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# Unofficial Document

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
PINELAKE ESTATES

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
PINELAKE ESTATES

This Declaration of Covenants, Conditions and Restrictions is made as of the 1<sup>st</sup> day of February, 2002 by SCHULER HOMES OF ARIZONA LLC, a Delaware limited liability company, as "Declarant," with reference to the following:

A. As of the date hereof, Declarant is the owner of fee title to a portion of the Property, and the owners of fee title to the portions of the Property not owned by Declarant have consented to this Declaration as evidenced by their signatures appearing herein.

B. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property within the Property. Declarant desires to provide a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property Unofficial Document hereafter subjected to this Declaration and which shall be binding on all parties having any right, title or interest in said real property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

ARTICLE 1  
DEFINITIONS

Except as otherwise expressly provided in this Declaration, the following terms shall, for purposes of this Declaration, have the meanings set forth below:

1.1 "Annexable Property" means any and all real property any part of which is located within two (2) miles of the property described on Exhibit A hereto.

1.2 "Annual Assessments" means the Assessments levied pursuant to Section 8.5.

1.3 "Architectural Committee" means the committee established pursuant to Article 9.

1.4 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 9.2, as amended or supplemented from time to time.

1.5 "Articles" means the articles of incorporation of the Association, as amended from time to time.

1.6 "Assessments" means the Annual Assessments, the Special Assessments and any other amounts declared by this Declaration to be a part of the Assessments or declared by this Declaration to be secured by the lien created under Section 8.3.

1.7 "Association" means Pinelake Community Association, an Arizona non-profit corporation, and its successors and assigns.

1.8 "Association Rules" means the rules and regulations adopted by the Association pursuant to Section 7.3, as amended from time to time.

1.9 "Board" means the board of directors of the Association.

1.10 "Bylaws" means the bylaws of the Association, as amended from time to time.

1.11 "Common Area" means all real property (including the Improvements thereto), all easements and licenses, all other real property interests, and all personal property and facilities owned, managed or maintained by the Association for the common use and enjoyment of the Owners.

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

1.13 "Declarant" means Schuler Homes of Arizona LLC, a Delaware limited liability company, its successors and any Person to whom it may expressly assign any or all of its rights under this Declaration.

1.14 "Declarant Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.15 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Pinelake Estates as amended from time to time.

1.16 "Designated Builder" means any Person other than Declarant who (i) is engaged in the business of construction and selling residences in the Property to the public, (ii) has acquired one or more Lots in connection with and in the course of such business, and (iii) is designated by Declarant in this Declaration, or in a separate Recorded instrument, as a Designated Builder entitled to enjoy the rights and privileges provided to Designated Builders under this Declaration. Declarant hereby designates each of the following as Designated Builder hereunder: Key Construction, Inc., an Arizona corporation dba Trend Homes (and its successors), and Shea Homes Limited Partnership, a California limited partnership (and its successors). Declarant reserves

the right to hereafter Record one or more separate instruments naming other Person(s) as a Designated Builder hereunder, as Declarant may from time to time determine.

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

1.18 "First Mortgage" means a Mortgage Recorded against a Lot that has priority over all other Mortgages Recorded against that Lot.

1.19 "Improvement" means any building, road, driveway, levee, dam, channel, basin, gate, parking area, recreation facility, pool, fence, wall, rock, hedge, planting, planted tree, shrub, and any other structure or landscaping improvement of every type and kind.

1.20 "Lake" means the lake within the Property installed by Declarant or any Designated Builder and shown on the Master Development Plan and Recorded subdivision plat for the Property, including the land underlying such lake, but excluding any portion of such lake (if any) that is within the boundaries of a Lot. The Lake shall be a part of the Common Area. Portions of the Lake may be located within the boundaries of one or more Lots, and the rights and responsibilities for such portions will be included in the recorded subdivision plat for the Property, in a separate instrument Recorded by Declarant (and the Owner of such Lot(s), if not owned by Declarant) prior to conveyance of any such Lot to a Retail Purchaser, and/or hereinafter within this Declaration, but the Association shall at all times have certain rights to the surface areas of the Lake, the shoreline and the Lakefront Easement Unofficial Document herein described.

1.21 "Lakefront Easement" shall mean an easement benefiting the Association over, on, and adjacent to the Lakefront Lots as described in Section 12.11.

1.22 "Lakefront Lot" shall mean a Lot that has a portion of its boundary on or in the Lake.

1.23 "Lot" means a lot into which any part of the Property is subdivided as set forth in a subdivision plat now or hereafter Recorded with respect to all or any part of the Property. For purposes of this Declaration, a Lot shall be deemed to come into existence on and as of the date the plat depicting and establishing such Lot is Recorded. In no event shall the term "Lot" mean or refer to all or any part of the Common Area.

1.24 "Master Development Plan" means the Pinelake Estates master development plan approved by the City of Chandler, as the same may be from time to time amended.

1.25 "Maximum Annual Assessment" means the amount determined for each fiscal year of the Association in accordance with Section 8.7.

1.26 "Member" means any Person entitled to membership in the Association, as provided in this Declaration.

1.27 "Mortgage" means a deed of trust, as well as a mortgage, which, in either case, is Recorded against a Lot.

1.28 "Mortgagee" means a beneficiary under a deed of trust, as well as a mortgagee under a mortgage, which, in either case, is Recorded against a Lot.

1.29 "Occupant" means any Person other than an Owner who occupies or is in possession of a Lot, whether as a lessee under a lease or otherwise.

1.30 "Owner" means the Person or Persons who individually or collectively own fee title to a Lot (as evidenced by a Recorded instrument), provided that: (a) Declarant (and not the fee title holder) shall be deemed to be the "Owner" of each Lot with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of Declarant or a Declarant Affiliate; (b) in the event that, and for so long as, Declarant or a Declarant Affiliate has an existing right or option to acquire any one or more Lots, pursuant to a written agreement, Declarant shall also be deemed to be the "Owner" of each Lot with respect to which Declarant or a Declarant Affiliate has such right or option; and (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to Chapter 6.1 of Title 33 of the Arizona Revised Statutes, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot. Where reference is made in this Declaration to Lots "owned by" a Person, such phrase shall be deemed to refer to Lots of which that Person is the Owner, as determined pursuant to this Section. The term "Owner" shall not include: (i) any Person who holds an interest in a Lot merely as security for the performance of an obligation; or (ii) a lessee, tenant or other Occupant of a Lot.

1.31 "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.32 "Private Waterfront Area" shall mean the portion of a Lakefront Lot that lies within the Lake and within the Lakefront Easement.

1.33 "Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

1.34 "Property" means the real property described on Exhibit A hereto, and shall further refer to such additional property, if any, as may hereafter be annexed thereto pursuant to Article 6 or as is now or may hereafter be owned in fee simple by the Association, but shall not include real property, if any, which is deleted and removed from the Property pursuant to Section 6.6.

1.35 "Record", "Recording", "Recorded" and "Recordation" means placing or having placed an instrument of public record in the official records of Maricopa County, Arizona.

1.36 "Retail Purchaser" means a Person who in a retail transaction purchases from Declarant, any Declarant Affiliate, or any Designated Builder (or from any other Person engaged in the business of construction and selling residences in the Property to the public) a Lot on which a completed Dwelling Unit has been constructed. The term "Retail Purchaser" shall not include (i) Declarant, any Declarant Affiliate, or any Designated Builder, or (ii) a Person who purchases such a Lot and simultaneously with such purchase leases such Lot and the Dwelling Unit thereon back to Declarant, any Declarant Affiliate, or any Designated Builder, for use as a model home, for long as the Dwelling Unit continues to be used for marketing rather than residential purposes.

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

1.38 "Special Assessments" means those Assessments levied pursuant to Section 8.9.

1.39 "Special Use Fees" means any fees charged by the Association for use of Common Area pursuant to Subsection 2.1.1(d).

1.40 "Visible from Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground (or water) level on any part of any street, Lot, Common Area, Lake, or other property which adjoins the Lot on which such object is located.

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1.41 "Waterfront Facilities" means all docks, wharves, floats, slips, ramps, piers, landings and other equipment or structures designed for use with and access to the Lake.

## ARTICLE 2 EASEMENTS

### 2.1 Owners' Easements of Enjoyment.

2.1.1 Subject to the rights and easements granted to the Declarant in Section 2.4, each Owner, and each Occupant of such Owner's Lot, shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, which right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to the provisions of this Declaration including, without limitation, the following:

(a) The Association shall have the right to dedicate or transfer all or any part of the Common Area to a public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board. Unless otherwise required by zoning stipulations or agreements with Maricopa County or any municipality having jurisdiction over the Property, or any part thereof, effective prior to the date hereof or specified on a Recorded subdivision plat, no such dedication or transfer shall be effective unless approved by Owners representing two-thirds (2/3) of each class of Members, except that the Board shall have authority to transfer to such

public agencies, authorities or utilities easements and rights-of-way which are intended to benefit the Property and which do not have any substantial adverse effect on the enjoyment of the Common Area by the Owners.

(b) The Association shall have the right to regulate the use of the Common Area through the Association Rules (which may include, without limitation, the adoption and implementation of a reservation system for such portions of the Common Area, or Improvements or amenities thereon, as the Board deems appropriate) and to prohibit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners or Occupants.

(c) The Declarant and the Association shall each have the right to convey certain portions of the Common Area to Owners of adjoining Lots, provided, however, that neither the Association nor the Declarant shall have the right to transfer or convey any portion of the Common Area upon which is situated any recreational facility unless approved by a vote of the Owners pursuant to Subsection 2.1.1(a).

(d) The Association shall have the right to charge Special Use Fees for the use of the Common Area. The Special Use Fees, if any, shall be set by the Board from time to time, in its discretion. Special Use Fees shall be charged only for actual entry upon or use of those portions of the Common Area, if any, selected by the Board to be subject to a Special Use Fee, and shall be imposed only where the Board deems it appropriate to collect revenue from the actual users of such selected portions of the Common Area so that all of the costs of operating such selected portions of the Common Area are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other Persons using such selected portions of the Common Area.

(e) The Board shall have the right to suspend the rights of any Owner or Occupant to use and enjoy recreational facilities on the Common Area: (1) for any period during which an Assessment remains delinquent; (2) for a period not to exceed sixty (60) days for any infraction of the Project Documents; or (3) for successive sixty (60) day periods if any such infraction is not corrected during any preceding suspension period. Any suspension of the rights of an Owner or Occupant to use and enjoy recreational facilities on the Common Area shall automatically, without any further action, also act as a suspension of any rights or privileges of any guest, family member, lessee or invitee of such Owner or Occupant might otherwise have to use and enjoy any such recreational facilities.

2.1.2 If a Lot is leased or rented by its Owner, the Occupants of such Lot shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

2.1.3 The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one

time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

2.2 Utility Easement. There are hereby created easements upon, across, over and under the Common Area, Lots and other property for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of these easements, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area, Lots and other property, but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Area, Lots and other property except as initially designed, approved and constructed by the Declarant or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot).

2.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Area. There are also hereby created easements for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots and their guests, families, tenants and invitees. There are also hereby created easements upon, across and over the Common Area and all private streets, private roadways, private driveways and private parking areas within the Property for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel.

#### 2.4 Declarant's Use and Easements.

2.4.1 The Declarant and each Designated Builder shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Property and to maintain one or more advertising signs on the Common Area while the Declarant (or Designated Builder, as applicable) is selling Lots or other property in the Property. Declarant reserves the right (which, in its discretion, it may delegate to and/or share with one or more Designated Builders, upon and subject to such terms and conditions as Declarant may deem appropriate) to place models, management offices and sales and leasing offices on any Lots or other property owned by Declarant (or such Designated Builder, as applicable) and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate.

2.4.2 So long as Declarant or any Designated Builder is marketing Lots or other portions of the Property or the Annexable 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 and Designated Builders' employees and others engaged in sales, leasing, maintenance, construction or management activities.

2.4.3 Declarant and Designated Builders shall have the right and an easement on and over the Common Area to construct all Improvements the Declarant (or any such Designated Builder, as applicable) may deem necessary and to use the Common Area and any Lots and other property owned by Declarant (or such Designated Builder, as applicable) for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Property.

2.4.4 Declarant and Designated Builders shall have the right and an easement upon, over, and through the Common Area as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by the Declarant and Designated Builders by this Declaration.

2.5 Easement in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

2.5.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

2.5.2 For inspection, maintenance, repair and replacement of portions of the Common Area accessible only from such Lots;

2.5.3 For correction of ~~unofficial document~~ conditions on one or more Lots or on portions of the Common Area accessible only from such Lots;

2.5.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

2.5.5 For inspection of the Lots in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Project Documents.

### ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS

3.1 Membership; Power to Vote. Every Owner of a Lot automatically shall be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner's membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable. In the event any Lot is owned by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member but the membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall either: (a) make such designation,

in which event such designation shall be binding for all purposes; or (b) declare that until all Persons who together hold such membership jointly make such written designation, the vote(s) attributable to such membership under this Declaration shall not be cast or counted on any questions before the Members; provided, however, that if any one of such Persons casts a vote representing a certain Lot without objection from any other Person sharing ownership of such Lot, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot unless and until objection thereto is made to the Board, in writing. Notwithstanding the foregoing, so long as any Class B membership is in existence, no Class B Member shall at the same time be a Class A Member nor shall a Class B Member have any Class A votes, and the membership and number of votes of the Class B Member(s) shall be determined in accordance with Subsection 3.3.2.

3.2 Declarant and Designated Builder Memberships. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B membership. Each Designated Builder shall be a Member of the Association for so long as it holds a Class A or Class B membership.

3.3 Voting Classes; Number of Votes. The Association shall have two classes of Members, as follows:

3.3.1 Class A. Class A Members shall be all Owners, except that until the conversion of the Class B memberships to Class A memberships as provided below, Declarant and each Designated Builder shall be a Class B Member, not a Class A Member. Subject to the authority of the Declarant to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have one vote for each Lot owned by such Member; and

3.3.2 Class B. The Class B Members shall be Declarant and each Designated Builder. Each Class B Member shall be entitled to three (3) votes for each Lot owned by such Class B Member. Declarant and any Designated Builder shall have the right, at any time and from time to time, to assign all or any part of its voting rights appurtenant to its Class B membership (as well as all or any other rights appurtenant thereto) to one or more Persons acquiring, for purposes of development and sale, any part of the Property. Further, Declarant and any Designated Builder shall have the right, at any time and from time to time, to designate an individual or individuals to exercise its voting rights hereunder (whether appurtenant to Class A or Class B membership), provided, however, that such designation shall not act as an assignment by Declarant (or such Designated Builder) of its membership or voting rights hereunder. Subject to the provisions of Article 6 below, all Class B memberships automatically shall cease and be converted to a Class A membership upon the happening of the first of the following events:

(a) the date which is ninety (90) days after the date upon which the total number of votes of the Class A Members equals the total number of votes of the Class B Members;

(b) the date which is ten (10) years after the date this Declaration is Recorded; or

(c) the date on which Declarant and all Designated Builders that then hold a Class B membership Record a written notice electing to convert all Class B memberships to Class A memberships.

3.4 Right to Vote. The Board shall not be required to recognize a change in the ownership of a Lot as being effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. The vote for each Member must be cast as a single unit. Split or fractional votes shall not be allowed. Any Owner of a Lot which is leased or which is subject to a valid, outstanding and Recorded executory agreement of sale may, in the lease, agreement of sale or other written instrument, assign the voting rights appurtenant to the Lot to the lessee thereof or to the purchaser thereof under such agreement of sale, as applicable, provided that a copy of the written assignment of such voting rights is furnished to the Secretary of the Association prior to any meeting at which such lessee or purchaser seeks to exercise such voting rights. The Board shall have the right to suspend the voting rights of any Owner for such period of time as the Owner is delinquent in the payment of any Annual Assessments and/or Special Assessments required to be paid by this Declaration.

3.5 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules and any other rules and regulations adopted pursuant to any of the foregoing.

3.6 Transfer of Membership. Except as otherwise provided in this Declaration, the rights, duties and obligations of a Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Member's Lot and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure or other legal process authorized under Arizona law, shall operate to transfer the membership appurtenant thereto to the new Owner and any attempt to make any other form of transfer shall be void.

#### ARTICLE 4 MAINTENANCE

4.1 Association's General Responsibilities. The Association shall maintain and keep in good repair the Common Area (and certain other areas, as more expressly provided in this Section 4.1), and the costs of such maintenance shall be Common Expenses of the Association (subject to any insurance then in effect). This maintenance shall include, but not be limited to:

4.1.1 maintenance, repair and replacement of all landscaping, lakes, and other flora, structures and Improvements (including, without limitation, any and all recreational facilities and appurtenant Improvements) situated upon the Common Area,

including compliance with the requirements of the Wildlife Damage Management Plan described in Section 12.13 in connection with such maintenance of such Common Area;

4.1.2 maintenance, repair and replacement of landscaping and flora in or upon public rights-of-way immediately adjacent to the exterior boundaries of the Property (or between such public rights-of-way and perimeter or boundary walls on or surrounding the exterior boundaries of the Property), and of any perimeter or boundary walls on or surrounding the exterior boundaries of the Property;

4.1.3 maintenance, repair and replacement of landscaping and signs within areas designated on one or more subdivision plats or other instruments Recorded by, or bearing the written approval of, Declarant (or, after termination of all Class B memberships, the Association) with respect to all or portions of the Property as "landscape easements," "landscape and wall easements" or "landscape and sign easements" (or similar designations) to be maintained by the Association;

4.1.4 maintenance, repair and replacement of the side facing a street or portion of the Common Area of any boundary or perimeter wall situated within areas designated on one or more subdivision plats or other instruments Recorded by, or bearing the written approval of, Declarant (or, for subdivision plats Recorded after termination of all Class B memberships, the Association) with respect to all or portions of the Property as "wall easements" (or similar designations) to be maintained by the Association;

4.1.5 maintenance of the <sup>Unofficial Document</sup> retention basins constructed and installed on certain property adjacent to the Property, which retention basins serve the Property and are located in the areas depicted in Exhibit B attached hereto (each, a "Retention Basin"); provided, however, that the Association's obligation to maintain each Retention Basin shall terminate at (and shall only exist until) such time as Kaleidoscope Marketing Corporation, a Nevada corporation ("KMC") (who is the present owner of the parcels of property on which the Retention Basins are located) sells or develops the parcel on which such Retention Basin is located (with such parcel in all events being deemed to have been "developed" upon commencement of construction of improvements or grading for improvements after final plat or final site plan approval after building permits have first been issued, and with such parcel in all events being deemed to have been "sold" upon recordation of a deed transferring title thereof from KMC to a third party);

4.1.6 maintenance of the landscaping improvements along those areas of Chandler Heights Boulevard and the entrance road to the Pinelake Estates project, as depicted in Exhibit B attached hereto (the "Right-of-Way Landscaping"); provided, however, that the Association's obligation to maintain each portion of the Right-of-Way Landscaping shall terminate at (and shall only exist until) such time as KMC sells or develops the parcel on which such portion of the Right-of-Way Landscaping is located (or to which such portion of the Right-of-Way Landscaping is adjacent), with "sold" and "developed" being deemed to have occurred upon the same terms as provided in Subsection 4.1.5 above;

4.1.7 maintenance of the landscaping improvements within the twenty-five foot wide landscape buffer located adjacent to the north boundary of the Property (i.e., the area lying between the north boundary line of Lots 109 through 121, and a line twenty-five feet north of the north boundary line of such Lots), which landscape buffer is a requirement imposed by the City of Chandler in connection with the zoning for the Property);

4.1.8 maintenance and repair of any drainage easements upon or across the Common Area.

Notwithstanding anything to the contrary in the foregoing, except where otherwise provided in an instrument Recorded by, or bearing the written approval of, Declarant, the Association shall be responsible for maintaining the side of any boundary wall facing a public street or roadway (or a private street or roadway owned by the Association), while the Owner of a Lot shall be responsible for maintaining the side of any boundary wall facing such Owner's Lot. For purposes of the preceding sentence a "boundary wall" shall be any wall or fence separating a Lot from a public street or roadway adjacent to or along the exterior perimeter boundaries of the Property or adjacent to or along a major arterial street or roadway (whether public or owned by the Association) within the Property if, in the case of a wall within the Property, such wall is designed as a "common" or "theme" wall presenting a uniform appearance along its length. The Association shall also have the right, power and authority to maintain and repair drainage easements upon and across one or more Lots, and/or landscaping, sidewalks, curbs and gutters adjacent to public streets or roadways, where: (a) the Association is required to do so by applicable statute, <sup>Unofficial Document</sup> ordinance, code, rule or regulation, or by the terms of a Recorded subdivision plat signed or otherwise approved in writing by Declarant or the Association; (b) in the reasonable discretion of the Board, such maintenance and repair is necessary or advisable to protect any Common Area or other Lots or to permit proper flow of runoff through other portions of the Property; or (c) in the reasonable discretion of the Board, such maintenance and repair is otherwise in the best interests of the Association or serves a reasonable goal of the Association. The costs of any maintenance and repair described in the preceding sentence shall be Common Expenses, subject to any right the Association may have to recover all or any portion of such costs from insurance or from any Owner or other Person whose negligent or reckless act, breach of this Declaration or other misconduct gave rise to need for such maintenance or repair.

4.2 Maintenance of Owner's Structures. Each Owner shall be responsible for the maintenance, cleaning, painting, repair and general care of all structures existing or constructed upon such Owner's Lot and, in particular, each Owner shall cause the exterior of said structures to be maintained in good condition and repair and in an attractive state consistent with general community standards within the Property. In the event that the Board shall determine, after providing reasonable notice and an opportunity to be heard, that any Owner is in breach of such Owner's obligations under the preceding sentence, the Board shall promptly give such Owner written notice of such determination, including a reasonably detailed list or description of the repairs, maintenance or other work required to cure such Owner's breach, and in the event the