

Cactus Park Estates

Homeowners Association

CC&R's



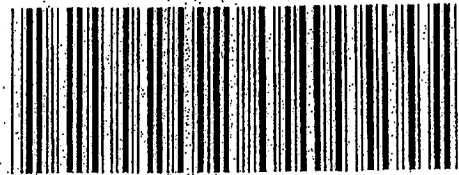
Cactus Park Estates
Homeowners Association
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Mesa, AZ 85211

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CACTUS PARK

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CACTUS PARK**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CACTUS PARK

This Declaration of Covenants, Conditions and Restrictions for Cactus Park (the "Declaration") is made this 22nd day of August, 2001, by **LENNAR COMMUNITIES DEVELOPMENT, INC.**, a Delaware corporation (the "Declarant").

ARTICLE 1

DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

1.1. **"Additional Property"** means the real property, together with all Improvements located thereon, described on **Exhibit "B"** attached to this Declaration.

1.2. **"Annual Assessment"** means the assessments levied against each Lot, and the Owner thereof, pursuant to **Section 6.2** of this Declaration.

1.3. **"Architectural Committee"** means the committee of the Association to be created pursuant to **Section 9.1** of this Declaration.

1.4. **"Architectural Guidelines"** or **"Design Guidelines"** means the rules and guidelines adopted by the Architectural Committee pursuant to **Section 5.4** of this Declaration, as amended or supplemented from time to time.

1.5. **"Areas of Association Responsibility"** means (i) all Common Area; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association; and (iii) all real property, and the Improvements situated thereon, within or adjacent to the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

1.6. **"Articles"** means the Articles of Incorporation of the Association, as amended from time to time.

1.7. **"Assessment"** means an Annual Assessment or Special Assessment.

1.8. **"Assessment Lien"** means the lien created and imposed by **Article 6** of this Declaration.

1.9. **"Assessment Period"** means the period set forth in **Section 6.6** of this Declaration.

1.10. **"Association"** means Cactus Park Estates Homeowners' Association, an Arizona nonprofit corporation, and its successors and assigns.

1.11. **"Association Officials"** means each and every officer, director, and committee member of the Association as set forth in **Section 10.16** of this Declaration.

1.12. **"Association Rules"** means the rules adopted by the Board pursuant to **Section 5.3** of this Declaration, as amended from time to time.

1.13. **"Board"** means the Board of Directors of the Association.

1.14. **"Bylaws"** means the Bylaws of the Association, as amended from time to time.

1.15. **"Common Area"** means land together with all Improvements situated thereon which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest. Tracts A through X on the Plat are not Common Area and are owned and maintained by the City of El Mirage pursuant to the Plat.

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

1.17. **"Declarant"** means Lennar Communities Development, Inc., a Delaware corporation, its successors and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.18. **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Cactus Park, as amended from time to time.

1.19. **"Deficit"** means Common Expenses in excess of the Annual Assessment levied by the Association as set forth in **Section 6.4** of this Declaration.

1.20. **"Designated Builder"** means (a) U.S. Home Corporation, a Delaware corporation, (b) Greystone Homes, Inc., a Delaware corporation, and (c) an Owner (i) regularly engaged in the business of building single-family detached residences, (ii) who owns Lots and constructs or intends to construct Residential Units on the Lots it owns, and (iii) who has been specifically designated as a Designated Builder hereunder by Declarant in a written Recorded instrument.

1.21. **"FHA"** means the Federal Housing Administration.

1.22. **"First Mortgage"** means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

1.23. **"First Mortgagee"** means the holder or beneficiary of any First Mortgage.

1.24. **"Improvement"** means any building, fence, wall or other structure or any road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

1.25. **"Lessee"** means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.

1.26. **"Lot"** means a portion of the Project intended for independent ownership and use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

1.27. **"Maintenance Standard"** means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.28. **"Member"** means any Person who is a member of the Association.

1.29. **"Membership"** shall mean a membership in the Association and the rights granted to the Owners and Declarant pursuant to **Article 5** to participate in the Association.

1.30. **"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 of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or 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 and receipt, 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. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

1.32. **"Plat"** means the following plats and all amendments, supplements and corrections thereto recorded in the records of Maricopa County, Arizona, which are referred to collectively herein as the **"Plat"**:

1.32.1. The plat of Dysart and Cactus, Parcel 1;

1.32.2. The plat of Dysart and Cactus, Parcel 2;

1.32.3. The plat of Dysart and Cactus, Parcel 3;

1.32.4. The plat of Dysart and Cactus, Parcel 4; and

1.32.5. Any subdivision plat Recorded against Additional Property annexed pursuant to Section 2.2 of this Declaration and all amendments, supplements and corrections to such plat.

1.33. **"Property"** or **"Project"** means the real property described on **Exhibit A** attached to this Declaration, together with all Improvements located thereon, and all real property together with all Improvements located therein which is annexed and subjected to this Declaration by the Declarant pursuant to Section 2.2 of this Declaration.

1.34. **"Project Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Guidelines and the Design Guidelines.

1.35. **"Purchaser"** means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for (i) a Person who purchases a Lot and then leases it to the Declarant and/or Designated Builder for use as a model in connection with the sale or lease of other Lots, or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.36. **"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 placed of public record.

1.37. **"Resident"** means each individual occupying or residing in any Residential Unit.

1.38. **"Residential Unit"** means any building, or portion of a building, situated upon a Lot and designed and intended for use and occupancy as a residence.

1.39. **"Single Family"** shall mean an individual living alone, 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.

1.40. **"Special Assessment"** means any assessment levied and assessed pursuant to **Section 6.5** of this Declaration.

1.41. **"Visible From Neighboring Property"** means, with respect to any given object, that such object, or any portion thereof, is or would be visible to a person six (6) feet tall standing on any portion of the adjoining Lot or adjoining Common Area on the same base horizontal plane as the object being viewed.

1.42. **"VA"** means the Veterans Administration.

ARTICLE 2.

PURPOSE OF DECLARATION

2.1. **Property Subject to the Declaration.** This Declaration is being Recorded to establish a general plan for the development, use and maintenance of the Project to protect and enhance the value and desirability of the Project. The Declarant declares that all of the property within the Project 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, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be personally binding on all 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 Declarant, Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2. Annexation of Additional Property.

2.2.1. At any time on or before the date which is seven (7) years after the date of the Recording of this Declaration, the Declarant shall have the right to annex and subject to this Declaration all of any portion of the Additional Property without the consent of any other Owner or Person (other than the Person who owns the property to be annexed, if other than the Declarant). The annexation of all or any portion of the Additional Property shall be effected by the Declarant (notwithstanding that Declarant might not own any Lot at the time of such annexation) executing and Recording an amendment to this Declaration setting forth the legal description of the Additional Property being annexed, stating that such portion of the Additional Property is annexed and subjected to the Declaration and describing any portion of the Additional Property being annexed that will be Common Area. Unless a later effective date is set forth in the amendment annexing Additional Property, the annexation shall become effective upon the Recording of the amendment. An amendment Recorded pursuant to this Section may divide the portion of the Additional Property being annexed into separate phases and provide for a separate effective date with respect to each phase. The voting rights of the Owners of Lots annexed pursuant to this Section shall be effective as of the date the amendment annexing such property is Recorded even if the annexation will not be effective until a later date. The Lot Owner's obligation to pay Assessments shall commence as provided in Section 6.7 of this Declaration. If an amendment annexing a portion of the Additional Property divides the annexed portion of the Additional Property into phases, the Declarant shall have the right to amend any such amendment to change the description of the phases within the annexed property, except that Declarant may not change any phase in which a Lot has been conveyed to a Purchaser.

2.2.2. Declarant makes no assurances as to the exact number of Lots which shall be added to the Project by annexation, or if all or any portion of the Additional Property will be annexed.

2.2.3. The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The property annexed by the Declarant pursuant to this Section 2.2 need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any portion of the Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property.

2.3. **Disclaimer of Representations.** Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

ARTICLE 3.

EASEMENTS

3.1. **Owners' Easements of Enjoyment.**

3.1.1. Subject to the rights and easements granted to the Declarant and Designated Builders in **Sections 3.3 and 3.4** of this Declaration, every Member, and any person residing with such Member, 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, subject to the following provisions:

3.1.1.1. The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in **Section 5.11** of this Declaration;

3.1.1.2. The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by Owners, Lessees or Residents; and

3.1.1.3. The right of the Association to suspend the right of an Owner and such Owner's family, Lessees and guests to use the Common Area if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

3.1.2. If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

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

3.3. **Declarant's Use for Sales and Leasing Purposes.** Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, construction offices and models throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned by Declarant. A Designated

Builder shall have the right and easement to maintain sales or leasing offices, management offices, construction offices and models throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area or on the Lots owned by the Designated Builder while the Designated Builder is selling Lots if those offices, models and signs have been approved by the Architectural Committee. Declarant reserves the right to place models, management offices, construction offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate.

3.4. Declarant's Easements.

3.4.1. Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. A Designated Builder shall have the right and easement on and over the Areas of Association Responsibility to use the Areas of Association Responsibility and any Lots and other property owned by the Designated Builder for construction or renovation related purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures provided the Architectural Committee has approved such use.

3.4.2. Declarant shall have the right and an easement upon, over and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant by this Declaration.

3.5. Easement in Favor of Association. The Lots, excluding, however, the interior of any completed and occupied Residential Unit, are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

3.5.1. For inspection of the Lots to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

3.5.2. For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

3.5.3. For correction of emergency conditions in one or more Lots;

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

3.5.5. For inspection of the Lots to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot.

3.6. Easement for Encroachments. There is hereby created an easement upon, across, over and under the Common Area and the Lots for all encroachments upon the

Common Area and the Lots which are minor or inconsequential in nature and do not materially interfere with the intended use of the burdened property, including, but not limited to, the encroachment of party walls and perimeter walls, in which event the Owner of the benefited property shall be responsible for the maintenance of the portion of the burdened property lying on the same side of the party wall or perimeter wall as the benefited property.

ARTICLE 4.

USE RESTRICTIONS

4.1. **Architectural Control.** Except as otherwise expressly provided in this Declaration or the Architectural or Design Guidelines (i) no improvements (whether temporary or permanent) including, but not limited to, the construction of a Residential Unit on a Lot, alterations, repairs, excavation, grading, lighting, landscaping or other work which in any way alters the exterior appearance of any property within the Project or improvements thereon from its natural or improved state existing on the date this Declaration is Recorded shall be made or done, and (ii) no building, fence, exterior wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Architectural Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade, lighting or landscaping of any area in the Project, shall be subject to the prior written approval of the Architectural Committee. No changes or deviations in or from the plans and specifications once approved by the Architectural Committee shall be made without the prior written approval of the Architectural Committee. Once construction of an improvement has been commenced on the Property, the Owner thereof shall diligently pursue completion of such improvement in accordance with approved plans. The Declarant shall be exempt from the requirements of this Section and therefore all improvements, alterations, repairs, excavation, grading, lighting, landscaping or other work performed, constructed or installed by the Declarant shall be deemed approved by the Architectural Committee.

4.2. **Animals.** No animals, birds, fowl, poultry, reptiles or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot, and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All pets must be kept in a fenced yard or on a leash at all times. No animal, bird, fowl, poultry, reptile or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance or an annoyance to other Owners. It shall be the responsibility of each Owner to remove immediately any droppings from pets. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, reptiles or livestock shall be maintained so as to be Visible From Neighboring Property, unless otherwise approved by the Architectural Committee. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird or reptile is a generally recognized house or yard pet, whether such pet is a problem or nuisance or whether the number of animals, birds or reptiles on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

4.3. **Temporary Occupancy and Temporary Buildings.** No trailer, incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures may be used on any property for construction, repair or sales purposes, with the prior written approval of the Board and for the time period approved by the Board.

4.4. **Maintenance of Landscaping and Driveways.** Unless otherwise provided in a Recorded instrument approved by Declarant or the Association, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations: (i) his Lot (including set back areas and Common Areas located thereon); (ii) public right-of-way areas between sidewalks (or bikepaths) and the street curb on the front or side of his Lot; (iii) public areas between a sidewalk and the Lot boundary; (iv) portions of Common Area adjacent to the Owner's Lot and which lie on the Lot's side of a wall erected on the Common Area; and (v) other public or easement areas adjacent to his Lot. However, in the event the maintenance of the above areas is the responsibility of the Association, a utility, or a governmental or similar authority, then the Owners shall be responsible for such maintenance only for so long as such other entities are not performing such maintenance. As used herein, maintenance shall include, but not be limited to, keeping the areas neatly trimmed, cultivated and free from trash, weeds and unsightly material. Each Owner will be required to comply with Design Guidelines for landscaping and approved plant palette established by the Architectural Committee, including, but not limited to, specific plant selections and the timing of landscape installation. Each Owner shall also maintain in good condition and repair all paved and concrete areas, including driveways, roadways, sidewalks and parking areas, located on his Lot.

4.5. **Nuisances, Construction Activities.** No weeds, dead trees or plants, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other area in the Project, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property 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 area in the Project. The Board shall have the exclusive right to determine the existence of any nuisance. Without limiting the generality of any of the foregoing provisions and except as otherwise permitted herein, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except back yard patio and/or landscape speakers approved by the Architectural Committee as to location and type and security devices used exclusively for security purposes, shall be located, used or placed on any such property. Normal construction activities and parking in connection with the building of improvements in the Project shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Architectural Committee. An Owner shall be responsible for and shall promptly perform all on-site and construction cleanup occasioned by his contractors or subcontractors. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Architectural Committee, which may also require screening of the storage areas. It is acknowledged that normal construction activities may be noisy and may require the use of exterior speakers.

4.6. **Diseases and Insects.** No Owner shall permit any thing or condition to exist upon any Lot or other area which shall induce, breed or harbor diseases or insects.

4.7. **Repair of Building.** No building or structure on any area in the Project shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by **Section 4.1** above, such building or structure shall be promptly repaired, rebuilt or demolished. In the event an Owner fails to comply with this provision, the Board may give notice to the

offending Owner, and may then proceed to repair the building or improvement and charge the Owner therefore as permitted in **Section 7.4.**

4.8. Antenna, Exterior Accessories. No antenna, satellite receiving station or other device for the transmission or reception of internet, television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any area in the Project (whether attached to a building or structure or otherwise) so as to be Visible from Neighboring Property, unless approved by the Architectural Committee; provided, however, with respect to antennas and other devices for the reception of video programming signals covered by 47 CFR part 1, Subpart S, Section 1.4000 (or any successor provision promulgated under the Telecommunications Act of 1996, as amended from time to time) (collectively the "**Permitted Antenna**"), an owner may install a Permitted Antenna on his Lot if written notice identifying the type of Permitted Antenna is given to the Association, and, to the extent the following can be done without precluding the reception of an acceptable quality signal, the Permitted Antenna is installed so as to be inconspicuous from adjacent Lots and Common Area in a manner that is architecturally compatible with the overall theme of the Project. This provision shall be interpreted in a manner to be consistent with the Telecommunications Act of 1996, as amended from time to time, and the regulations promulgated thereunder. The Architectural Committee may permit one or more aerial satellite dishes or satellite communication systems, and/or other apparatus and equipment for an antenna or cable system for the benefit of all or portions of the Project. No basketball backboards, flagpoles, lightpoles, swing sets or other play structures shall be installed so as to be Visible From Neighboring Property, unless approved by the Architectural Committee.

4.9. Mineral Exploration. No area in the 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.

4.10. Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential uses by a Single Family and no occupation, business, profession, trade or other nonresidential use shall be conducted thereon, except that an Owner or Resident may conduct business activities on a Lot 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 requirements; (iii) the business activity does not involve door-to-door solicitation of other Owners and Residents; and (iv) the business activity is consistent with the residential character of the property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents and Owners, as may be determined in the sole discretion of the Board. The terms "**business**" and "**trade**" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the providers family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section. Notwithstanding the foregoing, no Lot, Residential Unit or any portion thereof shall be used as a bed-and-breakfast or other form of hotel, motel or temporary lodging. The foregoing restriction shall not apply to any activity conducted by a Designated Builder with respect to the Designated Builder's development and sale of property within the Project or to any activity conducted by the Declarant.

4.11. **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot or other area in the Project except in covered containers of a type, size and style which are approved by the Architectural Committee. Unless otherwise approved by the Architectural Committee, such containers shall be maintained and stored so as to not be Visible From Neighboring Property, except to make the same available for collection. All rubbish, trash and garbage shall be removed from the Lots and other areas in the Project and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained in the Project.

4.12. **Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be placed or maintained in the Project unless they are not Visible From Neighboring Property.

4.13. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained in the Project 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 an approved building, appurtenant structures, or other improvements; or (ii) that which Declarant or the Association may require for the operation and maintenance of the Project. Solar energy devices must be approved by the Architectural Committee prior to installation.

4.14. **Signs.** No signs whatsoever (including, but not limited to, commercial, political, and similar signs) which are Visible From Neighboring Property shall be erected or maintained in the Project except:

- (i) Signs required by legal proceedings.
- (ii) Not more than two identification signs for individual detached residences, each with a face area of seventy-two (72) square inches or less.
- (iii) Such other signs (including but not limited to "for sale" and "for lease" signs, security company signs associated with a home security system installed in the Residential Unit on the Lot, construction job identification signs, builders' signs, directional signs and subdivision identification signs) which are in conformance with the requirements of Maricopa County and/or the City of El Mirage, as applicable, and which have been approved in writing by the Architectural Committee or the Declarant as to size, colors, design, message content and location.

4.15. **Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Declarant or the Architectural Committee. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant. No subdivision plat or further covenants, conditions, restrictions or easements shall be Recorded by any Owner or other Person against any property in the Project unless the provisions thereof have first been approved in writing by the Declarant or the Architectural Committee and any plan or other covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot, and no applications for variances or use permits shall be filed with any governmental authority unless

the proposed use of the property has been approved by the Declarant or the Architectural Committee and the proposed use otherwise complies with this Declaration and the general plan of development for the Project.

4.16. **Party Walls.** Each wall or fence which is located between two (2) Lots shall constitute a party wall. Except as hereinafter provided, the rights and duties of Owners of contiguous Lots which have party walls shall be as follows:

4.16.1. Each Owner shall have the right to use the party wall, provided that such use does not interfere with the other Owners use and enjoyment thereof.

4.16.2. If a party wall is damaged or destroyed through the act or failure to act of an Owner or any of his tenants, agents, guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to promptly rebuild and repair the party wall without cost to the Owner of the adjoining property.

4.16.3. In the event any party wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act or failure to act of an adjoining Owner, his tenants, agents, guests or family, it shall be the obligation of all Owners whose properties adjoin such party wall to rebuild and repair such wall at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their respective properties on the damaged or destroyed party wall.

4.16.4. In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Notwithstanding any such decision, an Owner may seek indemnity from any party causing the damage.

4.16.5. Notwithstanding the foregoing and unless otherwise indicated in an applicable Recorded document, in the case of party walls (i) between Common Areas and Lots, or (ii) constructed by the Declarant, a Designated Builder or the Association on Common Areas within a Lot, the Association shall be responsible for all maintenance thereof, subject to the provisions of **Sections 7.3 and 7.4**; except that each Owner of a Lot shall remain responsible for painting and maintaining the surface of the portion of the party wall facing his Lot and/or the portion of the party wall which is not a portion of the Common Area, and except that an adjoining Owner shall reimburse the Association for one-half (1/2) of the costs incurred by the Association for any structural repair of the party wall located on that Owner's property.

4.17. **Perimeter Walls.** Perimeter walls and other fencing shall be constructed in accordance with Design Guidelines to be promulgated by the Architectural Committee. All fences adjoining the Common Areas, parks or washes shall be constructed and maintained in accordance with specifications established by the Architectural Committee for the purpose of preserving and protecting the views from adjoining properties and shall be maintained by the Association, except that each Owner shall remain responsible for painting and maintaining the surface of the portion of the perimeter wall facing his Lot and except that the Owner shall reimburse the Association for one-half (1/2) of the costs of any structural repair of that portion of the perimeter wall located on that Owner's property or on or near that Owner's property boundary. The Board shall have sole discretion with respect to the maintenance of the exterior surface facing the arterial right-of-way and the structural repair of the perimeter walls. The Association shall be responsible for the maintenance of (i) all landscaping immediately outside

the perimeter walls and fences and adjoining the arterial right-of-way; and (ii) all areas immediately outside a perimeter wall and adjoining a Common Area wash, except to the extent that any maintenance of the foregoing is assumed by the City of El Mirage or by the Owner of the adjoining Lot.

4.18. **Utility Service.** No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, internet, television and radio signals, shall be erected, placed or maintained anywhere in the Project unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, except for boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices. Notwithstanding the foregoing, no above ground electrical apparatus shall be installed without the approval of the Declarant or the Architectural Committee. All lines for the transmission of gas, water and sewage shall also be installed and maintained underground or concealed in, on or under structures approved by the Architectural Committee. The installation and location of all utility lines and equipment must be approved in advance by the Declarant or the Architectural Committee. Temporary above ground power or telephone structures and water lines incident to construction activities shall be permitted with the prior written approval of the Architectural Committee.

4.19. **Overhead Encroachments.** No tree, shrub or planting of any kind on any Lot or other area shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, bike path, equestrian trail, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Architectural Committee.

4.20. **Trucks, Trailers, Campers and Boats.** No motor vehicle classed by the manufacturer as having a payload capacity of 3/4-ton or more, mobile home, motor home, trailer, camper shell, detached camper, boat, boat trailer, hang glider, ultra lights or other similar equipment or vehicle may be parked or stored on any area in the Project so as to be Visible From Neighboring Property, Common Area or street; provided, however, this provision shall not apply to (i) sport utility vehicles, pickup trucks of less than 3/4-ton payload capacity with camper shells not exceeding seven (7) feet in height measured from ground level, and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length all of which are parked as provided in Section 4.22 below and are used on a regular and recurring basis for basic transportation; (ii) trucks, trailers and campers parked in a recreational vehicle storage area within a residential area or other areas designated for such parking; provided, however, that all such parking areas have been approved by the Board or the Declarant; or (iii) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee.

4.21. **Motor Vehicles.** No motor vehicle of any kind shall be constructed, reconstructed or repaired upon any Lot, street or other area in the Project, and no inoperable vehicle may be stored or parked so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that this provision shall not apply to (i) emergency vehicle repairs; and (ii) the parking of motor vehicles in garages or other parking areas in the Project designated or approved by the Declarant or the Board so long as such vehicles are in good operating condition and appearance and are not under repair.

4.22. **Parking.** Vehicles of all Owners and Residents, and of their employees, guests and invitees, are to be kept in garages or other parking areas designated or approved by the

Declarant or the Board; provided, however, the foregoing shall not be construed to permit the parking or storing in the above described areas of any vehicle whose parking or storage in the Project is otherwise prohibited herein. The Association Rules may permit temporary parking on streets or other Project areas for public or private social events or other permitted activities.

4.23. **Roofs.** No solar panel, air conditioning unit, evaporative cooler or other apparatus, structure or object shall be placed on the roof of a Residential Unit without the prior written consent of the Architectural Committee.

4.24. **Window Treatments.** Within one hundred and twenty (120) days of occupancy, each Owner of a Residential Unit shall install permanent draperies or suitable window treatments on all windows Visible From Neighboring Property. In no event shall windows be covered with paper, aluminum foil, bed sheets or any other materials or temporary coverings not specifically intended for such purpose. No interior or exterior reflective material shall be used as a window covering unless such material has been approved by the Architectural Committee. Further, no metal or rigid plastic awnings of any nature whatsoever shall be permitted to be placed or installed on or attached to the outside of any building or elsewhere on a Lot, except as has been approved by the Architectural Committee.

4.25. **Drainage.** No Owner or Resident shall interfere with or obstruct the drainage pattern over his Lot from or to any other Lot or Common Area or the stormwater retention volume on his Lot as established by the Declarant or other developer.

4.26. **Garage Openings.** No garage door shall remain open except when necessary for access to and from the garage. No parking area or garage shall be used to store junk or other unsightly material. No Owner shall convert a garage to a living or recreational area or otherwise use a garage as a storage area if the conversion or use will prevent the garage from being used as a vehicle parking area for the number of vehicles for which the garage was originally designed.

4.27. **Right of Entry.** During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Committee, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot or other area, and the improvements constructed or being constructed thereon (except for the interior portions of any completed and occupied Residential Unit), to determine compliance with this Declaration, the Architectural Guidelines, or any approval stipulations issued by the Board or Architectural Committee or to perform repairs and maintenance as provided in **Section 7.4**, and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the Association shall have an easement and right of entry upon any Lot or other area at any time or times without notice to perform emergency repairs.

4.28. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or by other Designated Builders or their duly authorized agents of structures, improvements or signs necessary or convenient to the development or sale of property if those structures, improvements or signs have been approved by the Declarant or the Architectural Committee.

4.29. **Health, Safety and Welfare.** In the event additional uses, activities and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of

Owners or Residents, the Board may make rules restricting or regulating their presence in the Project as part of the Architectural Guidelines.

4.30. **Model Homes.** The provisions of this Declaration which prohibit nonresidential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes and sales offices and parking areas incidental thereto by persons engaged in the construction or marketing of Residential Units in the Project, provided that the location and the opening and closing hours of such model homes are approved by the Declarant or the Architectural Committee, and provided that the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration and with the ordinances of Maricopa County or the City of El Mirage, as applicable. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or builder thereof is not actively engaged in the construction and sale of Residential Units and, unless approved by Declarant, no home shall be used as a model home for the sale of homes not located in the Project.

4.31. **Leases.** Any agreement for the lease of all or any portion of a Lot or Residential Unit must be in writing and must be expressly subject to the Project Documents. Any violation of the Project Documents shall be a default under the lease. An Owner shall notify the Association regarding the existence of all leases. The Owner shall remain liable for compliance with the Project Documents and shall be responsible for any violations thereof by his Lessee or his Lessee's family and guests. All notices shall be sent to the Owner.

ARTICLE 5.

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1. **Formation of Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules, Architectural Guidelines or Design Guidelines, this Declaration shall control.

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 the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot.

5.3. **The Association Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Common Area, including, but not limited to, any recreational facilities situated upon the Common Area; (ii) the Maintenance Standards; or (iii) the health, safety or welfare of the Owners and Residents. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

5.4. **The Architectural and Design Guidelines.** From time to time and subject to the provisions of this Declaration, the Architectural Committee shall have the right to adopt, amend and repeal Architectural Guidelines and Design Guidelines; provided, however, that such rules and guidelines shall be reasonable and shall be consistent with the provisions of this Declaration, the Articles and Bylaws. The authority granted herein to develop rules and guidelines by the Architectural Committee and the enforcement powers of such committee are given for the purpose of insuring that the Project is developed and used according to the general descriptions and intent as evidenced by this Declaration. Upon adoption, the Architectural Guidelines and Design Guidelines shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if set forth in and a part of this Declaration. The Architectural Committee is specifically responsible for: (i) the administration and enforcement of the provisions of Article 4 of this Declaration; (ii) the administration and enforcement of the guidelines promulgated by such Committee; and (iii) all other duties and obligations designated to such Committee by the Declaration, Articles and Bylaws. Administrative support as required by the Architectural Committee shall be provided by the Board. In the event of any inconsistency between the rules and regulations adopted by the Board and the guidelines adopted by the Architectural Committee, the guidelines adopted by the Architectural Committee shall control. Copies of all Architectural Guidelines and Design Guidelines as adopted or amended shall be available for inspection at the office of the Association during reasonable business hours.

5.5. **Personal Liability.** No member of the Board or of any committee of the Association (specifically including, but not limited to, the Architectural Committee), no officer of the Association and no manager or other employee of the Association shall be personally liable to any Member, or 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 manager, 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.

5.6. **Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project 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 Project Documents or reasonably necessary to effectuate any such right or privilege.

5.7. **Identity of Members.** Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his Membership in the Association shall automatically cease.

5.8. **Classes of Members and Voting Rights; Authorized Votes.** The Association shall have the following two (2) classes of voting membership:

- (i) **Class A.** Class A Members are all Owners, with the exception of the Declarant and Designated Builders, until the termination of the Class B Membership. An Owner shall be entitled to one (1) vote for each Lot owned, subject to the authority of the Board to suspend the Owner's rights for violations of this Declaration as provided herein. Upon the termination of the Class B Membership, the Declarant and the Designated Builders shall be Class A Members so long as they own any Lot. The "authorized

votes" for the Class A Membership shall be the total number of votes represented by the Lots owned by Class A Members with respect to which voting rights have not been suspended by the Board as permitted herein.

(ii) **Class B.** All of the Class B Memberships shall be held by the Declarant and Designated Builders. The Class B Members shall be entitled to three (3) votes for each Lot owned, which shall be the **"authorized votes"** for the Class B Membership. The Class B Membership shall cease and be converted to Class A Membership on the earlier of: (i) the date which is sixty (60) days after the date on which the votes entitled to be cast by the Class A Members equal or exceed the votes entitled to be cast by the Class B Members; or (ii) the date which is seven (7) years after the Recording of this Declaration. The Declarant or a Designated Builder may at any time notify the Association in writing that it relinquishes its Class B Membership. In the event the Additional Property or any portion thereof is annexed into this Declaration, the Owner thereof at the time of annexation, if such Owner is Declarant or a Designated Builder, shall be a Class B Member entitled to three (3) votes for each Lot owned notwithstanding that the Class B Membership may have previously lapsed. In the event of an annexation, such Class B Membership shall cease and be converted to Class A Membership on the earlier of: (i) the date that is sixty (60) days after the date on which the total votes entitled to be cast by all the Class A Members of the Association equal or exceed the votes entitled to be cast by the Class B Members, or (ii) the date that is seven (7) years after the Recording of the annexation.

5.9. **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 (1) person or entity 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 was 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 by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

5.10. **Transfer of Membership.** The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

5.11. **Conveyance or Encumbrance of Common Area.** The Common Area, except any portion thereof dedicated to the public on the Plat, shall be conveyed to the Association in fee simple absolute free and clear of all monetary encumbrances, including, but not limited to, delinquent taxes and assessments. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B

Member of the Association and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members of the Association, except that the Association shall have the right to grant utility easements upon, across, over and under the Common Area and/or the right to convey portions of the Common Area to correct minor encroachments upon the Common Area which do not materially interfere with the intended use of the Common Area.

5.12. **Suspension of Voting Rights.** If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

5.13. **Managing Agent.** The Board may employ for the Association and the Project a managing agent at a compensation established by the Board (the "Managing Agent"). The Managing Agent shall perform such duties and services as the Board shall authorize, including, but not limited to, all of the duties listed in the Project Documents except for such duties and services that under the Project Documents may not be delegated to the Managing Agent. The Board may delegate to the Managing Agent all of the powers granted to the Board or the officers of the Association by the Project Documents other than the power to: (i) adopt the annual budget, any amendment thereto or to levy Assessments; (ii) adopt, repeal or amend Association Rules; (iii) designate signatories on Association bank accounts; (iv) borrow money on behalf of the Association; (v) acquire real property. Any agreement for the services of a Managing Agent shall provide for termination by the Association, with or without cause, and without payment of a termination fee, upon thirty (30) days written notice, and no such agreement shall be of a duration excess of one (1) year, renewable by agreement of the parties for successive one (1) year periods.

ARTICLE 6.

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1. **Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including, but not limited to, reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including, but not limited to, reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, 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 became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2. **Annual Assessments.**

6.2.1. 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 Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot an Annual Assessment.

6.2.2. 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 its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.2.3. The maximum allowable Annual Assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser other than a Designated Builder, the maximum Annual Assessment and the maximum allowable Annual Assessment for each Membership shall be \$420.00.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser other than a Designated Builder, and on each successive January 1, the maximum allowable Annual Assessment shall be increased without a vote of the Members by the greater of (a) ten percent (10%) of the maximum allowable Annual Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPIU) U.S. City Average (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the second to last month of each fiscal year in accordance with the following formula:

X Consumer Price Index for September of the calendar year immediately preceding the then current fiscal year.

Y Consumer Price Index for September of the year immediately preceding the fiscal year for which the maximum allowable Annual Assessment is to be determined.

The quotient of (Y-X) divided by X multiplied by the maximum allowable Annual Assessment for the then current fiscal year equals the amount by which the maximum allowable Annual Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index that shall be used for computing the increase in the maximum allowable Annual Assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor

index is recommended by the United States government, the index selected by the Board.

(iii). The Annual Assessment for Common Expenses actually levied by the Association in any particular year may be less than the maximum allowable Annual Assessment for that year. The Association, however, shall not levy an Annual Assessment for Common Expenses that exceeds the maximum allowable Annual Assessment, unless the Annual Assessment has been approved by a vote of at least two-thirds (2/3) of the Members in each Class of Membership who are voting in person or by proxy at a meeting duly called for such purpose.

6.3. **Rate of Assessment.** The amount of the Annual Assessment shall be the same for each Lot other than Lots owned by the Declarant or a Designated Builder. The Annual Assessment for Lots owned by the Declarant and/or a Designated Builder shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Lots owned by Persons other than the Declarant and/or a Designated Builder. If a Lot ceases to qualify for the twenty-five percent (25%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

6.4. **Obligation of Declarant for Deficiencies.** Declarant and any Designated Builder who pays a reduced rate of assessment pursuant to **Section 6.3** shall pay to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Annual Assessment levied by the Association, to pay all Common Expenses of the Association as they become due (the "Deficit"). The Declarant's and Designated Builder's proportionate share of the Deficit shall be determined by a ratio, the numerator of which is the Declarant's or Designated Builder's, as the case may be, Annual Assessment liability to the Association for the fiscal year to which the deficit is attributable and the denominator of which is the sum of the Declarant's and Designated Builder's Annual Assessment liability to the Association for the fiscal year to which the Deficit is attributable as determined by the Board. For example, assume a Deficit of \$1,000.00 in fiscal year 200X, the Declarant's Annual Assessment liability to the Association for such year was \$200.00, and the Designated Builder's Annual Assessment liability was \$100.00. The Declarant's proportionate share of the Deficit would be \$666.67 ($\$200.00/\$300.00 \times \$1,000.00$) and the Designated Builder's proportionate share of the Deficit would be \$333.33 ($\$100.00/\$300.00 \times \$1,000.00$). Notwithstanding any other provision of this **Section 6.4**, in no event shall the sum of the Annual Assessment liability plus proportionate share of the Deficit exceed the total amount that the Declarant and Designated Builder, respectively, would have paid had they been required to pay the full Annual Assessment rate per Lot for that Assessment Period.

6.5. **Special Assessments.** In addition to the Annual Assessment authorized above, the Association may levy against each Lot which is then subject to assessment, 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 assent of two-thirds (2/3) of the Members in each Class of Membership who are voting in person or by proxy at a meeting duly called for such purpose.

6.6. **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except for the first Assessment

Period. The first Assessment Period shall commence upon the conveyance of the first Lot to a Purchaser other than a Designated Builder and shall terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.7. **Commencement Date of Assessment Obligation.** All Lots within the Property described on **Exhibit A** to this Declaration shall be subject to assessment upon the conveyance of the first Lot to a Purchaser other than a Designated Builder. All Lots within the Additional Property annexed pursuant to Section 2.2 of this Declaration shall be subject to assessment upon the conveyance to a Purchaser, other than a Designated Builder, of the first Lot within the annexed property. If the amendment to this Declaration which annexes all or any part of the Additional Property divides the property being annexed into phases, then the Lots within each phase will be subject to assessment when the first Lot in the phase is conveyed to a Purchaser, other than a Designated Builder.

6.8. **Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special 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 levy of Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.9. **Effect of Nonpayment of Assessments; Remedies of the Association.**

6.9.1. Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve percent (12%) per annum or the prevailing FHVA interest rate for new home loans, whichever is higher. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

6.9.2. The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all fines levied against the Owner of the Lot; (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; and (v) any amounts payable to the Association pursuant to **Section 7.3 or 7.4** of this Declaration. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. 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 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 interest, lien recording fees and reasonable attorneys' fees. Before Recording

any Notice of Lien against a Lot, the Association shall make a written demand to the delinquent Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within fifteen (15) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot.

6.9.3. The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

6.9.4. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, title report fees, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.9.5. The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments, and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments, or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.10. **Evidence of Payment of Assessments.** Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association or Managing Agent may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

6.11. **Purposes for which Association's Funds May Be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (i) discharging and performing the Association's duties and obligations under the Project Documents; (ii) exercising the rights and powers granted to the Association

under the Project Documents; (iii) and providing for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property to, among other things, 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 the Project and Common Area, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. 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: maintenance of landscaping on Common Areas and public right-of-way and drainage areas within the Common Area, liability insurance, communications, utilities, public services, safety and indemnification of officers and directors of the Association.

6.12. **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.

6.13. **Working Capital Fund.** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser (other than a Designated Builder) of a Lot from the Declarant or a Designated Builder shall pay to the Association immediately upon becoming the Owner of the Lot a the sum equal to one-fourth (1/4th) of the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

6.14. **Transfer Fee.** Each Purchaser of a Lot upon which a Residential Unit has been constructed shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board (and not the Managing Agent) but no transfer fee shall be payable with respect to the transfer of a Lot by the Declarant or a Designated Builder to a Purchaser.

6.15. **Notice and Quorum for Action Authorized Under Sections 6.2.3(iii) and 6.5.** Written notice of any meeting called for the purpose of taking action authorized under Sections 6.2.3(iii) and 6.5 shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, Owners holding sixty percent (60%) of the votes relative to the affairs of the Association shall constitute a quorum. In the event there are not enough Owners present or represented by proxy at the first meeting to constitute a quorum, a subsequent meeting or meetings may be called subject to the same notice requirement and the required quorum at each subsequent meeting shall be one-half of the required quorum at the immediately preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the immediately preceding meeting.

ARTICLE 7.

MAINTENANCE

7.1. Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility but all Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this **Article 7**.

7.2. Lots. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot which is an Area of Association Responsibility. All Lots, buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot 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 areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

7.3. Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, Lessees, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.4. Improper Maintenance and Use of Lots. In the event any portion of any 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 the Project that are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written 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 said Owners cost. If at the expiration of said fifteen (15) day period of time 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 paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.5. Installation of Landscaping. Within ninety (90) days after acquiring a Lot upon which a Residential Unit has been constructed, each Owner shall install trees, plants and other

landscaping improvements (together with any sprinkler system or drip irrigation system sufficient to water adequately the trees, plants or other landscaping improvements) on (i) that part of the Lot which is between the street or public right-of-way adjacent to the Lot and the exterior walls of the Residential Unit situated on the Lot, except for any side or back yard of the Lot which is completely enclosed by a wall or fence, and (ii) any public right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and any adjacent street, except for any part of such area which is an Area of Association Responsibility. All such landscaping must be installed in accordance with plans and specifications approved by the Architectural Committee pursuant to **Section 4.1** of this Declaration.

ARTICLE 8.

INSURANCE

8.1. **Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1. Comprehensive general liability insurance in an amount determined by the Board, but not less than One Million Dollars (\$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 Common Area, and also shall include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.2. Property insurance on all Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall be not less than one hundred percent (100%) of the current 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 the State of Arizona; and

8.1.4. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

8.2. **Policy Provisions.** The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants and employees, with respect to Owners and members of their household; (ii) 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; (iii) 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; (iv) 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; (v) a statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at

least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.3. **Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

8.4. **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.

8.5. **Payment of Insurance Proceeds.** With respect to any loss to any Common Area 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 and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of **Section 8.6** of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

8.6. **Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association, unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in each Class of Membership of the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the total authorized votes in each Class of Membership of the Association.

ARTICLE 9.

ARCHITECTURAL COMMITTEE

9.1. **Establishment.** An Architectural Committee shall be established to perform the functions set forth in this Declaration. The Architectural Committee shall adopt rules, regulations and guidelines for the performance of its duties, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The Architectural Committee shall consist of three (3) regular members and not less than one alternate member. All members and alternates of the Architectural Committee shall be appointed by the Declarant so long as Declarant owns any Lot or until such time as the Declarant has relinquished its appointment rights by a written Recorded Instrument, at which time the Designated Builders, if any, then owning Lots within the Project shall appoint the members and alternates to the Architectural Committee which are mutually acceptable to all the Designated Builders. In the event there are no Designated Builders owning any Lot or if all the

Designated Builders do not mutually agree upon the appointments, thereafter, the members of the Architectural Committee shall be appointed by the Board. Architectural Committee members shall be appointed to one (1) year terms (or until replaced) Architectural Committee members may, but need not, be members of the Board. In the event of a temporary or permanent vacancy on the Architectural Committee, an alternate member selected by the Board shall serve as a replacement until the next election or until the regular member is again available. Members of the Architectural Committee need not be architects, Owners or Residents and need not possess any special qualifications of any type. Architectural Committee members appointed by Declarant or the Designated Builder(s) need not be Owners or Residents. The Declarant may voluntarily relinquish (either temporarily or permanently) its right to appoint all or some of the members of the Architectural Committee by Recording an amendment to the Declaration executed by the Declarant alone.

9.2. **Meetings; Guidelines.** The Architectural Committee shall keep a record of the minutes of all meetings. A quorum for any meeting shall consist of a majority of the regular members of the Architectural Committee and the concurrence of a majority of the regular members shall be necessary for any decision of the Architectural Committee. Alternate member(s) may participate at any meeting in lieu of any absent regular member(s), may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. As provided in **Section 5.4**, the Architectural Committee shall promulgate Architectural Guidelines to be used in rendering decisions, including procedures for the preparation, submission and determination of applications for approval. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. Members of the Architectural Committee shall not be entitled to compensation for their services, unless otherwise approved by the Board. The Architectural Guidelines shall interpret and implement procedures for the Architectural Committee's review of, and the standards for development within, the Project, including, but not limited to, architectural design, placement of buildings, landscaping, plant selection, color schemes, exterior finishes and materials, signage, wall design and similar matters, and shall have the same force and effect as the Association Rules. The Architectural Guidelines may also include provisions requiring the establishment of landscaping on parcels pursuant to specific timetables.

9.3. **Discretion of Committee.** The Architectural Committee shall be under no duty or obligation to pass upon, approve or disapprove any structural stability matters or matters pertaining to the stability of footings or foundations or matters pertaining to geological conditions involved in any foundation or footings and may indicate on any plans or specifications or drawings or other materials or in any certificate that the Architectural Committee has not passed upon, approved or disapproved any such referred to matters. All actions of the Architectural Committee authorized under this Declaration, including without limitation the approval or disapproval of plans, specifications, drawings, plot plans, grading plans and height, as well as other matters in which the Architectural Committee is authorized hereunder to act, shall be in the sole and complete discretion of Architectural Committee. Neither the Architectural Committee nor any member thereof shall be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of:

- (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective;
- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

- (c) the development of any property within the Project;
- (d) the execution of any estoppel certificate, whether or not the facts therein are correct; or
- (e) the enforcement of this Declaration and the Architectural Guidelines;

provided, however, that with respect to the liability of an Architectural Committee member, such member has acted in good faith on the basis of such information as may be actually possessed by him. The approval by the Architectural Committee of any plans, specifications or other matter shall not be deemed to constitute a waiver of any right to withhold approval of any similar plans, specifications or other matter subsequently submitted for approval. Subject to **Section 9.1**, the vote or written consent of a majority of its regular members, at a meeting or otherwise, shall constitute the act of the Architectural Committee.

9.4. Response Within Forty-five (45) Days. Any approval required under this Declaration by an Architectural Committee shall not be withheld unreasonably. The failure by the Architectural Committee to approve or disapprove a request within forty-five (45) days after such request is filed with the Architectural Committee (or within any shorter period of time set forth in the applicable Architectural or Design Guidelines) shall constitute an approval by the Architectural Committee. Notice of disapproval shall be written and it shall set forth the reason or reasons for the disapproval. Notwithstanding **Section 10.14**, no request shall be deemed filed with the Architectural Committee until it is actually received by the Architectural Committee, and all submissions to the Architectural Committee shall be made by certified mail or personal delivery. After the expiration of one (1) year from the completion of construction of any structure, work, improvement or alteration, the said structure, work, improvement or alteration shall, in favor of purchasers or encumbrancers in good faith and for value, be deemed to be in compliance with this Declaration and the applicable Architectural Guidelines, unless actual notice of non-compliance executed by the Architectural Committee shall appear of record in the office of the County Recorder of Maricopa County, or a complaint has been filed to enforce compliance.

9.5. Committee's Certificate. Any approval of any plans and specifications or other matter by the Architectural Committee given or made pursuant to the provisions of this Declaration which is evidenced by a certificate signed by at least a majority of the members of the Architectural Committee shall be irrevocable and not subject to change by the Architectural Committee. Any such certificate may be conclusively relied upon by all parties, including, but not limited to, any Owner, tenant or purchaser of any Lot or of any interest therein; by any lender taking any Lot as security; and by any title insurance company. Any such certificate may be Recorded by the Architectural Committee.

9.6. Fee. The Board may establish a reasonable processing fee to defer the costs of the Association and the Architectural Committee in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

ARTICLE 10.

GENERAL PROVISIONS

10.1. Enforcement. The Association or any Owner, subject to the dispute resolution provisions of **Section 10.19**, shall have the right to enforce the Project Documents in any

manner provided for in the Project Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any lawsuit is filed by the Association or by any Owner to enforce the provisions of the Project Documents or in any other manner arising out of the Project Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Project Documents or at law or in equity, the Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or, in the case of a Residential Lot, by a Resident of the Owner's Lot, provided the Owner is given notice and an opportunity to be heard.

10.2. **Term; 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 affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the total authorized votes in each class of membership. If the necessary votes and consents are obtained, or upon any automatic termination as described above, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant 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 and its assets shall be dedicated to a governmental body or conveyed to a nonprofit organization with similar purposes which organization shall assume the duty to operate and maintain the Areas of Association Responsibility.

10.3. **Amendments.**

10.3.1. Except for amendments made pursuant to **Section 10.3.2** or **10.3.5** of this Declaration, and subject to **Sections 10.3.3, 10.3.4** and **10.3.6**, the Declaration may be amended only with the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than seventy-five percent (75%) of the total authorized votes in each class of membership.

10.3.2. The Declarant, so long as the Declarant owns any Lot, and if Declarant does not own a Lot, then the Designated Builder(s), if any, then owning Lot(s) within the Project so long as the Designated Builders act together in a manner mutually acceptable to all Designated Builders owning Lots within the Project, and if there are no Designated Builder(s) owning any Lot, thereafter the Board, may amend this Declaration or the Plat without obtaining the approval or consent of any Owner or First Mortgagee to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Company, the FHA, the VA or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant, Designated Builders or the Board.

10.3.3. So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant. If Declarant does not own a Lot but a

Designated Builder owns any Lot, any amendment to this Declaration must be approved in writing by the Designated Builder(s) then owning Lots.

10.3.4. So long as there is a Class B Membership in the Association, any amendment to this Declaration must have the prior written approval of the FHA or the VA.

10.3.5. The Declarant, so long as the Declarant owns any Lot, the Designated Builder(s), if any, then owning any Lot if Declarant does not own a Lot, and thereafter the Board, may amend this Declaration without the consent of any other Owner, mortgagee or beneficiary to correct any error or inconsistency in the Declaration.

10.3.6. So long as the Declarant owns any Lot subject to this Declaration, any amendment to this Declaration shall be signed by Declarant and Recorded in the records of Maricopa County, Arizona. At any time the Declarant does not own at least one of the Lots subject to this Declaration, any amendment approved pursuant to **Section 10.3.1** of this Declaration or by the Board pursuant to **Section 10.3.2** or **10.3.5** of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded with the County Recorder of Maricopa County, Arizona, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to **Section 10.3.2** or **10.3.5** of this Declaration shall be signed by the Declarant and Recorded with the County Recorder of Maricopa County, Arizona. Any amendment made by the Designated Builder(s) pursuant to **Section 10.3.2** or **10.3.5** of this Declaration shall be signed by the Designated Builders and Recorded with the County Recorder of Maricopa County, Arizona. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment. An amendment effectuated in accordance with this **Section 10** may amend this Declaration and any term, covenant, condition, restriction or easement herein (other than **Sections 5.8(i)** and **6.3**) in a non-uniform manner with respect to some or all of the Lots and other Property subject hereto.

10.4. Rights of First Mortgagees.

10.4.1. Any First Mortgagee will, upon written request, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

10.4.2. No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

10.4.3. For purposes of this **Section 10.4.3**, First Mortgagee shall mean the holder of a First Mortgage who has given the Association written notice of such holder's address and its desire to participate in the following actions. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) of Owners (other than the Declarant, developer or Designated Builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting

of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Section;

(ii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(iii) Change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Area;

(iv) Fail to maintain fire and extended coverage insurance on Common Area on current replacement cost basis in an amount of at least one hundred percent (100%) of insurable value;

(v) Use hazard insurance proceeds for losses to any Common Area other than for the repair, replacement or reconstruction of such Common Area.

10.4.4. No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

10.4.5. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative written response from such First Mortgagee within thirty (30) days of the date of the Association's request.

10.4.6. In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Project Documents, the provisions of this Section shall prevail; provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Project Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) a amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in **Section 10.4.3** of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided, however, that the Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the FHA, the VA or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant or the Board.

10.5. **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 Articles, Bylaws, Association Rules, Architectural Guidelines

or Design Guidelines, 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, Architectural Guidelines or Design Guidelines, the Bylaws shall control.

10.6. **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.

10.7. **Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest. The "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

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

10.9. **Notice of Violation.** Upon fifteen (15) days prior written notice to the Owner, the Association shall have the right to Record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. The notice shall be executed by an officer or the Managing Agent of the Association and shall contain substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation had been cured or that the violation did not exist. Failure by the Association to record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

10.10. **Laws, Ordinances and Regulations.**

10.10.1. The covenants, conditions and restrictions set forth in this Declaration 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 also to comply with all applicable laws, ordinances and regulations.

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

10.11. **References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any other part of the Project 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 instrument and his heirs, executors, administrators, successors and assigns.

10.12. **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.

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

10.14. **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, Lessee or Resident, then, unless otherwise specified herein or in the resolution of the Board, such notice shall be in writing and shall be deemed to be delivered upon personal delivery or upon being deposited in a regularly maintained receptacle for the United States mail, first class postage prepaid, addressed to the Owner, Lessee or Resident at the last known address set forth in the records of the Association, or if personal delivery is not reasonably possible and there is no address for such Owner, Lessee or Resident in the records of the Association, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County. 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.

10.15. **No Absolute Liability.** No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall be responsible only for damage to the Common Area or Lots caused by the Owners' negligence or intentional acts.

10.16. **Indemnification.** The Association shall indemnify each and every officer and director of the Association, each and every member of the Architectural Committee, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Association, former members of the Architectural Committee, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceedings (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be apart by reason of being or having been an Association Official, except for his or

her own individual willful misfeasance, malfeasance, misconduct or bad faith. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Member of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses by defending himself or herself in any action or proceedings brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this **Section 10.16** or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest thereon (should the Board so elect) at a rate not to exceed twelve percent (12%) per annum from the date(s) advanced until paid.

10.17. FHA/VA Approval. So long as there is a Class B Membership in the Association, the following actions shall require the prior written approval of the FHA and/or the VA: annexation of additional properties, mortgaging of Common Areas, dedication of Common Areas, mergers and consolidations of the Association, dissolution and amendment of the Articles and any amendment to this Declaration.

10.18. References to FHA and VA. In various places throughout the Project Documents, references are made to the FHA and the VA and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Project Documents to meet certain requirements of such agencies should Declarant request approval of the Project by either or both of those agencies. However, Declarant shall have no obligation to request approval of the Project by either or both of such agencies. Unless and until the FHA or the VA have approved the Project as acceptable for insured or guaranteed loans, and at any time during which such approval, once given, has been revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust Recorded against a Lot to secure payment of an insured or guaranteed loan by either of such agencies, all references herein and elsewhere in the other Project Documents to required approvals or consents of such agencies shall be deemed null and void and of no force and effect.

10.19. Dispute Resolution.

10.19.1. Consensus for Association Action.

(a) Except as provided in this **Section 10.19**, the Association may not commence a legal proceeding or an action under this **Section 10.19** without the approval or affirmative vote of Owners representing not less than two-thirds (2/3) of the total authorized votes in each class of membership. A Member holding a proxy or otherwise representing Lots owned by Owners other than the voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of two-thirds of the total number of Lots represented by the voting

Member. This **Section 10.19** shall not apply, however, to (i) actions brought by the Association to enforce Project Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(b) Prior to the Association or any Owner commencing any proceeding to which Declarant or a Designated Builder is a party, including but not limited to an alleged defect of any improvement, Declarant or the Designated Builder as the case may be shall have the right to be heard by the Owners, or the particular Owner, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

10.19.2. Alternative Method of Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors, committee members and other Association Officials; all Owners and other persons subject to this Declaration; any Designated Builder, its officers, directors, employees and agents; and any person not otherwise subject to this Declaration who agrees to submit to this **Section 10.19** (each such entity being referred to as a "**Bound Party**") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in **Section 10.19.3** (collectively, "**Claims**") to the procedures set forth in **Section 10.19.4**.

10.19.3. Claims. Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to, Claims (a) arising out of or relating to the interpretation, application or enforcement of the Project Documents or the rights, obligations and duties of any Bound Party under the Project Documents; (b) relating to the design or construction of Improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of **Section 10.19.4**.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of **Section 10.19.4**.

(a) any suit by the Association against any Bound Party to enforce the provisions of **Article 6** (Assessments);

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association's ability to act under the provisions of **Article 4** (Architecture, Landscaping, Use and Conduct);

(c) any suit between or among Owners, which does not include Declarant, a Designated Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Project Documents;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations has expired;

With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in **Section 10.19.4.**

10.19.4. Mandatory Procedures.

(a) **Notice.** Any Bound Party having a Claim ("**Claimant**") against any other Bound Party ("**Respondent**") (the Claimant and the Respondent referred to herein being individually, as a "**Party**," or, collectively, as the "**Parties**") shall notify each Respondent in writing (the "**Notice**"), stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the proposed remedy; and

(iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) **Negotiation and Mediation.**

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("**Termination of Negotiations**"), Claimant shall have thirty (30) days to submit the Claim to mediation under the auspices of the American Arbitration Association ("**AAA**") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within ninety (90) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of Mediation**"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with **Section 10.19.4** and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in **Section 10.19.4**. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying, from all such Parties pro-rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

(c) **Binding Arbitration.**

(i) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(ii) If Claimant does not submit the Claim to arbitration within sixty (60) days after receipt of the Termination of Mediation, or does not appear for the arbitration, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iii) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(iv) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

10.19.5. Amendment of Section 10.19. Without the express prior written consent of Declarant and the Designated Builders, **Section 10.19** may not be amended for a period of twenty (20) years from the effective date of this Declaration.

LENNAR COMMUNITIES DEVELOPMENT, INC.,
a Delaware corporation

By: Alan M. Jones

Its: VICE PRES

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 22nd day of August, 2001, by Alan M. Jones, the Vice President, of **LENNAR COMMUNITIES DEVELOPMENT, INC.,** a Delaware corporation, for and on behalf of the corporation.

Deanna L. Powell
Notary Public

My Commission Expires: 10/31/04



EXHIBIT A

Legal Description

Lots 1 through 196, inclusive, of **Dysart & Cactus, Parcel 1**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 564 of Maps, page 22.

Lots 197 through 301, inclusive, of **Dysart & Cactus, Parcel 2**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 564 of Maps, page 23.

Lots 302 through 453, inclusive, of **Dysart & Cactus, Parcel 3**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 564 of Maps, page 24.

Lots 454 through 615, inclusive, of **Dysart & Cactus, Parcel 4**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 565 of Maps, page 32.

EXHIBIT B**Legal Description Additional Property**

Lots 616 through 744, inclusive, of **Dysart & Cactus Parcel 5**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 565 of Maps, page 29.

Lots 745 through 941, inclusive, of **Dysart & Cactus Parcel 6**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 565 of Maps, page 30.