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Return to: Scott A. Meyerson, Esq., LIKES MEYERSON HATCH LLC, 444 Regency Parkway Dr., Suite 100, Omaha, NE 68114

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR LOTS 1 & 2, MONTCLAIR WEST REPLAT 5, AND LOTS 158, 159 AND 160,
MONTCLAIR WEST REPLAT, AND LOT 2, MONTCLAIR WEST REPLAT 4, ALL IN
OMAHA, DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration"), made on the date hereinafter set forth, is made by AZCP Holdings, LLC, an Arizona limited liability company, hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Douglas County, Nebraska and described as follows:

- 61-26249** Lots 1 and 2, Montclair West Replat 5, inclusive, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and
- 61-26245** Lots 158, 159, and 160, Montclair West Replat, an addition to the City of Omaha, Douglas County, Nebraska; AND
- 61-26248** Lot 2, Montclair West Replat 4, an addition to the City of Omaha, Douglas County, Nebraska

Such lots are herein referred to collectively as the "Lots" and each individually as a "Lot". All of the Lots taken together may also be referenced herein as the "Development". Currently only a portion of the Development has been developed. Declarant intends to further subdivide and develop the remainder of the Development for commercial and retail uses. To effectuate the common development, use, maintenance, and operation of the Development and to protect the value and desirability of the Development, Declarant desires to establish certain covenants and agreements as part of a general plan for the beneficial use of the Development and to grant to current and future owners of the Development certain reciprocal easements in, to, over, and across certain portions of the Development, for the benefit of each Owner of a Lot in the Development, all as set forth in this Declaration.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to this Declaration. This Declaration shall run with such Lots and shall be binding

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upon and inure to the benefit of Declarant, its successors and assigns, and shall be binding on all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as well as the lessees, tenants and occupants of any portion of any Lot and their successors in interest, all as more fully described herein. The Lots, and each Lot is and shall be subject to all and each of the following conditions and other terms.

ARTICLE 1. DEFINITIONS

Definitions. The terms in this Article 1 shall have the following meanings:

“Building” means any permanently enclosed structure placed, constructed or located in the Development, including without limitation any building appurtenances such as stairs leading to or from a door, transformers, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure.

“Building Area” shall mean any area of a Lot upon which a Building is constructed or erected. Canopies may encroach from a Building Area over the Common Areas, provided such canopies do not interfere with the use of the Common Areas.

“Common Areas” shall mean and include all parts of a Lot which have been improved and are from time to time devoted primarily for parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads, loading areas (excluding loading docks) and other similar areas or exterior areas not used as a “Building Area”. Any areas containing signs or structures advertising the Development or the businesses thereon, together with the signs and structures constructed thereon shall also be deemed Common Areas; provided however, that signs advertising only businesses operating on the same Lot as the Lot on which the sign is located shall be deemed Outside Use Areas.

"Hazardous Materials" means and refer to any toxic substance, material or waste which is or becomes (a) regulated by any local governmental authority, the State of Nebraska or the United States Government; (b) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "Non-RCRA hazardous waste," RCRA hazardous waste," recyclable material," under any federal, state or local statute or regulation promulgated thereunder; (c) defined as a "Hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); (d) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; (e) defined as a "Hazardous Substance" or "Mixed Waste" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., and regulations promulgated thereunder; (f) defined as a "Hazardous Substance" pursuant to Section 401.15 of the Clean Water Act, 40 C.F.R. 116; and (g) defined as an "Extremely Hazardous Substance" pursuant to Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 et seq.

“Outside Use Area” shall mean those areas, if any, adjacent to a Building that from time to time may be used exclusively by a Permittee of such Building for purposes ancillary to the operation of its business, such as patios, sales, display, storage, outdoor eating, recreation, controlled access, or drive-through purposes, including without limitation perimeter sidewalks adjacent to and contiguous to Buildings and planters and areas located between perimeter sidewalks and Buildings or next to exterior Building walls.

“Owner” shall mean any individual, partnership, joint venture, corporation, trust, unincorporated associates, governmental agency or other business entity now or hereafter holding of record an ownership interest in fee in a portion or all of a Lot.

“Permittees” shall mean (i) the respective Owners of a Lot and their respective successors, assigns, heirs and personal representative; (ii) such Owners’ agents, customers, invitees, licensees, employees, servants and contractors, (iii) such Owners’ tenants and subtenants and their respective customers, invitees, employees, servants, licensees, contractors and agents, and (iv) such Owners’ land contract purchasers, mortgagees and beneficiaries under deeds of trust.

“Storm Water” shall mean surface, storm, and run-off water from natural causes or landscape irrigation.

ARTICLE 2. EASEMENTS

The Declarant hereby grants to the Permittees the following easements:

1. Access. Nonexclusive easements for the purpose of fire protection and emergency access over each Lot and for pedestrian and vehicular access, ingress and egress over, across, on and through the Common Areas of each Lot.

2. Self Help Easements. Nonexclusive rights of entry and easements in favor of the Declarant over, across and under each Lot for all purposes reasonable necessary to enable the Declarant to perform any of the provisions of this Declaration which a defaulting Owner has failed to perform, such easements to be exercised as provided in Article 17, Paragraph 2 of this Declaration.

3. Utility and Service Easements. Nonexclusive easements for the installation, maintenance, repair and replacement use and operation of electric lines, telecommunication lines, sewers, water lines, and fire lines for the exclusive use of such Owner (collectively, the “Private Utilities”) now or hereafter located on the Lots (the “Private Utility Easement”). Notwithstanding the foregoing, in connection with the use of the Private Utility Easement, each Owner shall (a) bear its own costs, fees and expenses incurred as a result of the use of the Private Utility Easement; and (b) notify in writing the other Owner(s) affected by the use of the Private Utility Easement not less than thirty (30) days prior to commencement of any installation, repair or maintenance activities in connection with the use of the Private Utility Easement (except in the case of an emergency in which event such notice shall be given as soon as possible following the use of the Private Utility Easement). Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utilities provided such easements are not otherwise inconsistent with the provisions of this Declaration.

4. Water Flow. Nonexclusive easements to allow Storm Water leaving a Lot to enter onto and/or cross over other Lots. Except as otherwise set forth in this Declaration, no Lot Owner shall alter the flow of surface water from its Lot onto another Lot, provided that any alteration in the water flow which may occur as a consequence of the development of a Lot and other construction activities (including without limitation Building and Building expansion, curbs, drives and paving) shall be permitted, provided such development is in compliance with all applicable statutes, codes, and ordinances. This easement contemplates only the transport of Storm Water. No Owner shall allow any domestic or commercial waste water, sewage, treated water, or other liquid, or any Hazardous Material (except in de minimis amounts not in violation of any applicable law, ordinance, or regulation) to run on or through any other Lot.

5. Maintenance Easement. Nonexclusive easements over and across those portions of the Lots necessary for the purpose of performing any construction, maintenance, repairs, resurfacing or replacements required or permitted by the terms of this Declaration (the "Construction/Maintenance Easement"). In connection with the use of the Construction/Maintenance Easement, each Owner shall (a) repair and restore the Lots to substantially the condition existing prior to the use of the Construction/Maintenance Easement; and (b) use the Construction/Maintenance Easement so as not to unreasonably interfere with access to, use, occupancy, or enjoyment of any Lot.

6. Use of Easements. The use of all easements created by this Declaration will, in each instance, be nonexclusive and for the use and benefit of the Permittees. The easements created by this Declaration shall become effective however only upon the development of a Lot and the construction thereon of a Building or paving, curbs, and other improvements for parking or vehicular and pedestrian ingress and egress. Prior to such development on a Lot, no Permittee shall have any use or access right to or on such Lot without the express prior written consent of the Lot Owner. Upon the development of a Lot as described above, evidenced by issuance of a certificate of occupancy or similar evidence of acceptance of a Building or other improvements by the City of Omaha, the easements created by this Article 2 shall become effective as to such Lot, and shall thereafter exist in perpetuity and shall be appurtenant to each such Lot and all future subdivisions thereof, and shall inure to benefit of the present and future owners of each Lot, and shall burden each other Lot.

7. Maintenance of Easement Areas and Common Areas. Except to the extent that such areas might be operated and maintained by public authorities or utilities and except as otherwise specifically provided in this Declaration, the Owner of each Lot will operate, maintain and replace all of the areas of the Lot which are subject to the easements created in this Declaration in sound structural and operating condition at the sole expense of the Owner of the Lot.

In addition, the Owner of any Lot, at its own expense, shall repair, maintain and replace all improvements in the Common Areas and within or upon any Building Area (the "Improvements") from time to time located on such Lot, as well as any Improvements (including without limitation landscaping and sidewalks) located on any right-of-way located adjacent to such Lot up to the inside of the curb (if any) or actual paving or concrete street. Such repairs, replacements and maintenance shall include, but shall not be limited to:

- A. maintenance, repair and replacement of the surface and subsurface of any paved areas so as to maintain level, smooth and evenly covered paved areas with the type of materials originally installed or used thereon or such substitutes as will in all material respects be equal to such materials in quality, appearance, use and durability, along with any curbs, sidewalks, bollards, drainage structures, and parking structures;
- B. maintenance, repair and replacement of all Buildings and other improvements. Nothing in this paragraph shall be construed to obligate the Owner of any Lot to restore any building or improvement destroyed by fire or other casualty; however, if such building or improvement is not replaced, then it shall be razed within a reasonable time (not to exceed 60 days after such casualty), all debris removed, and all unpaved or unlandscaped areas seeded. No Building shall have any graffiti or broken, cracked or boarded windows;
- C. maintenance and care of all grass, shrubs and landscaping, including, but not limited to, the fertilizing, weeding, watering, mowing and ridding thereof and the making of such replacements of shrubs, trees and other landscaping as it necessary to maintain the same in neat and clean condition;

- D. removal from the Common Areas of papers, debris, ice, snow, refuse, filth and any hazards to personal using such areas, and washing or thoroughly sweeping paved areas as required to keep such areas in a clean and orderly condition;
- E. maintenance of such appropriate paved area entrance, exit and directional signs, markers and lights as may be reasonable required from time to time;
- F. such painting and repainting as may be required to maintain the paved areas and equipment installed thereon in good condition and repair; and
- G. maintenance and replacement of all lighting equipment, facilities and identification signs.

The standard of care applicable to repairs and maintenance required under this Declaration shall be that of a high quality business and commercial park or retail development.

8. Shared Utilities. The Owners of the Lots may share the use of electrical power lines, telecommunications wires, sewer, water, and fire lines and other utilities located beneath the ground surface of each Owner's Lot other than the Private Utilities (collectively, the "Shared Utility Lines"). All costs of regular maintenance and repair of the Shared Utility Lines located on a Lot shall be borne by the Owner of such Lot at no cost or expense to the other Owners unless otherwise specifically provided herein or agreed upon by applicable parties. Each Owner shall use commercially reasonable efforts to avoid damaging or destroying the Shared Utility Lines in connection with the use, maintenance and repair of the Shared Utility Lines. If the Shared Utility Lines are damaged or destroyed by an Owner, such Owner shall promptly repair or restore the Shared Utility Lines to the condition existing prior to such damage or destruction in a manner reasonably expected to minimize disruption of utility service of the other Owners.

9. No Waiver. The failure of a Permittee to insist upon strict performance of any of the terms, covenants, conditions or agreements contained in this Article 2 shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

10. Security. Once a Lot is developed, the Owner shall be responsible for the maintenance of reasonable security arrangements on such Lot consistent with the use of such Lot.

11. Lighting. Each Owner shall bear the costs of lighting facilities, if any, located on such Owner's Lot, including, without limitation, utility and repair and maintenance costs. . Subject to the provision of Article 18, Section 13.b., at least fifty percent (50%) of the exterior lighting on each Lot shall remain illuminated between dusk and dawn, seven days a week, with the remaining lighting to remain illuminated until 10 P.M. at minimum.

12. Impositions Prohibited. Nothing in this Declaration shall be interpreted to permit, nor shall the Owner of any Lot impose, any charge or cost for the use of any of the Common Areas.

13. Parking Easement. The Declaration does not grant cross parking easements other than to the extent expressly provided for herein. However, Declarant expressly reserves the right to amend this Declaration and to grant cross parking rights if and to the extent Declarant determines such rights to be in the best interest of the Development.

ARTICLE 3. PERMITTED USES

1. Permitted Uses. Buildings constructed in the Development shall be used for commercial purposes of the type normally found in a retail shopping center or office park including, without limitation, financial institutions, service shops, restaurants and retail stores.
2. Prohibited Uses. Without the prior written consent of the Declarant, no part of the Development shall be used for any of the following purposes: a) bingo or other game room, pool hall, teen club, theater or gambling or live entertainment enterprise of any kind, b) warehouse operating or manufacturing or assembling operating, c) storage (except incidental to the primary commercial use), d) central laundry facility, e) facility in which fire sales, bankruptcy sales (unless pursuant to court order), or auction sales are conducted, f) bowling alley, g) skating rink, h) mortuary, i) any establishment or use that is devoted to providing adult-oriented or sexually explicit products, services, accessories or materials, including without limitation adult arcades, adult bookstores or video stores, cabarets, adult live entertainment establishments, adult motion picture theaters, adult theaters, and nude model studios, j) flea market, k) massage parlor, l) tanning parlor, m) bar or tavern, and n) ballroom, dance hall and discotheque.
3. Compliance with Law. No Owner shall use any Lot within the Development or otherwise conduct any operation on the Development that violates any applicable governmental statutes, laws, ordinances, rules and regulations (including, without limitation, any applicable governmental zoning statutes, laws, ordinances, rules and regulations).
4. Hazardous Materials. No Owner shall knowingly use, or authorize the use of Hazardous Materials on, about, under or in its Lot, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all environmental laws. Each Owner of a Lot shall indemnify, protect, defend and hold harmless the other Owners for, from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs of investigation, litigation and remedial response, arising out of any Hazardous Materials used or permitted to be used by such Owner, whether or not in the ordinary course of business.

ARTICLE 4. BUILDINGS AND SITE IMPROVEMENTS

Except as otherwise specifically provided herein, or as otherwise expressly permitted by the Declarant or its designee:

1. Design and Construction. The Building Area shall be designed so that the exterior elevations of buildings constructed on any Lot shall be architecturally and aesthetically compatible with the buildings to be constructed on the other Lots as determined by the Declarant in its sole discretion. The design and construction of any building or expansion thereof constructed on any Lot shall be of high quality. No building constructed within any Lot shall have a metal exterior.
2. Requirements. All building walls that face streets shall be approved masonry construction such as brick, stone, painted concrete block, architectural concrete or architectural plaster to specifications of the Declarant. All loading and unloading operating shall be off-street, in no case shall loading or unloading be permitted in the parking or lawn areas or in a location which will interfere with ingress or egress thereto. No loading areas shall be constructed facing any street or highway without prior written approval of the Declarant.

3. Outside Storage. No article of merchandise or other material shall be kept, stored or displayed outside the confines of a walled building unless it is screened by fences, walls or plantings that cannot be seen from any public street.

4. Rooftop Equipment. Any rooftop equipment or building components shall be screened from public view from all directions in a manner satisfactory to the Declarant in its sole discretion.

5. Signs. No rooftop sign or billboard shall be erected on any building constructed within any Lot. Only one freestanding identification sign may be erected on any Lot and may advertise only the name and logo of the business conducted thereon; such identification sign shall not exceed 10 feet in height, and contain no more than the number of square feet pursuant to the sign code of the City of Omaha. Such sign shall be of a design and erected in a location approved by the Declarant in its sole discretion. In no event shall any approved sign materially block the visibility of other buildings constructed on any other Lot. Notwithstanding the foregoing, there may be erected entrance-exit and directional signs to facilitate the free flow of traffic, which signage shall be of a monument type, not to exceed 10 feet in height.

6. Monument Signs. Declarant may install one or more monuments signs in, on or around the Development. Declarant may move, remove or modify monument signs as it deems in the best interest of the Development.

7. Declarant Review. No building or other improvement shall be constructed, erected, expanded or altered on any Lot until the plans for same (including site layout, elevations, exterior building materials, colors, landscaping, signage and parking layout) have been approved in writing by the Declarant.

- A. Any Lot Owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "Plans"). Such Plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the Plans, Owner shall notify the Declarant of the Owner's mailing address.
- B. Declarant shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall be developed as a high quality retail center or office park. The decision to approve or refuse approval of a proposed improvement shall be exercised by Declarant to promote development of the Lots and to protect the values, character and quality of all Lots. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality, high quality retail center or office park, Declarant may refuse approval of the proposed Improvement.
- C. Written notice of any approval of a proposed Improvement shall be mailed to the Owner at the address specified by the Owner upon submission of the Plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the Plans. If notice of approval is not mailed with such period, the proposed Improvement shall be deemed disapproved by Declarant.
- D. No Lot Owner or combination of Lot Owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

8. Landscaping. Landscaping shall not materially obstruct, in the sole judgment of the Declarant (either through original planting or through untrimmed growth) the view of the buildings constructed from time to time on any Lot. All trees shall be of an ornamental, low-growing type.

9. Pre-Development. Until such time as a Lot is developed and improved by its Owner, such Owner shall keep the same planted with grass, mowed and in a clean and attractive condition, free of rubbish, debris, weeds, and overgrowth.

10. Satellite Dishes. No outdoor satellite, receiving dishes, exterior television, radio antenna, or antenna of any type shall be installed on the roof of any building or within or on any portion of any Lot, without prior consent of Declarant.

11. Dumpsters. All areas of any Lot which house refuse dumpsters or garbage containers shall be completely surrounded with decorative fencing approved by Declarant and designed to preclude public view. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot.

12. Subdivision. Lots may not be subdivided in any manner without the prior written consent of the Declarant which may be withheld in its sole discretion.

13. Free Access. Without the prior written consent of the Declarant, no barricades, fences or other dividers will be constructed at or near the property lines of a Lot and nothing will be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic within a Lot in the areas designated for such purpose by the Owner of such Lot except for curbing reasonably designed and installed to assist traffic control; provided that each Owner will have the right to erect barrier, once each year for a period not exceeding 24 hours, to avoid the possibility of dedicating such areas for public use or creating prescriptive rights there.

14. Vehicle Storage. No vehicles offensive to the Development may be visibly stored, parked or abandoned on any Lot.

15. Building Materials. No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

16. Vehicle Restrictions. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot, other than in an enclosed structure. No motor vehicle may be parked or stored outside on any Lot for more than 24 hours. No grading or excavating equipment, tractors or semi tractors/trailers shall be stored, parked, kept or maintained on any Lot, and in any yards, driveways or streets. However, this Section 15 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of a building during the period of construction.

17. Parking. All Lots shall provide at least the minimum number of parking areas or spaces for private passenger vehicles required by the applicable zoning ordinance of the City of Omaha, Nebraska.

18. Exterior Lighting. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the tenants of adjacent Lots.

19. Construction. Construction of any Improvement shall be completed within one and one-half (1 ½) years from the date of commencement of excavation or construction of the Improvement and shall be undertaken in compliance with all applicable statutes, codes, and regulations, as well as the Plans approved

by Declarant. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot. As much as possible during the construction process, root zone areas will be barricaded to prevent contractors from compacting the soil by driving vehicles beneath trees or by piling dirt or other construction material on top of roots. If retaining walls prove necessary, underground aeration systems will be installed.

20. Utilities. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

21. Erosion Control. Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such locations, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

ARTICLE 5. LIMITATIONS OF USE

1. Customers. Each of the Owners shall use reasonable efforts to ensure that its customers and invitees and those of its tenants and subtenants and all other Permittees shall not be permitted to park on the Common Areas of any other Lot within the Development unless parking easements are expressly granted in this Declaration.

2. Employees. Each of the Owners shall use reasonable efforts to ensure that its employees and those of its tenants and subtenants shall not park on the Common Areas of any other Lot within the Development unless parking easements are expressly granted in this Declaration.

3. General. Without the prior consent of the Declarant which may be withheld in its sole discretion, the Common Areas of a Lot shall not be used for any purpose other than the primary purpose of such Common Areas which is to provide for parking for the customers, invitees and employees of the business conducted within the Building Areas of such Lot and for the servicing and supplying of such business.

ARTICLE 6. ARCHITECTURAL AND LANDSCAPE CONTROL

1. Regulation of Design. The Declarant shall establish reasonable rules, regulations, restrictions, architectural standards and design guidelines with respect to the exterior (but not the interior) of all Improvements on the Lots, which the Declarant may from time to time, in its sole discretion, amend, repeal or augment including, without limitation, requirements for construction and installation of common surface Improvements by Lot Owners in conjunction with the construction of a Building on a Lot, the regulation of all landscaping (including, without limitation, absolute prohibition of certain types of landscaping, trees and plants) and regulation of all construction, reconstruction, exterior additions, changes or alterations to or maintenance of any building or improvement, including without limitation, the exterior nature, kind, shape, height, material, color, surface texture and location there.

2. Construction Restrictions. No excavation, fill, grading or other alteration of the topography or drainage of any Lot shall be commenced and no building or improvement of whatever type other than improvement or alterations to the interior of a building shall be constructed, erected or maintained upon any Lot, nor shall there be any addition or change to the exterior appearance of any building or improvement, including, without limitation, the color (other than repainting with the same color of paint as previously existed) of exterior walls, entryways, overhangs, parapets, atriums and fences, except in compliance with plans and specifications therefore, which have been submitted to and approved by the Declarant.

3. Design Review. The Declarant may charge reasonable fees in connection with its review of plans and specifications including, but not limited to, the fees charged by architects and engineers employed by the Declarant to review such plans and specification, and, with respect to any building or other Improvement or any alteration of an existing building or other improvement on a Lot, may require reasonable evidence of financial ability (such as a construction loan commitment or completion bond) to complete the building, other Improvement or alteration in compliance with all requirements provided for in this Declaration. The Declarant may delegate its responsibility to review plans and specifications to one or more of its members or consultants retained by the Declarant. The Declarant shall approve or disapprove all plans and specifications submitted to it within 30 days of the receipt thereof. In the event the Declarant fails to approve or disapprove any plans and specifications submitted to it within such 30-day period, such plans and specifications shall be deemed to have been disapproved.

4. Standards of Review. The Declarant shall have the right, in its sole discretion, to refuse to approve any plans and specifications which are not suitable or desirable for aesthetic or other reasons. In reviewing all plans and specifications, the Declarant shall take into consideration the suitability of the proposed building or improvement, including any proposed common surface Improvement, in light of Declarant's development plans for the Lots as an exclusive integrated development, the harmony of external design and location in relation to surrounding structures and topography and the effect of the Improvements as planned on the outlook from other Lots and the adjacent public streets. No changes or deviations in or from such grading plans and plans and specifications once approved shall be made without the prior written approval of the Declarant.

5. Reconstruction. The reconstruction by the Owner of any common surface Improvements after damage thereto or destruction thereof which is accomplished in substantial compliance with "as-built" plans for such common surface Improvements shall not require review and approval of plans and specifications by the Declarant. The Declarant shall not withhold its approval of any plans and specifications for the reconstruction of a building by its Owner after damage thereto or destruction thereof if such plans and specifications call for the reconstruction of such building in the same form as it existed prior to such damage or destruction; otherwise, the standard of review shall be as set forth above.

ARTICLE 7. TAXES AND ASSESSMENTS

The Owners of the Lots shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments which are levied and assessed against an Owner's respective Lots.

ARTICLE 8. INDEMNIFICATION

Each Owner of a Lot shall indemnify and save the Owner of the other Lot and Owner of any Lot within the Development harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from personal injury, death or property damage occurring on or from its own Lot, except if caused by the gross negligence or willful misconduct of the Owner to be indemnified.

ARTICLE 9. INSURANCE

1. Liability Insurance. The Owners of the Lots (until such time as a Lot is sold to another party who shall thereby assume this obligation) shall procure and maintain in full force and effect throughout the term of this Declaration, general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Lot, Owner's insurance to afford protection to the limit of not less than \$2,000,000 for any one occurrence, and to the limit of not less than \$1,000,000 for property damage. Each Owner shall provide the Declarant with certificate of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the Lot covered by this Declaration. Such insurance shall provide that the same may not be cancelled without 30 days prior written notice to the Declarant.

2. Fire Insurance. At all times during the term of this Declaration, the Owner or its tenants or subtenants shall keep the improvement on its Lot insured against loss or damage by fire and other perils and events as may be insured against under the all-risks form in effect from time to time in Nebraska, with such insurance to be for the full replacement value of the insured improvements. In the event of a fire or other casualty, the building and other improvements shall be repaired and restored as soon as practicable or shall be razed and all debris and other Improvements (excluding undamaged landscaping) removed and the Lot so affected shall be planted with grass and properly maintained.

3. Release. Each Owner of a Lot hereby releases the Declarant and the Owners of the other Lots in the Development from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits resulting from or in any way connected with any fire or other casualty, whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released, or by any agent, associate or employee of the party being released; this release is effective only to the extent that such damage or loss is covered by the property insurance which the releasing party is obligated hereunder to carry or, if for any reason the releasing party is not carrying such insurance, then to the extent such damage or loss would be covered if the releasing party were carrying such insurance.

ARTICLE 10. EMINENT DOMAIN

1. Owner's Right to Award. Nothing herein shall be construed to give an Owner of any Lot in Development any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting another Owner's Lot or granting the public or any government any rights in such Lot. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas, the award attributable to the land and improvement of such portion of the Common Areas shall be payable only to the Owner thereof.

2. Tenant's Claim. Nothing in this Article shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and such Owner for all or a portion of any such award or payment.

3. Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer and without contribution from any other Owner.

ARTICLE 11.
RIGHTS AND OBLIGATIONS OF LENDERS

If, by virtue of any right or obligation set forth herein, a lien shall be placed upon any Lot, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Lot. Except as set forth in the preceding sentence, however, any holder of a first lien on any Lot, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Declaration.

ARTICLE 12.
RELEASE FROM LIABILITY

Any person acquiring fee or leasehold title to a Lot shall be bound by this Declaration only as to the Lot or portion of the Lot acquired by such person. In addition, such person shall be bound by this Declaration only during the period for which such person is the fee or leasehold owner of such Lot or portion thereof and shall be responsible for all obligations and liabilities which accrue during such period. Although persons may be released under this Article, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon such Lot or Lots, running with the land.

ARTICLE 13.
BREACH

In the event of the breach or threatened breach of this Declaration, either (a) any or all of the Owners of any Lot adversely affected by such breach or threatened breach, or (b) the Declarant shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The unsuccessful party in any action shall indemnify the prevailing party from all reasonable attorneys' fees and other reasonable costs and expenses incurred by the prevailing party in connection with such proceedings. No breach or threatened breach of this Declaration will entitle any Owner of any of the Lots to cancel, rescind or otherwise terminate this Declaration.

ARTICLE 14.
LEGAL EFFECT

1. Rights Appurtenant. Each of the easements and rights created by this Declaration are appurtenant to the Lot to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Lot. For the purpose of each such easement and right, the benefited Lots will constitute the dominant estate and the burdened Lots will constitute the servient estate. Each easement or covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of each Lot and the Declarant; (b) creates mutual equitable servitudes on each Lot in favor of all Lots in the Development; (c) constitutes a covenant running with the Land; (d) binds every Owner now having or hereafter acquiring an interest in any Lot; and (e) will insure to the benefit of (i) each Owner and each Owner's successors, assigns, mortgages and beneficiaries under deeds of trust and (ii) the Declarant and its successors, assigns and designees.

2. Conveyance. Upon the conveyance of all or any part of a Lot, the grantee, by accepting such conveyance, will thereby become a new party to and be bound by this Declaration and will be deemed to

have assumed and agreed to perform each of the obligations of the conveying Owner under this Declaration with respect to the Lot or portion thereof conveyed to such grantee. Upon recordation of such conveyance with the Register of Deeds of Douglas County, Nebraska, the conveying Owner will be released from any obligation under this Declaration arising thereafter with respect to the portion of the Lot so conveyed but will remain responsible for any and all liability which as accrued prior to such recordation.

ARTICLE 15.
NO DEDICATION

Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of a Lot to the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited, in accordance with the terms hereof, to the private use of the Permittees of each Lot to whom easements have been granted in this Declaration. Except as otherwise specifically provided herein, this Declaration is intended to benefit the Owners and their respective successors, assigns, mortgagees and beneficiaries under deeds of trust, and is not intended to constitute any person or entity which are not Permittees of Lots to whom easements or other rights have been granted in this Declaration a third party beneficiary hereunder or to give any such person or entity any rights hereunder.

ARTICLE 16.
DURATION; AMENDMENT; TERMINATION

1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

2. Amendment. This Declaration may be amended by AZCP Holdings LLC, an Arizona limited liability company, or any person, firm, corporation, partnership, or entity designated in writing by AZCP Holdings LLC, in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Any Owner, by taking title to a Lot, acknowledges and consents to Declarant's right to amend this Declaration and waives any objection or opposition to any such amendment provided that such amendment is consistent with applicable governmental authorities. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

3. Termination. AZCP Holdings LLC, an Arizona limited liability company, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

4. Severance. Invalidation of any covenant by judgment or court order shall in no way affect any other provision hereof, which shall remain in full force and effect.

ARTICLE 17.
DEFAULT; REMEDIES

Subject to the provisions of Article 16 of this Declaration, the provisions of this Declaration will be enforced as follows:

1. Injunctive Relief. In the event of any violation or threatened violation by any Owner of any of the provisions of this Declaration, in addition to the right to collect damages, each Owner and the Declarant will have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, 30 days written notice of the violation will be given to the Owner claimed to have committed such violation during which period such Owner shall the right to cure such default; in the event such default cannot be cured during such period and such Owner is diligently pursuing such cure, such Owner shall not be considered in default.

2. Self Help. In the event any Owner fails to perform any of the provisions of this Declaration, the Declarant will have the right, without being obligated to do so, to enter upon the Lot and improvements of such defaulting Owner and perform the obligations of the defaulting Owner hereunder; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed has been given to the defaulting Owner not less than 30 days prior to the commencement of such action or without notice if such default is of an emergency nature. During such 30 day period, the defaulting Owner will have the right to perform or commence performance of action appropriate to remedy such default, and provided such action is diligently carried to completion, the right of the Declarant to perform such obligation of the defaulting Owner will terminate without prejudice to correct future defaults. If the Declarant elects to perform the action to have been performed by a defaulting Owner, on completion of such action, or from time to time, if the action is of continuing nature, an itemized statement of the reasonable cost thereof will be submitted to the defaulting Owner and the amount thereof will be immediately due and payable by the defaulting Owner which amount will bear interest at the rate of 12% per annum from the date such costs are incurred to the date reimbursement is made by the defaulting Owner; such amount, including interest, shall be a lien on the Lot of the defaulting Owner, until paid.

3. Force Majeure. If performance of any action by an Owner is prevented or delayed by act of God, war, labor disputes or other cause beyond the reasonable control of such Owner, the time for the performance of such action will be extended for the period that such action is delayed or prevented by such cause.

4. Notice of Default. An Owner will not be in default under this Declaration unless the Owner has received written notice specifying the nature of such default and has failed to cure or commence appropriate action to cure such default within the times herein provided.

5. No Termination. No breach of this Declaration will entitle any Owner to cancel, rescind or otherwise terminate this Declaration. The foregoing limitation will not affect, in any manner, any other right or remedy which any Owner might have by reason of any breach of this Declaration.

ARTICLE 18. MISCELLANEOUS

1. Approvals. Except for the consent or approval required of the Declarant or its designees pursuant to Articles 3, 4, 5 and 6 of this Declaration, which consents and approvals may be withheld in its sole discretion, unless otherwise provided therein, when approval by any Owner is required hereunder, such approval will not be unreasonably withheld or delayed. Unless provision is made for a specific period of time, the period of time in which approval will be granted will be 30 days, and if an Owner neither approves nor disapproves at proposed action within that period, the Owner will be deemed to have given approval. If an Owner disapproves of any action proposed by another Owner hereunder, the Owner shall set forth in writing the specific reasons for such disapproval.

2. Notices. All notices, statements, demands, approvals and other communications given pursuant to this Declaration will be in writing and will be delivered in person, by certified or registered mail, postage prepaid, or by recognized courier service, to the Owners and the Declarant at the addresses on file with the office of the Douglas county Assessor for delivery of ad valorem tax statements relating their respective Lots. All such notices which are mailed shall be deemed delivered on the third day after postmark unless delivered sooner.

3. Waiver of Default. No waiver of any default by any Owner or Declarant will be implied from the failure by any other Owner take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Declaration will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any Owner or Declarant will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Declaration are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Owner or Declarant might otherwise have by virtue of a default under this Declaration; and the exercise of any right or remedy by any Owner or Declarant will not impair such Owner's or Declarant's standing to exercise any other right or remedy.

4. No Partnership. Nothing contained in this Declaration and no action by the Owner of any Lot will be deemed or construed by any Owner or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among any of the Owners of any of the Lots.

5. Severability. If any provision of this Declaration is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.

6. Governing Law. This Declaration will be construed in accordance with the laws of the State of Nebraska.

7. Captions. The captions of the paragraphs of this Declaration are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

8. Time. Except as otherwise provided in this Declaration, time is of the essence.

9. Estoppel Certificates. The Owner of any Lot shall, from time to time, upon not less than 20 days written notice from any other Owner or the Declarant, execute and deliver to such other Owner a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or if modified, indicating the modifications, and stating whether or not, to the best of its knowledge, any Owner is in default under the Declaration and if so, specifying such default.

10. Notice of Default to Mortgagee. Any Owner or the Declarant servicing notice of default under this Declaration shall provide written notice of such default in the manner permitted in this Declaration to any holder of any mortgage or beneficiary under any deed of trust covering the Lot of the Other allegedly in default, provided such holder or mortgagee shall have provided the Owner responsible for serving such notice of default a written notice informing it of the existence of such mortgage or deed of trust and the address to which notices of default are to be sent.

11. Merger. This Declaration and the easements and rights created herein shall not be subject to the doctrine of Merger.

12. Binding Effect. The provisions of this Declaration will be binding on the Declarant and Owners and their respective successors, assigns, heirs, personal representatives, mortgagees and beneficiaries under deeds of trust to the extent herein provided.

13. Initial Sale. Immediately after the recordation of this Declaration, Subrosa, LLC, a Nebraska limited liability company ("Subrosa"), will acquire from Declarant Lot 2, Montclair West Replat 5, Omaha, Douglas County, Nebraska ("Lot 2 MWR5"), which is the first Lot to be sold by Declarant and the only fully developed Lot as of the date of this Declaration. Declarant hereby declares the following provisions to be applicable to Lot 2 MWR5, which provisions shall also bind Subrosa by its acceptance of title to Lot 2 MWR5 subject to this Declaration:

- a. Trash Enclosure. An existing trash enclosure is located northwest of Lot 2 MWR5. Declarant shall have the full and unfettered right to relocate or eliminate the trash enclosure at any time. Until such relocation or elimination, the Owner of Lot 2 MWR5 shall have the right to utilize the existing trash enclosure provided that it shall be responsible for its pro rata share of costs and expenses associated therewith, and shall maintain the trash enclosure in a clean and sanitary condition. Upon any relocation or elimination, the Owner of Lot 2 MWR5 shall have no right to utilize the relocated enclosure, but shall have the right, upon written notice to Declarant to construct, maintain, and utilize a new trash enclosure immediately west of the west boundary of Lot 2 MWR5, or such other location as is permitted by relevant governmental authorities. The exact location and the design of the new trash enclosure shall be subject to Declarant's approval and governmental approvals. Declarant and the Owner of Lot 2 MWR5 may also agree in the future to the shared use of either the existing trash enclosure or any new trash enclosure with commensurate sharing of related costs and expenses.
- b. Lighting. Declarant shall have the full and unfettered right to modify, relocate or eliminate any lighting currently existing on the Lots adjacent to Lot 2 MWR5. Notwithstanding the provisions of Article 2, Section 7, Declarant shall have no obligation to maintain the illumination of these lighting facilities. Declarant, upon written notice to the Owner of Lot 2 MWR5, may at Declarant's expense install safety lights on the west side of the Building on Lot 2 MWR5, and such lighting shall thereafter be maintained and operated by the Owner of Lot 2 MWR5.
- c. Adjacent Areas. Areas to the north and west of Lot 2 MWR5 have been improved as parking areas, driveways, and patio/open space. Declarant shall have the full and unfettered right to reconfigure, eliminate, or restrict access to such areas. Until any such action is taken by Declarant, the Permittees of Lot 2 MWR5 shall be allowed to utilize such areas, provided that the Owner of Lot 2 MWR5 shall then be responsible for the maintenance of such areas at its sole expense.
- d. Monument Sign. An existing monument sign is located at the southeast corner of Lot 2 MWR5 (the "Existing Sign Area"). Declarant, for so long as Declarant remains Declarant hereunder, and thereafter to the Association, hereby reserves a perpetual easement for the construction, reconstruction, replacement, operation, maintenance and repair of a sign structure, including the right and privilege to place thereon or affix thereto sign panels, over, under, upon and across that the Existing Sign Area. Declarant shall have the full and

unfettered right to relocate or remove the monument sign located on the Existing Sign Area on any Lot and in such event shall restore and landscape the Existing Sign Area to be consistent with the surrounding landscaping and shall terminate the easement granted above.

- e. Association. Declarant may establish an Association pursuant to Article 19 below for the sharing of Common Area maintenance and attendant costs in the Development. For as long as Subrosa is the Owner of Lot 2 MWR5 (which requirement includes the maintenance of the current component members of Subrosa and their ownership), the provisions of Article 19, if exercised by Declarant, shall not be applicable to Lot 2 MWR5, and Lot 2 MWR5 shall have no obligation for joint maintenance costs of the Development, if any, nor shall Lot 2 MWR5 nor shall Subrosa be obligated to join the Association, if any; provided however, that in such event Subrosa as Owner of Lot 2 MWR5 shall have no rights with respect to the Association nor be entitled to vote on matters that properly come before the Association, and no area of Lot 2 MWR5 shall be maintained or otherwise befit by any Association duties or activities. Upon the sale of Lot 2 MWR5 by Subrosa or any change of or in the component members of Subrosa, then Lot 2 MWR5 and its Lot Owner shall be immediately obligated and subject to all provisions of Article 19.
- f. Existing Improvements. The Improvements on Lot 2 MWR5 as they exist on the date of closing of the acquisition of Lot 2 MWR5 by Subrosa shall not be deemed to be in violation of the design and construction requirements contained in Article 4, Sections 2 & 8 hereof, so long as such Improvements are maintained in good condition and repair. Any alterations to the Improvements will continue to be subject to any applicable provisions of Article 4.

14. Future Easements. Declarant and all future Owners shall in good faith negotiate and enter into appropriate easements for temporary construction, access, and other rights necessary to effectuate the other provisions of this Declaration, including without limitation the specific provisions of Article 18, Section 13 above.

15. Declarant's Right to Develop. All Permittees, including specifically but without limitation Subrosa, LLC, by taking title to a Lot, acknowledge that Declarant intends to develop the remainder of the Development and in doing so shall have the right to replat, resubdivide, combine, or rearrange the configuration of the other Lots, to design and plan the infrastructure, Common Areas, Buildings, and other improvements to such Lots, and to determine the uses and design and exteriors of such improvements. Such Permittees hereby expressly consent to Declarant's rights and waive any objection or opposition to such actions provided that all such development is consistent with the applicable governmental authorities and otherwise in compliance with the provisions of this Declaration.

ARTICLE 19. OWNER'S ASSOCIATION

1. The Association. Declarant, in its sole discretion, may cause the incorporation of the Montclair West Owner's Association, a Nebraska not-for-profit corporation (hereinafter referred to as the "Association"). If so formed, excepting as otherwise provided for herein, each Lot Owner shall be a member (hereinafter referred to as "Member") of this Association. The Association shall have for its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the tenants of the Lots, including:

- A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of common facilities for the general use, benefit and enjoyment of the Members. Common facilities may include, but are not limited to, recreational facilities, dedicated and nondedicated roads, paths, ways and green areas; and signs and entrances for the Development ("Common Facilities"). Common Facilities may be situated on property owned or leased by the Association, on public property, or on private property subject to an easement in favor of the Association.
- B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict the use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required by pay a fee or other charge in connection with the use or enjoyment of the Common Facility.
- C. The exercise, promotion, enhancement and protection of the privileges and interests of the tenants of the Development.

2. Membership and Voting. Except as provided for herein (and specifically provided in Article 18, Section 13.e), each Lot Owner shall be a Member of this Association. The Association shall include further phases of Development as may be developed by the Declarant. For purposes of this Declaration, the term Lot Owner means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as a security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the Lot Owner for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot. Each Lot Owner, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association. An Owner holding title to more than one Lot shall be entitled to one vote for each Lot so owned.

3. Purposes and Responsibilities. The Association, if formed, shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The Association shall have the right to fix, levy and charge each Lot Owner with dues and assessments (herein referred to respectively as "dues and assessments") fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

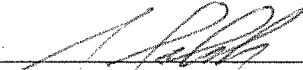
4. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by Declarant. Lots owned by the Declarant shall not be subject to imposition of dues, assessments or Association liens. Assessments and dues shall otherwise be fixed at a uniform rate as to all Lots.

5. Subordination. The lien of dues and assessments if created shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien. The Board of Directors shall have the right to promulgate other necessary rules, regulations, and procedures relating to, without limitation, the Association, dues and assessments, and the enforcement of payment thereof.

[SIGNATURE AND NOTARY PAGE FOLLOWS]

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 29 day of July, 2015.

AZCP Holding, LLC,
An Arizona limited liability company, "Declarant"
By: Midwest AZ Management, Inc.,
An Arizona corporation, Manager

By 
Scott A. Seldin, President

STATE OF ARIZONA)
) SS:
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 7/29/15 day of July, 2015, by Scott A. Seldin, President of Midwest AZ Management, Inc., Manager of AZCP Holdings, LLC, an Arizona limited liability company, on behalf of the limited liability company.


Notary Public

