

**TRANSITION AGREEMENT FOR  
SADDLEBROOKE VILLAS ASSOCIATION NOS. 35, 35A, INC.**

This Agreement is entered into as of the 18<sup>th</sup> day of October, 2007, by SADDLEBROOKE DEVELOPMENT COMPANY, an Arizona corporation ("Developer"), and SADDLEBROOKE VILLAS ASSOCIATION NOS. 35, 35A, INC., an Arizona nonprofit corporation (the "Association").

**RECITALS**

A. Developer is the developer of a master planned residential community known as SaddleBrooke Country Club, also known as the SaddleBrooke Resort Community ("SaddleBrooke"). The Association is the homeowners' association for SaddleBrooke Units 34, 35, 35 amended and 35 "A" amended (the "SaddleBrooke Villas"). Developer is the declarant under that certain Tract Declaration for SaddleBrooke Units 34, 35, 35 Amended and 35 "A" Amended, which was recorded in the Official Records of the Pinal County Recorder on October 23, 1997 at Fee No. 1997-036959 (the "Villas Declaration"), which Villas Declaration governs SaddleBrooke Villas.

B. The Villas Transition Date (as defined in the Villas Declaration) occurred on or about June 30, 2005. Since the Villas Transition Date, management and control of the Association has been vested solely in the members of the Association.

C. The Association is required by the Villas Declaration to maintain the landscaping and the sprinkler and irrigation systems installed by the Association or Developer on the front, side and back yard of each Villas Lot. The Association has alleged that Developer has liability for issues relating to the Villas Areas, including erosion, irrigation and drainage.

D. The purpose of this Agreement is to resolve any and all disputes between the parties regarding the operation of the Association by Developer prior to the Villas Transition Date and regarding the construction, development and maintenance of the Villas Areas.

**AGREEMENTS**

In consideration of the matters set forth herein, the Developer and the Association agree as follows:

1. The Recitals are incorporated herein by this reference. All capitalized used but not defined in this Agreement shall have the meaning set forth in the Declaration.
2. Within ten (10) days following the full execution of this Agreement by Developer and the Association, Developer shall pay the Association \$47,000.
3. At such time as reasonably requested by the Association after the removal of the turf but before the installation of the new landscaping in certain portions of the Villas Areas as referenced in Section 4 below, Developer shall, at Developer's expense, perform or retain a third party to perform the work (the "DP Work") set forth in that certain drainage plan dated February 14, 2007 prepared by B & R Engineering, Inc., a true and correct copy of which is attached hereto as **Exhibit "A"** (the "Drainage Plan"). The Association understands that the Drainage Plan is specifically designed for the current landscaping (i.e. grass areas), and therefore, any re-design of such area, including without limitation the desert landscaping referenced in Section 4 below, must maintain

the Drainage Plan and the DP Work. The Association understands and agrees that any change in any portion of grading, including without limitation the addition of any washes, dry creek beds or mounds, will necessarily impact the drainage established pursuant to the Drainage Plan and Developer shall not have any liability relating to any such changes. The Association shall maintain the Villas Areas in accordance with the Drainage Plan, including without limitation the grades set forth therein. The Association acknowledges and agrees that neither Developer nor any of the Released Parties (as defined in Section 6 below) shall be responsible for any issues arising from the Association's failure to maintain the Villas Areas in accordance with the Drainage Plan, and the Association hereby releases and agrees to indemnify and defend Released Parties (as defined below) for, from and against same. Furthermore, the Association agrees that Developer shall conclusively be deemed to have performed all of its obligations under this Section 3, and Developer shall have no further obligations or liabilities with respect to drainage, the DP Work, the Drainage Plan or otherwise under this Section 3, if B&R Engineering, Inc. or another engineer licensed in the State of Arizona confirms to the Association in writing that the DP Work actually performed by or for Developer is substantially in accordance with the Drainage Plan by verifying, through a survey or other reasonable means, that the new elevations of the DP Work are substantially in accordance with those shown in the Drainage Plan.

Alternatively, in lieu of the Association requesting the performance of the DP Work (as set forth above), the Association may, in its sole discretion, send written notice to Developer that Developer is released from any and all obligations to perform the DP Work in exchange for the receipt by the Association from the Developer of a payment in the amount of \$113,000. Upon Developer's payment of such requested \$113,000, Developer shall have no further obligations or liabilities with respect to drainage, the DP Work, the Drainage Plan or otherwise under this Section 3.

4. It is the intention of the Association to replace with desert landscaping the portions of the landscaping in the Villas Areas that are currently grass. The Association shall select, in its discretion, a landscape architect to design such desert landscaping. Developer will reimburse the Association for 50% of such reasonable design fees of such landscape architect up to a maximum reimbursement of \$20,000. Developer shall pay such reimbursement to the Association within ten (10) days of receipt from the Association of a copy of such landscape architect's invoice for such amount. The Association shall prohibit such landscape architect as well as any company retained to install such desert landscaping (hereafter, the "landscape installer") from altering or in anyway disrupting the Drainage Plan or the installation of the DP Work referenced in Section 3 above. In addition, the Association's contract with any such landscape architect and landscape installer shall specifically provide that such landscape architect and landscape installer shall each assume any and all liability arising from any alteration or disruption of the Drainage Plan or the installation of the DP Work referenced in Section 3 above. The Association understands and agrees that Developer shall have no liability for any alteration or disruption of the Drainage Plan or the installation of the DP Work referenced in Section 3 above.

5. Other than the DP Work referenced in Section 3 above, the parties agree that all Villas Areas and improvements thereto are in reasonably good condition as of the date of this Agreement, reasonable wear and tear excepted, due consideration being given both to the age of the items and appropriate cost-effective maintenance procedures.

6. General Release. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ASSOCIATION ACCEPTS AND SHALL ACCEPT ALL FACILITIES, EQUIPMENT,

GROUNDS AND ROADS OWNED OR TRANSFERRED TO THE ASSOCIATION IN THEIR "AS IS" CONDITION AS OF THE VILLAS TRANSITION DATE, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, FROM DEVELOPER OR ANY OF ITS AFFILIATES REGARDING PHYSICAL CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, OR OTHERWISE. Without limiting the foregoing, the Association hereby waives, releases and forever discharges the Released Parties for, from and against any and all liability, complaints, claims, demands, damages, actions, causes of action, costs and expenses, whether at law or in equity, which the Association asserts or could assert, at common law or under any insurance, warranty, statute, rule, regulation, order or law, or on any grounds whatsoever against any of the Released Parties arising out of or relating to the Villas Areas or the Association, including without limitation: (a) erosion, drainage or irrigation of the Villas Areas; (b) the repairs/work referenced herein; or (c) any deficiency in the Association's reserve funds. Without limiting the foregoing, the foregoing release shall also apply to repairs/work done, at the request of the Association, by or on behalf of the Developer prior to this Agreement, which the Association hereby acknowledges have been completed, including without limitation (i) installation of rip rack rock in side yards, (ii) revised elevation in side yards to drain to street; (iii) buried exposed irrigation and television cable lines; (iv) reshored air conditioning units; and (v) repaired asphalt in the streets. It is the parties' intention that this Agreement shall be effective as full and final accord and satisfactory release and settlement arising out of or relating to the Villas Areas or the Association, including without limitation any claims relating to those items specifically referenced above in this Section 6.

"Released Parties" means and refers to Developer and all of its affiliates, including but not limited to SaddleBrooke Construction Company, Robson Communities, Inc., Arlington Property Management Company and all of their respective owners, directors, officers, shareholders, subcontractors, employees, agents, successors, and assigns. This Agreement is binding on the Association and its insurers, successors and assigns. Neither this Agreement nor the payments or repairs referenced herein constitutes an admission of liability, estoppel, waiver or bar with respect to any claim on the part of any of the Released Parties, liability having being expressly denied.

7. No Need for Financial Assistance and No Reserve Funds. Neither the Developer nor any of the Released Parties shall have any liability for the financial condition of the Association, whether before, as of or after the Villas Transition Date, or for failing to establish reserves, or reserves of any particular amount.

8. Notices. All notices or other communications required or provided to be given by any party to the other party pursuant to this Agreement shall be in writing and shall be hand-delivered, delivered by courier, or sent via United States first class (or registered or certified) mail, postage prepaid, and shall be effective when hand-delivered or delivered by courier, or when deposited in the mail as provided above and addressed, to the parties at the following addresses, or to such other address as may be specified by a party by written notice to the other party:

If to Developer:  
SaddleBrooke Development Company  
9532 East Riggs Road  
Sun Lakes, AZ 85248-7411  
Attn: James Poulos

With copy to:  
Robson Communities, Inc.  
9532 East Riggs Road  
Sun Lakes, AZ 85248-7411  
Attn: Peter Gerstman

If to the Association:  
Saddlebrooke Villas Association Nos. 35, 35A,  
Inc.  
64500 East SaddleBrooke Road  
Tucson, AZ 85739

With copy to:  
David A. McEvoy, Esq.  
McEvoy, Daniels & Darcy, P.C.  
4560 East Camp Lowell Drive  
Tucson, Arizona 85712

9. Severability. Whenever possible, each provision of this Agreement shall be interpreted so as to be valid under applicable law, but if any provision of this Agreement is void or unenforceable, such provision shall be ineffective to the extent it is void or unenforceable, which shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

10. Attorneys Fees. In the event of legal proceedings involving this Agreement, the unsuccessful party shall pay to the prevailing party all costs of suit, including but not limited to reasonable attorneys fees, as determined by the court, and not by jury.

11. Time of Essence. Time is of the essence of each and every provision of this Agreement.

12. Performance Dates. In the event that the time for performance of any obligation hereunder expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next day that is not a Saturday, Sunday or legal holiday. As used in this Agreement, "business day" means any day, other than a Saturday, Sunday or legal holiday.

13. Integration. This Agreement contains the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior arrangements and understandings between the parties. No agreement, statement or promise made by either party with respect to the subject matter of this Agreement shall be binding or valid unless set forth in this Agreement.

14. Amendments. This Agreement may be amended or modified only by a written amendment executed by a duly authorized representative of each of the parties to this Agreement.

15. Counterparts. This Agreement may be executed by the signing in counterparts of this instrument. The execution by each party signing a counterpart of this instrument shall constitute a valid execution, and this instrument and all of its counterparts so executed shall be deemed for all purposes to be a single agreement.

16. Headings. The headings of this Agreement are for convenience only and shall not affect the meaning or interpretation of any of the terms of this Agreement.

17. Representation by Counsel. All parties to this Agreement have been represented by legal counsel in connection with this Agreement. This Agreement is the product of extensive negotiations and the fact that this Agreement was prepared by one of the parties or its legal counsel shall not affect the interpretation or application of this Agreement.

18. Inurement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

19. Governing Law. The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

Developer and the Association have executed this Agreement as of the date first set forth above.

**DEVELOPER:**

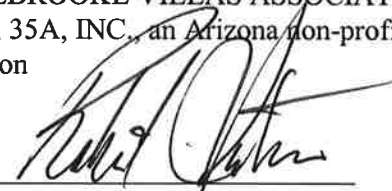
SADDLEBROOKE DEVELOPMENT  
COMPANY, an Arizona corporation

By  \_\_\_\_\_

Its V.P. \_\_\_\_\_

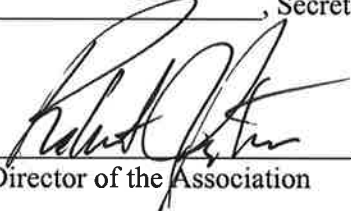
**THE ASSOCIATION:**

SADDLEBROOKE VILLAS ASSOCIATION  
NOS. 35, 35A, INC., an Arizona non-profit  
corporation


By  \_\_\_\_\_  
\_\_\_\_\_, President

By  \_\_\_\_\_  
\_\_\_\_\_, Secretary

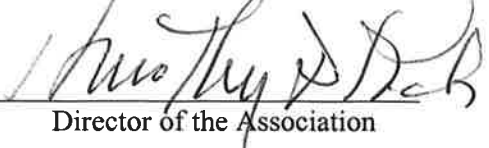
**Approved:**

By  \_\_\_\_\_  
Director of the Association

By  \_\_\_\_\_  
Director of the Association

By  \_\_\_\_\_  
Director of the Association

By  \_\_\_\_\_  
Director of the Association

By  \_\_\_\_\_  
Director of the Association

**EXHIBIT "A"**

**DRAINAGE PLAN**

Association received 2 copies of this plan, 1 kept permanently with the original signature copy of this document; the 2<sup>nd</sup> copy provided to the Villas Landscape Committee (via Jack Rehe) for project/working purposes.