

**STONEGATE  
AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

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## ARTICLE 1

### DEFINITIONS

- 1.1 **“ANNUAL ASSESSMENT”** means the assessments levied against each Lot and the Owner thereof, pursuant to Section 6.3 of this Declaration.
- 1.2 **“ARCHITECTURAL COMMITTEE”** means the committee of the Association created pursuant to Section 5.9 of this Declaration.
- 1.3 **“ARCHITECTURAL COMMITTEE RULES”** means the rules, guidelines and procedures adopted by the Architectural Committee pursuant to Section 5.9 of this Declaration, as they may, from time to time, be amended.
- 1.4 **“ARTICLES”** means the Articles of Incorporation of the Association, as they may, from time to time, be amended.
- 1.5 **“ASSESSMENT”** means an Annual Assessment, Special Assessment, or Lot Specific Assessment pursuant to Article 6 of this Declaration.
- 1.6 **“ASSOCIATION”** means Stonegate Community Association, Inc., an Arizona nonprofit corporation, and its successors.
- 1.7 **“ASSOCIATION LIEN”** means a lien created and imposed pursuant to Article 6 of this Declaration.
- 1.8 **“ASSOCIATION RULES”** means the rules, regulations, guidelines, procedures and other requirements adopted by the Board pursuant to Section 5.3 of this Declaration, as they may, from time to time, be amended.
- 1.9 **“BOARD”** means the Board of Directors of the Association.
- 1.10 **“BYLAWS”** means the Bylaws of the Association as they may, from time to time, be amended.
- 1.11 **“COMMON AREA”** means all land and the Improvements situated thereon owned by the Association, including all land and the Improvements situated thereon within a Stonegate Recorded subdivision plat, Recorded Tract Declaration or other Recorded instrument as indicated in this Declaration.
- 1.12 **“COMMON EXPENSES”** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.13 **“DECLARATION”** means this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as it may, from time to time, be amended.
- 1.14 **“IMPROVEMENT”** means any Residential Unit, building, fence, wall or other structure, or any swimming pool, road, driveway, parking area, or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

**1.15** **“LESSEE”** means the lessee under a written lease of any Lot and Residential Unit that complies with the provisions of Subsection 3.26 of this Declaration.

**1.16** **“LOT”** means a portion of Stonegate intended for independent ownership and use and shall include any Residential Unit, other building or structure or other Improvements situated on the Lot.

**1.17** **“LOT SPECIFIC ASSESSMENT”** means any assessment levied and assessed pursuant to Section 6.7 of this Declaration.

**1.18** **“MEMBER”** means any Person who is a member of the Association.

**1.19** **“MEMBERSHIP”** means a membership in the Association.

**1.20** **“OWNER”** means the record Owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest in a Lot. 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. Owner shall include a Purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 *et. seq.* Owner shall not include a Purchaser under a purchase contract, escrow instructions, or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, *et. seq.*, the trustor shall be deemed to be the Owner.

**1.21** **“PERSON”** means any natural person, corporation, partnership, trust or other legal entity.

**1.22** **“PLAT”** means the Plat of Dedication for Stonegate recorded in Book 326 of Maps, Page 8, Records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

**1.23** **“PROPERTY TRANSFER PAYMENT”** means the fee created and imposed by Section 6.10 of this Declaration.

**1.24** **“PURCHASER”** means any natural person, corporation, partnership, trust or other legal entity who or which becomes the Owner of a Lot, whether by voluntary or involuntary transfer and whether or not for a valuable consideration.

**1.25** **“RECORDING”/“RECORDED”** **“Recording”** means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and **“Recorded”** means having been so filed in the public record.

**1.26** **“RESIDENT”** means an individual residing in any Residential Unit.

**1.27** **“RESIDENTIAL UNIT”** means a structure that is devoted exclusively to residential use by a Single Family.

**1.28** **“SINGLE FAMILY”** means one (1) person, or a group of two (2) or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

**1.29**     **“SPECIAL ASSESSMENT”** means any assessment levied and assessed pursuant to Section 6.6 of this Declaration.

**1.30**     **“STONEGATE”** means all real property and the Improvement(s) thereon, described on the Plat or otherwise subject to this Declaration.

**1.31**     **“STONEGATE DOCUMENTS”** means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

**1.32**     **“TRACT DECLARATION”** means a declaration referred to in Section 2.2 of this Declaration.

**1.33**     **“VISIBLE FROM NEIGHBORING PROPERTY”** means, with respect to any given object, that such object is, or would be, visible to a person six feet tall, standing at ground level on any part of any neighboring property unless only by reason of being able to see the object through a view fence and such object would not be visible to such person if the view fence were a solid fence.

*End of Article I*

## ARTICLE 2

### PLAN OF DEVELOPMENT

#### **2.1 Property Subject to the Declaration**

This Declaration is being Recorded to establish a general plan for the development and use of the property within Stonegate in order to protect and enhance its value and desirability. All of the property within Stonegate shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representative, successors, transferees and assigns, binds himself, his heirs, personal representative, successors, transferees and assigns, to all of the provisions, covenants, conditions and restrictions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the property and hereby evidences his interest that all the covenants, conditions, restrictions, rules and regulations contained in this Declaration shall run with the land and be binding on all current, subsequent and future Owners, grantees, Purchasers, assignees, Lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

#### **2.2 Tract Declaration**

The uses for which property within Stonegate may be used shall be determined by the Recorded Tract Declaration covering such property. A Tract Declaration may designate Common Areas and impose such additional covenants, conditions and restrictions as may be appropriate for the property subject to the Tract Declaration. Each recorded Tract Declaration shall be construed as a supplement to this Declaration as if all of the provisions of the Tract Declaration were set forth in this Declaration. A Tract Declaration may only be amended with the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than sixty-seven percent (67%) of the votes entitled to be cast by the Owners subject to such Tract Declaration.

*End of Article 2*

## **ARTICLE 3**

### **PERMITTED USES AND RESTRICTIONS**

#### **3.1 Architectural Control**

In addition to any requirements imposed by the State of Arizona, Maricopa County or the City of Scottsdale,

3.1.1 All Improvements constructed on Lots within Stonegate shall be of new construction, and no buildings or other structures shall be relocated on to any Lot without the prior written approval of the Architectural Committee;

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

3.1.3 No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee;

3.1.4 No addition, alteration, repair, change (including a change in paint color), replacement or other work on any Improvement which in any way alters the exterior appearance of any Lot shall be made or done without the prior written approval of the Architectural Committee. With respect to paint colors, an Owner may review a list of colors to be maintained by the Association and may request in writing that a color desired by such Owner be approved as being the same, similar or substantially similar to a color on such list. Such approval shall be subject to any other relevant factors and shall be at the sole discretion of the Executive Director or another person designated by the Board for such purpose. Any such approval shall constitute approval of the Architectural Committee. If such request is denied, the Owner may submit a written request for approval to the Architectural Committee in accordance with Section 3.1.5;

3.1.5 Any Owner desiring approval of the Architectural Committee for any construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his Lot, including the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of any construction, installation, addition, alteration, repair, change, replacement or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications and payment of any fees, charges and expenses pursuant to section 3.1.9 which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application within thirty (30) days after its receipt of such request and of all supporting information, plans, specifications and payment of fees, charges and expenses required by the Architectural Committee pursuant to Section 3.1.9, the date of such receipt to be determined in writing by the Architectural Committee, this Section shall be deemed to have been complied with and such plans shall be deemed to be approved;

3.1.6 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change, replacement or other work pursuant to this Section, including plans deemed approved as a result of the Architectural Committee's failure to act, shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, replacement or other work subsequently submitted for approval by any Owner;

3.1.7 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change, replacement or other work approved by the Architectural Committee, including plans deemed approved as a result of the Architectural Committee's failure to act, the Owner shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee;

3.1.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee, including plans deemed approved as a result of the Architectural Committee's failure to act, must be submitted in writing to and approved in writing by the Architectural Committee;

3.1.9 The Architectural Committee shall have the right to seek prepayment and/or reimbursement from an Owner of all third-party fees, charges and expenses incurred or to be incurred by the Association in reviewing requests for approval of any construction, installation, alteration, addition, repair, change, replacement or other work pursuant to this Section. An estimate of such third-party fees, charges and expenses shall be provided to the Owner and shall, if requested, be payable prior to such fees, charges and expenses being incurred;

3.1.10 The Architectural Committee may require an Owner, before commencing construction of any Improvements, to deposit monies to be used by the Association to remove any construction debris that is allowed to accumulate and/or repair any damage to the Common Area. The deposit will be refunded upon the completion of construction of the Improvements, less any expenses incurred by the Association, upon written request of the Owner;

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

3.1.12 Any Owner shall have the right to appeal to the Board any decision made by the Architectural Committee in accordance with the rules, guidelines and procedures established by the Board; and

3.1.13 Any approval of plans or specifications and/or proposed work given by the Architectural Committee shall be only for the purpose of permitting the construction, installation, addition, alteration, repair, change, or replacement of any Improvements or proposed Improvements within Stonegate. Such approval shall not constitute an approval, ratification, or endorsement of the quality of architectural or engineering soundness of the proposed work or Improvements. The Architectural Committee and its members, the Board and its members, the Association and any officers and committees of the Association, the Executive Director, manager and other employees of the Association shall not have any liability for any design faults, defects or omissions in the plans, specifications, proposed work or proposed Improvements.

### **3.2 Vehicle/Equipment Control**

In addition to any requirements imposed by the State of Arizona, Maricopa County or the City of Scottsdale, the Board shall have the right to adopt rules and regulations, after notice and opportunity to be heard by the Members, prohibiting or restricting the parking, maintenance, construction, reconstruction, repair or use of any Vehicle/Equipment on Lots or Common Area within Stonegate. For purposes of this Section and Section 3.3, the term "Vehicle/Equipment" shall be read in its broadest sense to include any vehicle, means of transport or item capable of being transported. By way of illustration but not limitation, such term shall include Vehicles/Equipment such as passenger cars, trucks, multi-purpose vehicles, vans, buses, motorcycles, motorbikes, dirt bikes, all terrain vehicles, go-peds, snow mobiles, golf carts, electric carts, aircraft, boats, boat trailers, mobile homes, motor homes, horse trailers, travel trailers, tent trailers, camper shells, detached campers, recreational vehicles or other similar vehicles or equipment. Notice of such rules and regulations shall be provided to the Owners in a manner that is decided by the Board. Such rules and regulations shall be administered by such committee as directed by the Board. Any Owner shall have the right to appeal to the Board any decision made by such committee in accordance with rules and procedures established by the Board.

### **3.3 Towing of Vehicles/Equipment**

In the event compliance is not made with a written demand from the Association to move any Vehicle/Equipment as defined in Section 3.2, the Board shall have the right to have any such Vehicle/Equipment which is parked, maintained, constructed, reconstructed, repaired or used in violation of any Stonegate Documents (including such rules and regulations adopted pursuant to Section 3.2) towed away. If such Vehicle/Equipment is owned by an Owner or an Owner's Lessee or their respective families, guests or other invitees, all expenses incurred by the Association in connection with such towing shall be levied as a Lot Specific Assessment, shall be paid by such Owner and shall be secured by an Association Lien established pursuant to Article 6.

### **3.4 Temporary Buildings Use**

No temporary buildings or structures of any kind shall be used as a residence. Temporary buildings, trailers or other structures used during the construction, installation, addition, alteration, repair, change or replacement of any Improvements require the prior written approval of the Architectural Committee.

### **3.5 Maintenance of Lawns and Plantings**

Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot; (ii) any public right-of-way or easement area which abuts or adjoins the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike-path or similar area; and (iii) any non-street public right-of-way or easement area adjacent to his Lot, properly trimmed and cultivated and free of trash, weeds and other unsightly material. No Owner shall be responsible for maintenance of any area over which (i) the Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by a Recorded Tract Declaration; or (iii) Maricopa County or any municipality having jurisdiction over such property assumes responsibility, for so long as the Association, Maricopa County or such municipality assumes or has responsibility.

### **3.6 Nuisances**

No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, 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 other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and other property 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 shall be piled only in such areas as may be approved in writing by the Architectural Committee. The Board in its sole discretion shall have the right to determine the existence of any nuisance.

### **3.7 Diseases and Insects**

No Person shall permit any thing or condition to exist upon any Lot or other property which may induce, breed or harbor infectious plant diseases or noxious insects.

### **3.8 Repair of Building**

No Residential Unit, other building or structure or other Improvement situated on any Lot or other property shall be permitted to fall into disrepair, and each Residential Unit, other building or structure or other Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, other building or structure or other Improvement shall be immediately repaired or rebuilt or shall be demolished.

### **3.9 Antennas**

No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee.

### **3.10 Mineral Exploration**

No Lots or other property 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.

### **3.11 Trash Containers and Collection**

No garbage or trash shall be placed or kept on any Lot or other property, except in covered containers of a type, size and style which are provided by the City of Scottsdale. In no event shall such containers be located so as to be Visible From Neighboring Property, except when placed at the curb for collection. Containers shall not be placed at the curb prior to the evening of the day before collection and must be removed from the curb by the evening of the day after collection or at such other times as determined by the Board. All rubbish, trash, or garbage shall be removed

from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property. Nothing in this Section shall prohibit brush and bulk collection or other services as provided by the City of Scottsdale and in accordance with City of Scottsdale guidelines for such services.

### **3.12 Clothes Drying Facilities**

No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or other property so as to be Visible From Neighboring Property.

### **3.13 Utility Service**

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 other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures in a manner approved by the Architectural Committee.

### **3.14 Landscape Encroachments**

No tree, shrub, planting or other property of any kind on any Lot or Common Area shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet.

### **3.15 Residential Use**

All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances and Association requirements; (iii) the business activity does not involve the door-to-door solicitation of Owners or others within Stonegate; and (iv) the business activity is consistent with the residential character of Stonegate and does not constitute a nuisance or a hazardous or offensive use or threaten the security, health or safety of others within Stonegate. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

### **3.16 Health, Safety and Welfare**

In the event that uses, activities and/or Improvements on any Lots or Common Area are deemed by the Board to be a nuisances or to adversely affect the health, safety or welfare of Owners, Lessees or Residents, the Board may make rules restricting or regulating their presence in Stonegate as part of the Association Rules or may direct the Architectural Committee to propose rules for Board approval governing their presence on Lots or other property as part of the Architectural Committee Rules.

### **3.17 Animals**

No fowl, poultry or livestock may be kept on any Lot for any purpose. No animal, bird, or reptile may be kept on any Lot for commercial purposes. Domestic pets are permitted; however, in the case of dogs, each Lot shall be limited to a maximum of two dogs. All pets shall be trained and

kept under safe and sanitary conditions so as not to become a nuisance, whether noise, odor or otherwise, to neighboring Lot Owners. All pets shall be safely restrained when being walked throughout the community and no person owning or in the custody of a pet shall allow the pet to stray or go upon another Lot. The person walking the pet shall be responsible for picking up their pet's fecal matter and disposing of it in a safe and sanitary manner. No pet shall be permitted to cause a nuisance upon any Lot or Common Area so as to be offensive or detrimental to such property or to any other property or in the vicinity thereof or to its occupants. Upon the written request of any Owner, Lessee or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this Section, and in accordance with Section 3.6, a particular animal is a nuisance or making an unreasonable amount of noise.

### **3.18 Machinery and Equipment**

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, 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; or (ii) that which the Association may require for the operation and maintenance of Stonegate.

### **3.19 Signs**

No signs whatsoever which are Visible From Neighboring Property shall be erected or maintained on any Lot, except

3.20.1 Signs required by legal proceedings;

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

3.20.3 Such construction job identification signs, business identification signs and subdivision identification signs which are in conformance with the requirements of the City of Scottsdale, Maricopa County or other governmental body having jurisdiction;

3.20.4 Temporary "Open House" signs indicating that a Residential Unit is available for inspection by interested parties, but such signs may only be erected or maintained during the hours of 10:00 A.M. through 5:00 P.M. on Saturdays, Sundays, or legal holiday weekends or as otherwise designated by the Board;

3.20.5 Political signs allowed pursuant to A.R.S. § 33-1808 and Stonegate Architectural Committee Rules; and

3.20.6 "For Sale" signs, "cautionary signs" or any other sign allowed pursuant to A.R.S. § 33-1808 and Stonegate Architectural Committee Rules.

### **3.20 Restriction on Subdivision and Property Restrictions**

No Lot shall be subdivided or separated into smaller lots by any Owner and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board. No further covenants, conditions and or restrictions or easements shall be recorded by any Owner against any Lot without the provisions thereof having been first approved in writing by the Board. No application for variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by

the Board and the proposed use otherwise complies with this Declaration and any applicable Tract Declaration.

### **3.21 Change of Use of Common Area**

Upon (i) 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 Area is no longer in the best interests of the Owners; and (ii) the written approval or the affirmative vote, or any combination thereof, of such resolution by Owners representing more than fifty percent (50%) of the votes entitled to be cast in the Association and who are entitled to use such Common Area under the terms of this Declaration or any Tract Declaration, 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 Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners and shall be consistent with any zoning ordinances and Association requirements.

### **3.22 Drainage**

No Residential Unit, other building or structure, or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for Stonegate, or any part thereof, as shown on any approved drainage plans on file with the City of Scottsdale or Maricopa County.

### **3.23 Garages and Driveways**

The interior of all garages shall be maintained in a neat and clean condition. Garage doors shall not remain open for unreasonable amounts of time.

### **3.24 Rooftop Air Conditioners**

No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building or structure or other Improvement so as to be Visible From Neighboring Property.

### **3.25 Exterior Lights**

In order to provide street lighting, each Residential Unit must have two exterior lights on the front exterior wall of the garage, which lights must be on a photocell and must be approved by the Architectural Committee with respect to size, design, color, intensity and location.

### **3.26 Leases**

No Owner may lease less than his entire Lot and the Residential Unit situated thereon (together, the "Premises"). All leases and any amendment thereto must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration, the Architectural Committee Rules and the Association Rules, and that any violation of any of the foregoing by the Lessee, any other person residing on the Premises, or their guests or invitees, during the lease term shall be a default under the lease, and, if such default is determined by the Board to constitute a nuisance or detract from the general welfare of the community, the lease shall automatically terminate. No Lessee shall sublease the Premises or assign the Lessee's rights under the lease, and any attempted sublease or assignment shall be void. No Premises may be leased for a term of less than one hundred and twenty (120) days. No Premises may be leased more than three (3) times during any consecutive twelve (12) month period without the

prior written approval of the Board. Within seven (7) days following the execution and delivery of a lease of Premises, the Owner shall provide the Association with a fully executed copy thereof (the monetary terms of which may be deleted), or warrant to the Association the terms thereof applicable to this Section 3.26, and with the address and telephone number at which the Owner can be contacted by the Association during the lease term. The Owner shall also provide the Association with a fully executed copy of any amendment to a lease of Premises, or warrant to the Association the terms thereof applicable to this Section 3.26, if any, within seven (7) days following the execution and delivery thereof, and such lease, as amended, must continue to comply with the provisions of this Section 3.26. The Owner shall notify the Association in writing within seven (7) days following the termination of a lease of Premises for any reason prior to the expiration of the lease. An Owner who leases his or her premises must provide the Lessee with copies of this Declaration, the Architectural Committee Rules and the Association Rules (or summaries thereof in form and substance approved by the Board for this purpose). The Owner shall be liable for any violation thereof by the Lessee, or any other person residing on the Premises, or their guests or invitees, during the lease term. Within seven (7) days after taking occupancy of the Premises, the Lessee shall register with the Association and furnish all information reasonably requested by the Association. The Association may charge the Owner a reasonable administrative fee in an amount established by the Board in connection with a lease of Premises.

### **3.27 Variances**

The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 or in any Tract Declaration if the Board determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident, or a change of circumstances since the Recording of this Declaration has rendered such restriction obsolete; and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of Stonegate and is consistent with the high standards and quality of life intended for Residents.

*End of Article 3*

## **ARTICLE 4**

### **EASEMENTS**

#### **4.1 Owner's Easements of Enjoyment**

Every Owner, Lessee and Resident shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to, and shall pass with, the title to every Lot or rights under any lease, subject to the following provisions: (i) the right of the Association to dedicate, convey, transfer or encumber the Common Area; (ii) the right of the Association to regulate the use of the Common Area through the Association Rules; and (iii) the right of the Association to suspend or restrict the right of an Owner, Lessee or Resident and such Owner's, Lessee's or Resident's family, guests or other invitees to use the Common Area.

4.1.1 If a Lot is leased, the Owner of such Lot or his family, guests or other invitees shall have no right to use the Common Area until the expiration or other termination of such lease; and

4.1.2 The guests and other invitees of any Owner or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area, provided they are accompanied by an Owner or other person entitled to use the recreational facilities pursuant to this Declaration. 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 days and times.

#### **4.2 Utility Easement**

There is hereby created an easement upon, across, over and under the Common Area and Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to reasonably erect and maintain the necessary equipment on the Common Area and Lots, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or Lots, except as initially designed, approved and constructed, or as approved by the Board.

#### **4.3 Easement in Favor of the Association**

The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, committees, agents, employees and independent contractors. With respect to 4.3.2, 4.3.3 and 4.3.4, reasonable notice shall be given by the Association unless the property is unoccupied, abandoned or otherwise vacant.

4.3.1 For correction of emergency or health and safety conditions on one or more Lots;

4.3.2 For Inspection of the Lots, including the exterior of any Residential Unit, in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.3.3 For the inspection of the Lots and Common Area, including the exterior of any Residential Unit, in order to verify that the provisions of the Stonegate Documents are being complied with by the Owners, Lessees, Residents and their respective families, guests or other invitees; and

4.3.4 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 Stonegate Documents.

*End of Article 4*

## ARTICLE 5

### **THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS**

#### **5.1 Formation of the Association**

The Association shall be a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration.

#### **5.2 Board 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 Bylaws. Unless the Stonegate Documents specifically require the vote or written approval of the Membership, approvals or actions given or taken by the Association shall be valid and binding.

#### **5.3 The Association Rules**

The Board may, from time to time, subject to the provisions of this Declaration, adopt, amend and repeal rules, regulations, guidelines, procedures and other requirements pertaining to all aspects of the Association's rights, activities and duties, including, but not limited to, the management, operation and use of all Common Area and in furtherance of rights and duties assigned to the Board pursuant to this Declaration.

#### **5.4 Personal Liability**

No member of the Board or of any committee of the Association, no officer of the Association, and no Executive Director, manager or other employee of the Association, when acting within his or her scope of authority, shall be personally liable to any other person or entity, 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, the Executive Director, 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 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

#### **5.5 Implied Rights**

The Association may exercise any right or privilege given to the Association expressly by the Stonegate Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Stonegate Documents or reasonably necessary to effectuate any such right or privilege.

#### **5.6 Membership and Votes in the Association**

Every Owner of a Lot shall be a Member of the Association. Each Lot shall be entitled to one (1) vote, subject to the provisions of Section 5.10.

### **5.7 Voting Procedures**

No change in the ownership of a Lot 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 Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot 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 Lot, it will thereafter be conclusively presumed for all purposes that he is acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast with respect to a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

### **5.8 Transfer of Membership**

The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership of a Lot and then only to the new Owner of the Lot. Any transfer of ownership of a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of the Lot.

### **5.9 Architectural Committee**

The Association shall have an Architectural Committee to perform the functions set forth in this Declaration or as otherwise directed by the Board. The Architectural Committee shall be a committee of the Board. The members of the Architectural Committee shall consist of such number of regular and alternate members as may be provided for in the Bylaws. The members of the Architectural Committee shall be appointed by the Board. The Architectural Committee shall promulgate architectural rules, guidelines and procedures approved by the Board to be used in rendering its decisions (the Architectural Committee Rules). Any decision of the Architectural Committee may be appealed to the Board for final determination in accordance with the rules, guidelines and procedures established by the Board.

### **5.10 Suspension of Voting Rights**

If a Member, otherwise entitled to vote, is delinquent in the payment of any Assessments, Property Transfer Payment or other fees, charges, fines and penalties, together with interest and late charges, costs of enforcement /collection, including attorney's fees, whether or not suit is filed, or other monies owed to the Association, or is otherwise not in compliance with the terms of the Stonegate Documents, the Board may, in its sole discretion, certify that such Member is not in good standing and such Member's right to vote shall, with respect to all Lots owned by such Member, be suspended until the delinquency, breach or violation is paid, cured or corrected.

*End of Article 5*

## ARTICLE 6

### **COVENANT FOR ASSESSMENTS, PROPERTY TRANSFER PAYMENT AND OTHER FEES, CHARGES, FINES AND/OR PENALTIES AND RELATED AMOUNTS; CREATION OF LIEN**

#### **6.1 Creation of Lien and Personal Obligation of Assessments**

Each Owner, by becoming the Owner of a Lot, is deemed to have covenanted and agreed to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including, but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines and penalties whether or not suit is filed, shall be a charge on the Lot and shall be secured by a continuing Association Lien upon the Lot against which each such Assessment, fee, charge, fine and penalty is levied or made. Recording of this Declaration constitutes recorded notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including, but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines and penalties whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine and penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines and penalties shall not pass to the successors in title of the Owner unless expressly assumed by such successors, but the Association Lien upon the Lot shall continue to exist.

#### **6.2 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, Property Transfer Payment and other 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 Association and the Owners by devoting said funds and property, among other things, to the funding of reserves 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 without Stonegate, which may be necessary, desirable or beneficial to the general common interests of the Association and the Owners. 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 and public right-of-ways and drainage areas within Stonegate; recreation and other liability insurance; communications; ownership and operation of maintenance storage areas; education; transportation; health; utilities; public services; safety; indemnification of officers and directors of the Association; and any other purposes permitted by applicable statutes or the Stonegate Documents.

#### **6.3 Annual Assessments**

In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Stonegate Documents, including the establishment of replacement and maintenance reserves,

the Board, for each Assessment period, shall levy an Annual Assessment against each Lot, subject to applicable Arizona Law. The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board, nor relieve any Owner from such Owner's obligation to pay the Annual Assessment.

**6.4 Annual Assessment Period**

The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the Association's fiscal year.

**6.5 Rate of Annual Assessment**

The amount of the Annual Assessment for each Lot shall be the amount obtained by dividing the anticipated Common Expenses of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots.

**6.6 Special Assessments**

The Association may levy against each Lot in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than sixty-seven percent (67%) of the votes entitled to be cast in the Association.

**6.7 Lot Specific Assessments**

Lot Specific Assessments shall be levied by the Board against Lots with respect to which particular costs have been incurred by the Association, including, but not limited to, those Lot Specific Assessments levied pursuant to this Article 6 and Article 7. Further, in the event the Association undertakes to provide work, materials or services on or with respect to a Lot which are necessary to cure or remedy a breach or violation of the Stonegate Documents that the Owner has refused to cure or remedy, such Owner, by refusing to undertake or complete the required cure or remedy, shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

**6.8 No Offsets**

All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or other area of Association responsibility, or that the Association is not enforcing the Stonegate Documents.

**6.9 Rules Regarding Billing and Collection Procedures for Assessments**

Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments and Lot Specific Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of such

Assessments. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period. Successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**6.10 Property Transfer Payment, Creation of Lien and Personal Obligation of Property Transfer Payment**

To ensure that the Association shall have sufficient funds to establish adequate operating, capital improvement and reserve funds and to meet its expenses or purchase necessary equipment or services, each Purchaser of a Lot shall, except as hereinafter provided, pay to the Association immediately upon becoming the Owner of the Lot, a Property Transfer Payment in an amount to be determined as follows: (i) for any Lots subject to a purchase contract prior to the Recording of this Declaration or acquired after the Recording of this Declaration and during the year 2009, a sum equal to .3 percent (30 basis points) of the total sales price of the Lot; (ii) for any Lots acquired after the Recording of this Declaration and during the year 2010, a sum equal to .4 percent (40 basis points) of the total sales price of the Lot, but not less than \$1,000.00; and (iii) for any Lots acquired after the Recording of this Declaration and during the year 2011 and subsequent years, a sum equal to .5 percent (50 basis points) of the total sales price of the Lot, but not less than \$1,000.00.

Effective in the year 2010, the Property Transfer Payment due from a Purchaser who is an existing Owner (whether one or more Persons) changing primary residence in Stonegate from one Stonegate Lot to another Stonegate Lot shall be reduced, but not below zero, by up to a total aggregate amount of \$1,000.00.

Transfers to new Owners, such as trustees, who acquire legal title to a Lot, although the grantor(s) has retained equitable title and power of direction, or transfers of title solely between spouses, or similar type transfers the Board determines should be exempt, shall be exempt from the Property Transfer Payment.

All payments made to the Association pursuant to this Section 6.10 shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

Notwithstanding the requirements of Section 9.3.1, this Section 6.10, including the amount of the Property Transfer Payment, may be amended at any time by the written approval or the affirmative vote, or any combination thereof, of Owners representing more than fifty percent (50%) of the votes entitled to be cast in the Association.

Any amendment pursuant to this Section 6.10 of this Declaration shall be signed by the President or Vice President of the Association and attested by the Secretary of the Association, with their signatures acknowledged, and shall be Recorded with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

The Property Transfer Payment together with interest, late charges and all costs, including, but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Property Transfer Payment(s) whether or not suit is filed, shall be a charge on the Lot and shall be secured by a continuing Association Lien upon the Lot against which each such Property Transfer Payment is levied or made. Recording of this Declaration constitutes Recorded notice and perfection of the lien established hereby. Similar to the Association Lien

created and imposed pursuant to Section 6.1, each Property Transfer Payment, together with interest and all costs including, but not limited to, reasonable attorney's fees incurred by the Association in collecting or attempting to collect delinquent Property Transfer Payment(s), whether or not suit is filed, shall also be the personal obligation of the person who was the Purchaser of the Lot at the time when the Property Transfer Payment became due. The personal obligation for delinquent Property Transfer Payment(s) shall not pass to the successors in title of the Purchaser unless expressly assumed by such successors, but the Association Lien upon the Lot shall continue to exist.

**6.11 Fees for Disclosure Statements**

Any Owner of a Lot who sells his Lot and requires a disclosure statement shall pay to the Association a disclosure fee in such amount as is established from time to time by the Board. Fees for such disclosure statement charged pursuant hereto shall be secured by an Association Lien established pursuant to this Article 6.

**6.12 Charges, Fines and/or Penalties**

In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or other Stonegate Documents, the Association shall have the right, subject to applicable law, to levy reasonable charges, fines and/or penalties against an Owner for any violation of this Declaration or other Stonegate Documents by the Owner, Lessee, Resident or their respective families, guests or other invitees. The Board shall have the right to adopt rules and procedures regarding notice of and opportunity to be heard on such violation. The amount of the charge, fine and/or penalty for each violation shall be levied pursuant to a Board-approved schedule of charges, fines and/or penalties. Any charges, fines and/or penalties levied pursuant hereto shall be secured by an Association Lien established pursuant to this Article 6.

**6.13 Costs of Enforcement/Collection**

Any costs incurred by the Association in enforcing this Declaration or other Stonegate Documents shall be the obligation of the Owner against which enforcement is sought. Such costs of enforcement/collection shall include, but not be limited to, reasonable attorney's fees, whether or not suit is filed. The obligation to pay the costs of enforcement/collection shall be secured by an Association Lien established pursuant to this Article 6.

**6.14 Effect of Nonpayment of Assessments, Property Transfer Payment and Other Fees, Charges, Fines and/or Penalties; Remedies of the Association**

6.14.1 Any Assessment, Property Transfer Payment or other fee, charge, fine and/or penalty, or any installment of an Assessment, Property Transfer Payment or other fee, charge, fine and/or penalty, not paid within fifteen (15) days after the Assessment, Property Transfer Payment or other fee, charge, fine and/or penalty, or the installment thereof, first became due shall bear interest from the due date at the rate established, from time to time, by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, Property Transfer Payment or other fee, charge, fine and/or penalty, or any installment of an Assessment, Property Transfer Payment or other fee, charge, fine and/or penalty, within fifteen (15) days after such payment is due.

6.14.2 As set forth in this Article 6, the Association shall have an Association Lien levied against or charged to a Lot or the Owner thereof for all Assessments, Property Transfer Payment or other fees, charges, fines and/or penalties, together with interest and late charges, and all costs of enforcement/collection, including reasonable attorney's fees, whether or not suit is filed. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description and/or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice of Lien, including late charges, interest, costs of enforcement/collection, lien Recording fees, lien release fees, reasonable attorney's fees and the cost of preparing the Notice of Lien.

6.14.3 Subject to applicable statutes, an Association Lien created by this Article 6 shall have priority over all liens or claims, except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body; and (iii) previously existing First Mortgage/Deed of Trust liens.

6.14.4 The Board may suspend for the entire period during which any Assessments, Property Transfer Payment or other fees, charges, fines and/or penalties, together with interest and late charges, and costs of enforcement/ collection, including reasonable attorney's fees, whether or not suit is filed, remain delinquent, the obligated Owner's right, if any, to the use of the Common Area.

6.14.5 The Board may enforce an Association Lien established pursuant to this Article 6.

6.14.6 The Board may institute an action at law for a money judgment to recover the amount of any delinquent Assessment, Property Transfer Payment or other fees, charges, fines and/or penalties, together with all interest and late charges and costs of enforcement/collection, including reasonable attorney's fees.

## **6.15 Surplus Funds**

The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, 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.

*End of Article 6*

## ARTICLE 7

### MAINTENANCE

#### **7.1 Areas of Association Responsibility**

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace (i) the Common Area and all Improvements located thereon, and (ii) all Association property.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all areas of Association responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of such properties shall be taken by the Board or by its duly delegated representative(s).

#### **7.2 Lots**

Except as may otherwise be provided in Section 7.3 or in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibility, each Owner shall be responsible for maintaining, painting, repairing or replacing any Residential Unit, other buildings or structures or other Improvements situated on such Owner's Lot. Residential Units, other buildings or structures or other Improvements shall at all times be kept in good condition and repair. Notwithstanding the obligations of the Association under Section 7.3 or in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibility, each Owner shall be responsible for such Owner's Lot, including protecting the security of such Lot. All grass, hedges, shrubs, vines and plants of any type on a Lot that are the responsibility of the Owner thereof shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage area may be maintained so as to be Visible From Neighboring Property.

#### **7.3 Common Walls**

Masonry fencing, view fencing or any combination thereof lying between adjacent Lots or a Lot and the Common Area shall be deemed to be a Common Wall. The rights and duties of an Owner of such a Lot, and the Association with respect to the Common Area, (Common Wall Party) relating to a Common Wall shall be as follows:

7.3.1 Common Wall Parties shall have an equal right to use such wall, provided such use by one does not interfere with the use and enjoyment of the wall by the other;

7.3.2 In the event any Common Wall is damaged or destroyed through the act of a Common Wall Party, it shall be the obligation of such Common Wall Party to rebuild, replace, repair and/or repaint the Common Wall without cost to the other Common Wall Party, subject to the provisions of Section 7.3.6 relating to view fencing;

7.3.3 In the event that the masonry fencing portion of any Common Wall is damaged or destroyed by some cause other than an act of a Common Wall Party (including ordinary wear and tear or deterioration, including paint deterioration, through lapse of time), both Common Wall parties shall rebuild, replace and/or repair the same to as good a condition as existed prior to the incident at their joint and equal expense, subject to Sections 7.3.4 and 7.3.6 relating to view fencing; provided, however, that in the event all or a part of the masonry fencing portion of a Common Wall requires painting, the Lot Owner shall be responsible for painting the side of the masonry fencing facing his Lot and the Association shall be responsible for painting the side of the masonry fencing facing the Common Area;

7.3.4 In the event a Common Wall between a Lot and the Common Area is larger than normal for the benefit of the Association, such as at the entrance to a subdivision, the Board may allocate more of the expense to the Association. Subdivision identification signs installed on a Common Wall shall be maintained and repaired by the Association at its expense;

7.3.5 In addition to meeting the other requirements of this Declaration and of any building code or similar regulation or ordinance, any Common Wall Party proposing to alter or modify the masonry fencing portion of a Common Wall shall first obtain the written consent of the other Common Wall Party, which consent cannot be unreasonably withheld;

7.3.6 In the event the view fencing portion of any Common Wall is damaged or destroyed by an act referred to in Sections 7.3.2 or 7.3.3, such view fencing, following reasonable notice to the Lot Owner, shall be rebuilt, replaced, repaired and/or repainted by the Association at times designated by it and not by the Lot Owner. If the damage or destruction was caused by the Lot Owner as provided in Section 7.3.2, such Lot Owner shall be responsible for reimbursing the Association for the entire cost thereof, and if the damage or destruction was caused by an act as provided for in Section 7.3.3, the Lot Owner shall be responsible for reimbursing the Association for one-half (1/2) of the cost thereof;

7.3.7 Each Common Wall Party shall notify the other if it has any actual knowledge of any dangerous condition relating to the integrity of any Common Wall shared between them;

7.3.8 The right of any Owner to contribution from any Common Wall Party under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;

7.3.9 The right of the Association to contribution or reimbursement from any Common Wall Party under this Section 7 shall be a Lot Specific Assessment, shall be paid to the Association within fifteen (15) days after the receipt of a bill, invoice or other demand from the Association and shall be secured by an Association Lien established pursuant to Article 6;

7.3.10 In the event a Common Wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the Common Wall shall, and does, exist in favor of the applicable Common Wall Party; and

7.3.11 In the event a Common Wall between a Lot and the Common Area has been altered or modified by the Owner of such Lot, such as by installing a gate, mesh wire or other attachment, the Owner of such Lot and such Owner's successors in title shall be responsible for all maintenance, repair, repainting and/or rebuilding relating to such alterations or modification or resulting therefrom.

#### **7.4 Assessment of Certain Costs of Maintenance and Repair**

In the event the need for maintenance or repair of an area of Association responsibility is caused by the willful or negligent act of any Owner, Lessee, Resident or their respective families, guests or other invitees, the cost of such maintenance or repair shall be levied as a Lot Specific Assessment and shall be secured by an Association Lien. Any charges or fees to be paid by the Owner of a Lot in connection with a contract entered into by the Association with an Owner for the performance of the Owner's maintenance responsibilities shall also be levied as a Lot Specific Assessment and shall be secured by an Association Lien established pursuant to Article 6.

#### **7.5 Improper Maintenance and Use of Lots**

In the event any portion of a Lot 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 or other areas of Stonegate which are substantially affected thereby or related thereto; is used in a manner which violates this Declaration; or in the event the Owner of any Lot fails to perform any of such Owner's obligations under the Stonegate Documents, the Board may make a finding to that effect, specifying the particular condition or conditions which exist or exists, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fifteen (15) days, the Board may cause such action to be taken at such Owner's expense. If at the expiration of such fifteen (15) day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be levied as a Lot Specific Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by an Association Lien established pursuant to Article 6.

*End of Article 7*

## **ARTICLE 8**

### **INSURANCE**

#### **8.1 Scope of Coverage**

The Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Comprehensive general liability insurance, including medical payment insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of, or in connection with the use, ownership or maintenance of the area of Association responsibility and all other portions of Stonegate which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage;

8.1.2 Property insurance on all areas of Association responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the area of Association responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Directors and officers liability insurance in an amount not less than \$1,000,000; and

8.1.5 Such other insurance as the Association shall determine from time to time to be appropriate.

#### **8.2 Policy Provisions**

The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions;

8.2.1 That there shall be no subrogation with respect to the Association, its agents and employees, or with respect to Owners, Lessees and members of their respective households;

8.2.2 No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

8.2.3 That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under Deeds of Trust;

8.2.4 A “severability of interest” endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners or Lessees or their respective households; and

8.2.5 A statement that the name of the insured is the Association.

### **8.3 Payment of Premiums**

The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

### **8.4 Payment of Insurance Proceeds**

With respect to any loss to any area of Association responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the area of Association responsibility.

### **8.5 Repair and Replacement of Damaged or Destroyed Common Area**

In the event any portion of the Common Area is damaged or destroyed, the Board shall, within a reasonable time under the circumstances, elect whether or not to repair or replace such damage or destruction and notify the Members in writing of its decision. If the estimated cost of repairing and/or replacing is in excess of \$100,000, such decision shall be subject to review by the Membership. It shall be overturned and reversed if Owners representing not less than sixty-seven percent (67%) of the votes entitled to be cast in the Association shall, within ninety (90) days of such notice from the Board, by written approval or affirmative vote, or any combination thereof, so elect. Any net funds received by the Association may either be disbursed by the Association to the Owners with an equal share being disbursed to the Owner of each Lot, or, at the Board's discretion, retained as additional operating or capital reserves.

### **8.6 Owner and Lessee Insurance**

Property of any Owner and/or Lessee shall be the responsibility of the Owner or Lessee to insure, including general liability coverage and any other coverage the Owner or Lessee deems necessary. The Association is not responsible for any insurance coverage relating to any Owner or Lessee and their private property, including general liability coverage.

*End of Article 8*

## **ARTICLE 9**

## **GENERAL PROVISIONS**

### **9.1 Enforcement**

The Association or any Owner shall have the right, but not the duty or obligation, to enforce Stonegate Documents and/or any and all covenants, conditions and restrictions, reservations, charges, servitudes, assessments, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration; or (ii) shall otherwise indicate that the provisions of such instrument were intended to be enforced by the Association or any Owner. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Stonegate Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Stonegate Documents in the future.

### **9.2 Method of Termination**

This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded, after which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than eighty percent (80%) of the votes entitled to be cast in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President of the Association and attested by the Secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

### **9.3 Amendments**

9.3.1 This Declaration may be amended at any time by the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than sixty-seven percent (67%) of the votes entitled to be cast in the Association, except as provided in Section 6.10 of this Declaration.

9.3.2 Notwithstanding the requirements of Section 9.3.1, the Board may amend this Declaration without obtaining the approval or consent of any Owner in order to conform the Declaration to changes in federal, state or local law or ordinance, to correct typographical errors in the Declaration, or to remove obsolete provisions from the Declaration. Notice of such changes shall be provided to the Owners in a manner that is decided by the Board.

9.3.3 Any amendment pursuant to Section 6.10 and Subsections 9.3.1 and 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and attested by the Secretary of the Association, with their signatures acknowledged, and shall be Recorded with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

#### **9.4 Interpretation**

Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Bylaws or Association Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules, the Bylaws shall control. In the event of any conflicts with the Articles, the Articles shall prevail.

#### **9.5 Severability**

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

#### **9.6 Change of Circumstances**

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

#### **9.7 Laws, Ordinances and Regulations**

9.7.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with applicable laws, ordinances and regulations.

9.7.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within Stonegate is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

#### **9.8 References to this Declaration in Deeds**

Deeds to and instruments affecting any Lot or any part of Stonegate may contain the covenants, conditions and restrictions 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 provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any such instrument and their respective heirs, executors, successors and assigns.

#### **9.9 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.

**9.10 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 of context thereof.

**9.11 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 Owner or Lessee, 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 either: (i) sent, via U.S. Mail, to the Member's address on record with the Association; (ii) posted at established posting locations throughout the Association; (iii) e-mailed to Members who have provided their e-mail address to the Association; and/or 4) published in an Association newsletter article. 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.

**STONEGATE COMMUNITY  
ASSOCIATION**, an Arizona nonprofit  
Corporation

By: Lee Secrest, President  
Stonegate Community Association, Inc.

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 31st day of  
March, 2009, by Lee Secrest, the President of Stonegate  
Community Association, Inc., an Arizona nonprofit corporation, for and on behalf of the  
corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**SECRETARY'S ATTESTATION**

I, Suzanne McCann, being the duly elected Secretary of Stonegate Community Association, Inc. hereby attest that the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions was agreed to by the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than sixty-seven percent (67%) of the votes entitled to be cast in the Association.

By: Suzanne McCann, Secretary

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 6th day of April, 2009, by Suzanne McCann, the Secretary of Stonegate Community Association, Inc., an Arizona nonprofit corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: