feet, concave southeasterly, whose radius bears North 69°33'05" East, through a central angle of 156°44'05", a distance of 273.55 feet, to a point of intersection with a non-tangent line;

THENCE South 48°05'45" East, a distance of 325.52 feet;

THENCE South 35°18'09" East, a distance of 558.16 feet, to a point of intersection with a non-tangent curve;

THENCE southeasterly along said curve, having a radius of 200.31 feet, concave southwesterly, whose radius bears South 58°47'57" West, through a central angle of 41°08'27", a distance of 143.83 feet, to a point of intersection with a non-tangent line;

THENCE South 03°49'26" West, a distance of 543.10 feet;

THENCE South 13°15'54" East, a distance of 321.81 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said curve, having a radius of 186.49 feet, concave northwesterly, whose radius bears South 76°52'35" West, through a central angle of 69°59'14", a distance of 227.80 feet, to a point of intersection with a non-tangent curve;

THENCE southeasterly along said curve, having a radius of 89.42 feet, concave southwesterly, whose radius bears South 00°19'49" East, through a central angle of 75°30'49", a distance of 117.85 feet, to a point of intersection with a non-tangent line;

THENCE South 14°07'22" East, a distance of 329.42 feet;

THENCE South 00°08'24" East, a distance of 618.46 feet;

THENCE South 22°19'21" West, a distance of 386.69 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said curve, having a radius of 185.00 feet, concave northwesterly, whose radius bears North 69°01'55" West, through a central angle of 44°15'53", a distance of 142.92 feet, to a point of intersection with a non-tangent line;

THENCE South 39°58'32" West, a distance of 358.81 feet;

THENCE South 50°27'22" West, a distance of 377.46 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said curve, having a radius of 186.06 feet, concave northeasterly, whose radius bears North 37°38'25" West, through a central angle of 110°57'00", a distance of 360.30 feet, to a point of intersection with a non-tangent curve;

**Parcel Description
Village B at Vistancia
Proposed Golf Course**

Revised November 24, 2004
November 11, 2004
WP # 031877.04
Page 7 of 10
See Exhibit "A"

THENCE southwesterly along said curve, having a radius of 100.00 feet, concave northwesterly, whose radius bears North 77°20'39" West, through a central angle of 79°28'42", a distance of 138.72 feet, to a point of intersection with a non-tangent line;

THENCE North 63°19'24" West, a distance of 18.19 feet;

THENCE North 67°53'50" West, a distance of 53.92 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said curve, having a radius of 100.00 feet, concave northeasterly, whose radius bears North 44°22'39" East, through a central angle of 16°45'02", a distance of 29.24 feet, to a point of intersection with a non-tangent line;

THENCE North 26°28'08" West, a distance of 292.47 feet;

THENCE North 10°13'30" West, a distance of 490.41 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said curve, having a radius of 185.00 feet, concave southwesterly, whose radius bears North 68°00'44" West, through a central angle of 206°51'30", a distance of 667.92 feet, to the curve's end;

THENCE North 48°50'47" East, a distance of 309.63 feet;

THENCE North 61°30'18" East, a distance of 434.74 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 203.00 feet, concave southeasterly, whose radius bears North 89°28'03" East, through a central angle of 152°08'13", a distance of 539.02 feet, to a point of intersection with a non-tangent line;

THENCE South 25°48'20" East, a distance of 309.38 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said curve, having a radius of 115.18 feet, concave northwesterly, whose radius bears South 70°34'42" West, through a central angle of 65°42'32", a distance of 132.09 feet, to a point of intersection with a non-tangent line;

THENCE South 50°09'14" West, a distance of 484.49 feet, to a point of intersection with a non-tangent curve;

THENCE southwesterly along said curve, having a radius of 204.31 feet, concave southeasterly, whose radius bears South 51°44'19" East, through a central angle of 42°41'49", a distance of 152.25 feet, to a point of intersection with a non-tangent line;

THENCE South 07°34'15" East, a distance of 306.70 feet;

THENCE South 00°55'48" West, a distance of 116.95 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 185.00 feet, concave southeasterly, whose radius bears South 53°28'42" East, through a central angle of 15°23'42", a distance of 49.71 feet, to a point of intersection with a non-tangent line;

THENCE North 53°29'45" East, a distance of 376.54 feet;

THENCE North 52°51'26" East, a distance of 233.11 feet, to a point of intersection with a non-tangent curve;

THENCE northeasterly along said curve, having a radius of 185.00 feet, concave southeasterly, whose radius bears North 81°42'16" East, through a central angle of 28°35'19", a distance of 92.31 feet, to a point of intersection with a non-tangent line;

THENCE North 22°17'41" East, a distance of 327.23 feet;

**Parcel Description
Village B at Vistancia
Proposed Golf Course**

Revised November 24, 2004
November 11, 2004
WP # 031877.04
Page 8 of 10
See Exhibit "A"

THENCE North 01°49'39" East, a distance of 551.03 feet;
THENCE North 14°02'50" East, a distance of 319.38 feet, to a point of intersection with a non-tangent curve;
THENCE northeasterly along said curve, having a radius of 100.00 feet, concave southeasterly, whose radius bears South 74°20'26" East, through a central angle of 26°53'24", a distance of 46.93 feet, to a point of intersection with a non-tangent curve;
THENCE northwesterly along said curve, having a radius of 184.53 feet, concave northeasterly, whose radius bears North 05°42'41" West, through a central angle of 38°30'05", a distance of 265.71 feet, to a point of intersection with a non-tangent line;
THENCE North 13°15'54" West, a distance of 377.40 feet;
THENCE North 05°01'06" East, a distance of 481.98 feet, to a point of intersection with a non-tangent curve;
THENCE northwesterly along said curve, having a radius of 184.02 feet, concave southwesterly, whose radius bears North 79°55'49" West, through a central angle of 38°18'33", a distance of 123.04 feet, to a point of intersection with a non-tangent line;
THENCE North 34°13'30" West, a distance of 447.02 feet;
THENCE North 20°59'52" West, a distance of 333.05 feet, to the **POINT OF BEGINNING**.

Containing 53.3213 acres, or 2,322,678 square feet of land, more or less.

**Parcel 6
Golf Holes 16 and 17**

Commencing at the west quarter corner of said Section 24, a G.L.O. brass cap, from which the southwest corner of said section, a G.L.O. brass cap, bears South 00°21'54" West, a distance of 2641.62 feet;
THENCE along the west line of said section, South 00°21'54" West, a distance of 691.04 feet;
THENCE leaving said west line, South 89°38'06" East, a distance of 348.20 feet, to the **POINT OF BEGINNING**;
THENCE North 17°36'01" East, a distance of 265.37 feet;
THENCE North 20°07'51" East, a distance of 221.43 feet, to the beginning of a curve;
THENCE southeasterly along said curve, having a radius of 184.15 feet, concave northeasterly, through a central angle of 183°06'26", a distance of 588.52 feet, to the curve's end;
THENCE South 23°14'17" West, a distance of 219.15 feet;
THENCE North 65°09'13" East, a distance of 103.31 feet;
THENCE North 79°54'49" East, a distance of 567.17 feet;
THENCE South 86°40'51" East, a distance of 277.84 feet, to a point of intersection with a non-tangent curve;
THENCE southeasterly along said curve, having a radius of 100.00 feet, concave southwesterly, whose radius bears South 02°01'56" East, through a central angle of 151°15'15", a distance of 263.99 feet, to a point of intersection with a non-tangent line;

**Parcel Description
Village B at Vistancia
Proposed Golf Course**

Revised November 24, 2004
November 11, 2004
WP # 031877.04
Page 9 of 10
See Exhibit "A"

THENCE South 62°44'49" West, a distance of 302.86 feet;
THENCE South 77°39'02" West, a distance of 505.12 feet;
THENCE South 65°22'44" West, a distance of 215.84 feet, to a point of intersection with a non-tangent curve;
THENCE northwesterly along said curve, having a radius of 185.00 feet, concave northeasterly, whose radius bears North 25°46'51" West, through a central angle of 118°16'40", a distance of 381.90 feet, to a point of intersection with a non-tangent curve;
THENCE northwesterly along said curve, having a radius of 100.25 feet, concave northeasterly, whose radius bears North 51°19'12" West, through a central angle of 161°48'31", a distance of 283.12 feet, to the **POINT OF BEGINNING**.

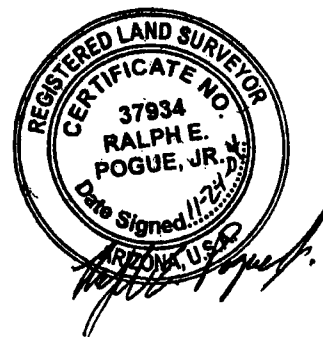
Containing 14.5260 acres, or 632,753 square feet of land, more or less.

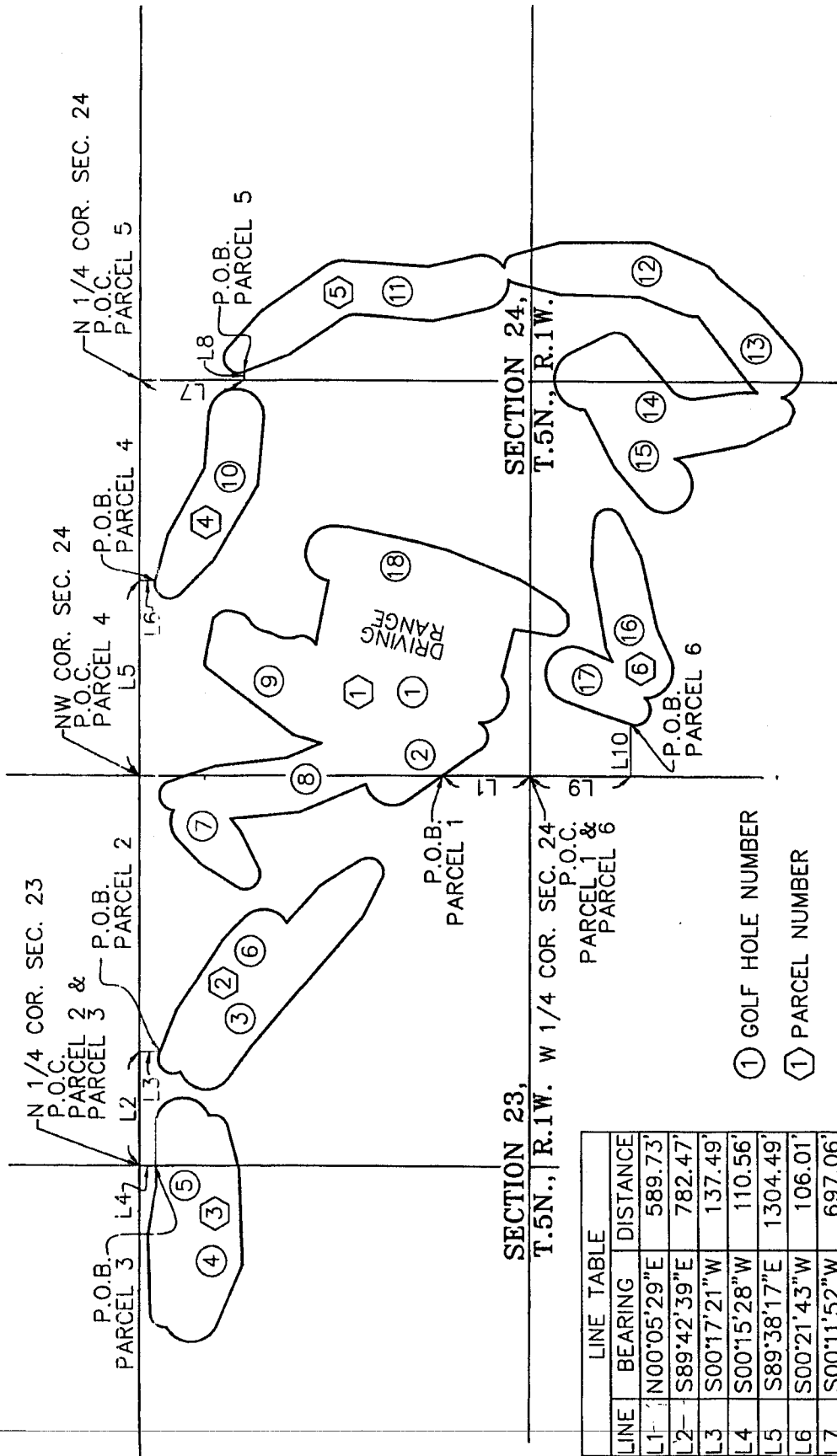
Total area is 190.3740 acres, or 8,292,692 square feet of land, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on the Amended Results of Survey recorded in Book 632, Page 24, Maricopa County Records and other client provided information. This parcel description is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of December, 2002 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\031877 Proposed Golf Course Holes 1, 2, 7, 8, 9, 18 & Driving Range.doc





LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°05'29"E	589.73'
L2	S89°42'39"E	782.47'
L3	S00°17'21"W	137.49'
L4	S00°15'28"W	110.56'
L5	S89°38'17"E	1304.49'
L6	S00°21'43"W	106.01'
L7	S00°11'52"W	697.06'
L8	S89°48'08"E	56.63'
L9	S00°21'54"W	691.04'
L10	S89°38'06"E	348.20'

- ① GOLF HOLE NUMBER
- ① PARCEL NUMBER

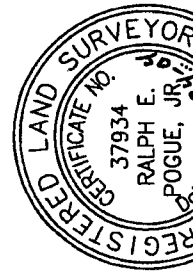


EXHIBIT "A" VILLAGE B AT VISTANCIA PROPOSED GOLF COURSE

11-24-04
WP#031877.04
PAGE 10 OF 10
NOT TO SCALE

WOOD/PATEL
2051 West Northern
Phoenix, AZ 85021
Phone: (602) 335-8500
Fax: (602) 335-8580