

96-013883 A

When Recorded Return To

Homes by Judi, Inc.  
a Washington Corporation  
Lawyers Title  
R/T



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

96-0138830A 02/29/96 05.00

DECLARATION OF COVENANTS, CONDITIONS

RESTRICTIONS AND EASEMENTS

FOR

LINDSAY COURT

HOMEOWNERS' ASSOCIATION

NOTICE

Any covenant, condition or restriction in this document indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin is omitted as provided in 42 U.S.C. § 3604, unless and only to the extent that the restriction (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. § 3607, or (c) relates to a handicap but does not discriminate against handicapped people.

10.01.2023 A

## INDEX

<b>RECITALS</b>		2
<b>ARTICLE ONE:</b>	<b>Definitions</b>	3
Section 1 1	Additional Covenants	3
1 2	Additional Property	3
1 3	Adjustment Date	3
1 4	Agencies	3
1 5	Annual Assessments	3
1 6	Articles	3
1 7	Assessments	3
1 8	Assessment Lien	3
1 9	Assessment Period	3
1 10	Association	4
1 11	Association Rules	4
1 12	Base Index	4
1 13	Board	4
1 14	Bylaws	4
1 15	City	4
1 16	Common Area	4
1 17	Comparison Index	4
1 18	Covered Property	4
1 19	Declarant	4
1 20	Declaration	4
1 21	Delinquent Amount	4
1 22	Developer Owner	4
1 23	Dwelling Unit	4
1 24	Event of Foreclosure	5
1 25	Exempt Property	5
1 26	Funds	5
1 27	Government Property	5
1 28	Guidelines	5
1 29	Index	5
1 30	Limited Common Areas	5
1 31	Lot	5
1 32	Maintenance Assessment	6
1 33	Master Development Plan	6
1 34	Maximum Annual Assessment	6
1 35	Member	6

A

	1 36	Membership . . . . .	6
	1 37	Net Acre . . . . .	6
	1 38	Non-Developer . . . . .	6
	1 39	Non-Residential Parcel . . . . .	6
	1 40	Occupant . . . . .	6
	1 41	Owner . . . . .	6
	1 42	Parcel . . . . .	7
	1 43	Person . . . . .	7
	1 44	Record . . . . .	7
	1 45	Resident . . . . .	7
	1 46	Review Committee . . . . .	7
	1 47	Single Family . . . . .	7
	1 48	Single Family Residential Development . . . . .	7
	1 49	Special Assessments . . . . .	7
	1 50	Special Use Fees . . . . .	7
	1 51	Tenant . . . . .	7
	1 52	Tract Declaration . . . . .	7
	1 53	Visible From Neighboring Property . . . . .	8
<b>ARTICLE TWO.</b>		<b>Property and Persons Bound by Declaration</b>	<b>8</b>
Section	2 1	General Declaration . . . . .	8
	2 2	Association Bound . . . . .	8
<b>ARTICLE THREE:</b>		<b>Easements and Rights of Enjoyment in the</b>	
		<b>Common Area . . . . .</b>	<b>8</b>
Section	3 1	Easements and Rights of Enjoyment . . . . .	8
	3 2	Ingress and Egress Over Certain Common Areas . . . . .	9
	3 3	Delegation of Use . . . . .	10
	3 4	Waiver of Use . . . . .	11
	3 5	Temporary Sign Easement . . . . .	11
	3 6	Disclaimer . . . . .	11
<b>ARTICLE FOUR.</b>		<b>Architectural and Landscaping Restrictions</b>	
		<b>and Control . . . . .</b>	<b>11</b>
Section	4 1	Powers and Duties . . . . .	11
	4 2	Organization of the Review Committee . . . . .	11
	4 3	Meetings and Compensation of the Review Committee . . . . .	12
	4 4	Review Committee Guidelines . . . . .	12
	4 5	Obligation to Obtain Approval . . . . .	13
	4 6	Waiver . . . . .	13
	4 7	Liability . . . . .	13
	4 8	Appeal to Board . . . . .	14
	4 9	Fee . . . . .	14
	4 10	Inspection . . . . .	14
	4 11	Declarant's Jurisdiction Over Non-Residential Parcels . . . . .	14
	4 12	Non-Residential Exemption . . . . .	15

7-11-2023 A

<b>ARTICLE FIVE:</b>		<b>Organization of Association</b>	<b>15</b>
Section	5.1	Formation of Association . . . . .	15
	5.2	Board of Directors and Officers	15
	5.3	Association Rules	16
	5.4	Personal Liability	16
	5.5	Mergers or Consolidations	16
<b>ARTICLE SIX:</b>		<b>Memberships and Voting</b>	<b>16</b>
Section	6.1	Votes of Owners of Lots and Parcels	16
	6.2	Declarant	17
	6.3	Voting Classes . . . . .	17
	6.4	Right to Vote	18
	6.5	Members' Rights	18
	6.6	Transfer of Membership	18
<b>ARTICLE SEVEN:</b>		<b>Assessments and Creation of Lien</b>	<b>18</b>
Section	7.1	Creation of Assessment Lien, Personal Obligation of Lot or Parcel Owner	18
	7.2	Annual Assessments	19
	7.3	Rate of Assessment	19
	7.4	Maximum Annual Assessment	21
	7.5	Special Assessments	22
	7.6	Notice and Quorum for Any Action Authorized Under Section 7.4 and 7.5	22
	7.7	Maintenance Assessments	23
	7.8	Annual Assessment Period	23
	7.9	Billing and Collection Procedures	22
	7.10	Collection Costs and Interest on Delinquent Amounts	23
	7.11	Statement of Payment	24
	7.12	Exempt Property	24
	7.13	Assessment of Certain Maintenance Costs	24
	7.14	Improper Maintenance and Use of Lots	24
<b>ARTICLE EIGHT:</b>		<b>Enforcement and the Assessment Lien</b>	<b>25</b>
Section	8.1	Association Remedies to Enforce Assessments	25
	8.2	Subordination of Assessment Liens	25
	8.3	Release of Recorded Assessment Lien	26
<b>ARTICLE NINE:</b>		<b>Use of Association Funds</b>	<b>26</b>
Section	9.1	Use of Association Funds	26
	9.2	Borrowing Power . . . . .	26
	9.3	Association Rights in Spending Funds From Year to Year . . . . .	26
<b>ARTICLE TEN:</b>		<b>Rights and Powers of Association</b>	<b>26</b>
Section	10.1	Rights, Powers and Duties . . . . .	27

- - - - 3. A

	10 2	Rules and Regulations . . . .	27
	10 3	Associations' Rights of Enforcement	27
	10 4	Contracts with Others . . . .	27
	10 5	Procedure for Change of Use of Common Area	27
	10 6	Procedure for Transfer of Common Area	28
	10 7	Common Area Use Fees	28
<b>ARTICLE ELEVEN:</b>		<b>Term; Amendments; Termination</b>	<b>28</b>
Section	11 1	Term, Method of Termination	28
	11 2	Amendments	29
	11 3	Right of Amendment if Requested by Governmental Agency or Federally-Chartered Lending Institution	29
<b>ARTICLE TWELVE:</b>		<b>Annexation of Additional Property</b>	<b>29</b>
Section	12 1	Annexation of Additional Property	30
	12 2	Supplementary Declarations	30
<b>ARTICLE THIRTEEN:</b>		<b>Eminent Domain and Insurance Involving the Common Area</b>	<b>30</b>
Section	13 1	Eminent Domain	30
	13 2	Authority to Purchase Insurance	31
	13 3	Individual Responsibilities	31
	13 4	Insurance Claims	31
<b>ARTICLE FOURTEEN:</b>		<b>Miscellaneous</b>	<b>32</b>
Section	14 1	Enforcement Rights	32
	14 2	Interpretation of the Covenants	32
	14 3	Severability	32
	14 4	Rule Against Perpetuities	32
	14 5	Change of Circumstances	32
	14 6	Declarant's Disclaimer of Representations	32
	14 7	Successors and Assigns	32
	14 8	Gender and Number	33
	14 9	Captions	33
	14 10	Notices	33
	14.11	FHA/VA Approval	33
	14 12	Water Rights	33
	14 13	Party Walls	34
	14 14	Leasing	35
	14 15	Placement of Trash Receptacles	35

RECEIVED

A

DECLARATION OF COVENANTS, CONDITIONS

RESTRICTIONS AND EASEMENTS

FOR

LINDSAY COURT HOMEOWNERS' ASSOCIATION

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is executed to be effective as of the 31st day of December, 1995 by LINDSAY COURT HOMEOWNERS' ASSOCIATION

RECITALS

A Declarant is the owner of the original Covered Property and the master developer of certain additional real property in Maricopa County, Arizona located at 1425 South Lindsay Road Mesa, AZ to be collectively known and developed under the name "Lindsay Court" ("Association")

B Declarant desires to develop Association as a planned area development

C As part of the development of Association and without obligation so to do Declarant intends to dedicate portions of Association to the public and to Record various additional covenants, conditions and restrictions apart from this Declaration in the form of separate Tract Declarations which shall cover certain portions of Association to be specified in such Tract Declarations

D Declarant desires and intends that the Covered Property shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions in this Declaration, which (i) are for the purpose of protecting the value, desirability and attractiveness of the Covered Property (ii) shall run with all of the real property comprising the Covered Property, (iii) shall be binding on all parties having any right title or interest in the Covered Property, or any part thereof, and (iv) shall inure to the benefit of the aforementioned parties and their successors and assigns

E Declarant desires to form an Arizona non-profit corporation to be known as "Lindsay Court Homeowners' Association" which shall be the "master association" for the purposes of, among other things (i) holding title in fee or otherwise to the Common Areas, (ii) the efficient preservation of the values and amenities of the Covered Property and (iii) establishing, collecting, disbursing and enforcing the Assessments created herein

F Until such time as the Association is incorporated, Declarant shall and does hereby reserve to itself, its successors and assigns, the right to exercise the powers, rights and duties granted to or imposed upon the Association under this Declaration



A

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows

## ARTICLE I

### DEFINITIONS

As used in this Declaration, the following terms shall have the following meanings

1.1 "Additional Covenants" shall mean the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any Tract Declaration, contract deed, declaration or other instrument Recorded by Declarant

1.2 "Additional Property" shall mean the real property described on Exhibit "A" attached hereto and by this reference incorporated herein

1.3 "Adjustment Date" shall mean January 1 of each year during the period this Declaration remains in effect

1.4 "Agencies" shall mean the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and any other governmental agencies or financial institutions

1.5 "Annual Assessments" shall mean the annual assessments levied by the Board pursuant to Section 7.2 of this Declaration

1.6 "Articles" shall mean the Articles of Incorporation of the Association as amended or restated from time to time, on file with the Arizona Corporation Commission

1.7 "Assessments" shall mean all Annual Assessments, Special Assessments and Maintenance Assessments

1.8 "Assessment Lien" shall mean the charge and continuing servitude and lien against a Lot or Parcel for payment of Assessments and Special Use Fees as described in Section 7.1 of this Declaration

1.9 "Assessment Period" shall mean each period for which Assessments are to be levied against a Lot or Parcel pursuant to this Declaration, as more particularly described in Section 7.8 below



A

1 10 "Association" shall mean the "Lindsay Court Homeowners' Association", an Arizona non-profit corporation, its successors and assigns

1 11 "Association Rules" shall mean the reasonable rules and regulations adopted by the Association pursuant to Section 4.3 of this Declaration

1 12 "Base Index" shall mean the Index published for the month which is 12 months prior to the month for which the Comparison Index is published

1 13 "Board" shall mean the Board of Directors of the Association

1 14 "Bylaws" shall mean the Bylaws of the Association, as amended or restated from time to time

1 15 "City" shall mean the City of Mesa, Arizona

1 16 "Common Area" shall mean all real property and the improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled or operated by the Association (including, but not limited to, areas used for landscaping, flood control, drainage, bicycle or jogging paths, parks recreational areas, open space, walkways, equestrian trails and pedestrian and vehicular ingress and egress), or with respect to which the Association has administrative, maintenance or other similar responsibilities

1 17 "Comparison Index" shall mean the Index published for the month which is three months prior to an Adjustment Date

1 18 "Covered Property" shall mean the property more particularly described on Exhibit "B" attached hereto and incorporated by this reference, plus the Additional Property, if and to the extent annexed

1 19 "Declarant" shall mean, Homes by Judi, Inc., a Washington corporation, and the successors and assigns of Homes by Judi, Inc.'s rights and powers hereunder

1 20 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements, as amended or supplemented from time to time

1 21 "Delinquent Amount" shall mean any Special Use Fee or Assessment, or installment thereof, not paid when due

1 22 "Developer Owner" shall mean a Person in the business of developing, leasing and/or selling real property and who has acquired one or more Lots or Parcels in connection with, and in the course of, such business, for the purpose of developing, leasing or selling such Lots or Parcels

1 23 "Dwelling Unit" shall mean any building, or part thereof, situated upon a Lot or Parcel and intended for use and occupancy as a residence by a Single Family

A

1 24 "Event of Foreclosure" shall mean the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust or other encumbrance superior in priority to an Assessment Lien pursuant to Section 8 2.

1 25 "Exempt Property" shall mean portions of the Covered Property not subject to Assessments, which shall be the following areas now or hereafter located within Lindsay Court Homeowners' Association

1 25 1 all Government Property,

1 25 2 a Parcel designated in a Tract Declaration as having a land use classification of School Use or Church Use, unless and to the extent it is otherwise indicated in the applicable Tract Declaration

1 25 3 all Common Areas for so long as Declarant or the Association is the owner thereof, and

1 25 4 all Limited Common Areas

1 26 "Funds" shall mean all funds and property collected and received by the Association from any source

1 27 "Government Property" shall mean all land and improvements owned by or dedicated to a public or governmental agency or authority for so long as the public or governmental agency or authority is the owner or beneficiary thereof except for land or improvements, or both, owned and/or operated by a public or governmental agency or authority acting in a proprietary capacity

1 28 "Guidelines" shall mean the rules and regulations adopted amended and supplemented by the Review Committee

1 29 "Index" shall mean the Consumer Price Index All Items All Urban Consumers (1967 = 100) published by the United States Department of Labor

1 30 "Limited Common Areas" shall mean all areas of any Parcel now or hereafter designated on a Tract Declaration or a Recorded subdivision plat as an area to be used in common by the Owners or Occupants of a particular Parcel or subdivision (which areas shall also be maintained by and at the expense of the Owners or Occupants of such Parcel or subdivision, or by a homeowners' or similar subsidiary association established with respect to such Parcel or subdivision), so long as such areas are so used and maintained

1 31 "Lot" shall mean

1 31 1 an area of real property designated as a "Lot" on a Recorded subdivision plat covering any Parcel, or a portion thereof, which area of real property is

A

limited by a Tract Declaration or other Recorded instrument to Single Family residential use, or

1312 a Condominium Unit

132 "Maintenance Assessments" shall mean the assessments if any levied by the Board pursuant to Sections 7.7 and 7.13 of this Declaration

133 "Master Development Plan" shall mean the conceptual or site development plan at any time in effect for Lindsay Court Homeowners' Association and approved by the City or any other governmental jurisdiction having the authority to approve and regulate master plans for planned area developments located in Lindsay Court Homeowners' Association, as the same may be amended from time to time. A current copy of the then applicable Master Development Plan shall be on file at all times in the Association office

134 "Maximum Annual Assessment" shall mean the amount established by or in accordance with Section 7.4 of this Declaration

135 "Member" shall mean any Owner, including Declarant for so long as Declarant is a Class A or Class B Member

136 "Membership" shall mean the amalgam of rights and duties of Owners including Declarant so long as Declarant is a Class A or Class B Member with respect to the Association

137 "Net Acre" shall mean a gross acre less any dedicated rights-of-way and Common Areas

138 "Non-Developer Owner" shall mean any Owner who is not a Developer Owner

139 "Non-Residential Parcel" shall mean a Parcel designated in a Tract Declaration as having a land use classification other than Single Family Residential Development or a Parcel on which no Tract Declaration has yet been recorded but which is designated for non-residential use on the Master Development Plan

140 "Occupant" shall mean any Person, other than an Owner, occupying a Parcel or Lot, or any portion thereof or building or structure thereon, as a Resident Tenant, licensee or otherwise, other than on a merely transient basis

141 "Owner" shall mean the Record holder of legal title to the fee simple interest in any Lot or Parcel or, in the case of a Recorded "contract" (as that term is defined in A.R.S. Section 33-741(2)), the holder, of Record, of the purchaser's or vendee's interest under said contract, but excluding otherwise who hold such title merely as security. If fee simple title to a Lot or Parcel is vested of Record in a trustee pursuant to A.R.S. Section 33-801 et seq for purposes of this Declaration, legal title shall be deemed to be held by the trustor (or the trustor's successor of Record), and not by the trustee. An

A

Owner shall include any Person who holds Record title to a Lot or Parcel in joint ownership or as an undivided fee interest

1 42 "Parcel" shall mean each area of the Covered Property shown as a separate piece of real property on the Master Development Plan, provided, however, that, in the event a Parcel is split in any manner into portions under separate ownership, each portion under separate ownership shall thereafter constitute a separate Parcel

1 43 "Person" shall mean a corporation, partnership, joint venture, individual, trust or any other legal entity

1 44 "Record", "Recording" and "Recorded" shall mean placing or having placed a document of public record in the Official Records of Maricopa County, Arizona

1 45 "Resident" shall mean:

1 45 1 each Tenant who resides on the Covered Property and the members of the immediate family of each Tenant who reside on the Covered Property,

1 45 2 each Owner who resides on the Covered Property and the members of the immediate family of each Owner who reside on the Covered Property, and

1 45 3 such persons as the Board, in its absolute discretion, may authorize including, without limitation, guests of an Owner or Tenant

1 46 "Review Committee" shall mean the committee formed pursuant to Article 4 of this Declaration

1 47 "Single Family" shall mean a group of persons related by blood, marriage or legal adoption, or a group of not more than three unrelated persons maintaining a common household

1 48 "Single Family Residential Development" shall mean a development comprised of Lots used or to be used for Single Family use

1 49 "Special Assessments" shall mean the assessments, if any, levied by the Board pursuant to Section 7 5 of this Declaration

1 50 "Special Use Fees" shall mean any fees charged by the Association for use of the Common Areas pursuant to Section 3 1 of this Declaration

1 51 "Tenant" shall mean a Person residing on any part of the Covered Property under any type of rental agreement

1 52 "Tract Declaration" shall mean any declaration of covenants, conditions and restrictions or like instrument Recorded by Declarant after the Recording of this Declaration in regard to one or more Parcels, or portions thereof, or group(s) of Lots, which shall in all cases be consistent with and subordinate to this Declaration

A

1.53 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to an individual whose eyes are six feet above the ground and who is standing at natural grade ground level on property within the Covered Property

## ARTICLE 2

### PROPERTY AND PERSONS BOUND BY THIS DECLARATION

2.1 General Declaration As portions of Lindsay Court Homeowners Association are developed, Declarant, without obligation, intends to Record one or more Tract Declarations that will, among other things, designate Common Areas and Limited Common Areas, and establish such additional covenants, conditions and restrictions as may be appropriate for the respective portions of Lindsay Court Homeowners' Association. Declarant reserves the right to impose different restrictions on different portions of the Covered Property in its sole discretion. Declarant hereby declares that all of the Covered Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Tract Declarations applicable thereto, as amended or modified from time to time. Notwithstanding the preceding sentence, except as expressly provided herein, Exempt Property shall not be subject to Assessments under this Declaration, provided however, that any restrictions imposed in this Declaration upon the Owners and Occupants concerning the use and maintenance of such property shall be applicable at all time unless otherwise provided in a Tract Declaration pursuant to Section 7.12. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Covered Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Covered Property. This Declaration shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant and all Owners and Occupants of the Covered Property and their successors in interest, whether or not stated in any document or deed transferring any interest in any Parcel or Lot to or from such Owners or Occupants. Nothing in this Declaration or in any Tract Declaration shall be construed to prevent Declarant from modifying any part of the Master Development Plan, or from dedicating or conveying portions of Lindsay Court not subject to this Declaration (if any) for uses other than as a Lot, a Parcel or Common Areas.

2.2 Association Bound Upon the incorporation of the Association, this Declaration shall be binding upon and benefit the Association, and its successors and assigns.

## ARTICLE 3

### EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREA

3.1 Easements and Rights of Enjoyment Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner's

Lot or Parcel. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

3.1.1 The right of the Association to charge Special Use Fees for the use of one or more of the Common Areas. The Special Use Fees may be set by the Board from time to time, in its absolute discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those Common Areas selected by the Board to be subject to a Special Use Fee, and shall be intended to collect revenue from the actual users of such selected Common Areas so that all of the costs of operating such selected Common Areas are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other Persons utilizing such selected Common Areas.

3.1.2 The right of the Association to suspend the voting rights and the rights to use and enjoyment of the Common Areas of any Owner or Occupant, as the case may be:

(a) for any period during which an Assessment remains delinquent,

(b) for a period not to exceed 60 days for any infraction of this Declaration, a Tract Declaration, the Guidelines or any rules or regulations adopted pursuant thereto, or

(c) for successive 60-day periods if any such delinquency or infraction is not corrected during any preceding suspension period.

3.1.3 The right of the Association to limit the number of guests of an Owner or Occupant, or the number of Persons from a Non-Residential Parcel who may use the Common Areas, and

3.1.4 The right of the Association to regulate use of the Common Areas in accordance with this Declaration.

### 3.2 Ingress and Egress Over Certain Common Areas

3.2.1 The Association may own land which is intended to be used for landscaping adjacent to streets in Lindsay Court Homeowners' Association. Such landscaping area will often separate a Parcel from the street nearest to the Parcel, thereby creating a need for the Owner of the Parcel to have ingress and egress rights over the landscaping area in order to have access to the street. Therefore, Declarant hereby creates, grants and conveys to the Owner and Occupants of each Parcel, their agents, employees, guests and invitees, a permanent, non-exclusive easement (an "Access Easement") for vehicular and pedestrian ingress and egress in, upon, over and across such landscaping area (a "Landscape Tract"). At such time as the exact location of such Access Easement is determined with respect to a particular Parcel, and approved by Declarant or the Review Committee, as applicable, it shall be indicated on the Recorded subdivision plat or plats for the Parcel or on such other Recorded Instrument as is acceptable to Declarant or the Review Committee, as applicable. For itself and the Association,

A

Declarant retains and reserves the right to use each Landscape Tract for landscaping, drainage, irrigation lines, pedestrian and bicycle paths and other purposes which do not preclude the uses permitted herein

3 2 2 At its sole cost and expense, the Owner of a Parcel benefitted by such an Access Easement shall construct all necessary improvements in connection with such Access Easement, and maintain such improvements in good working order, condition and repair (including, without limitation, all cleaning, sweeping, restriping and repaving of roadways) and in compliance with all applicable governmental regulations. During the construction phase of the improvements on a Parcel, Declarant or the Association, as applicable shall grant to the Owner thereof and its agents and employees a temporary license to enter upon the applicable landscape Tract as is reasonably necessary in order to construct such improvements, and such Owner shall be fully responsible and liable for making any and all repairs and replacement of landscaping and other improvements on such Landscape Tract caused by or resulting from such activities

3 2 3 Unless Declarant or the Board authorizes the public dedication or transfer of all or any parts of such an Access Easement to a municipal corporation the Owner of the Parcel to which such Access Easement is appurtenant (or Declarant or the Board, if such Owner fails to do so), shall on an annual basis prohibit the use of such Access Easement by the general public during a twenty-four (24) hour period

3 2 4 Each Owner, its successors, assigns and grantees hereby agrees to indemnify and hold harmless Declarant, its successors and assigns, and the Association, from and against any and all damages, costs and liabilities, including without limitation attorneys' fees mechanic's and materialmen's liens, real estate taxes and assessments arising out of or in connection with the Access Easement appurtenant to such Owner's parcel

3 2 5 Maintenance of Common Area Landscaping The maintenance and care of all common area landscaping owned by the Association shall be maintained by the Association within its operating authority. Such maintenance and care shall be within acceptable standards of cleanliness and upkeep as reflected by other comparable developments of this nature within the City of Mesa, Arizona. All retention/recreation areas and common areas shown as tracts on the final plat for the development shall be included within this requirement for landscaping and maintenance

3 2 6 Maintenance of Private Drives The private drives of the Association have been dedicated as easements for ingress/egress for refuse and emergency vehicles, public utilities and facilities and drainage purposes as reflected within the dedication statement filed with the City of Mesa, Arizona. It shall be the responsibility of the Association to maintain such private drives for the purposes stated within such dedication statement

3 3 Delegation of Use Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his rights of use and enjoyment in the Common Areas to the members of his family or his Occupants, employees (of a business located on the Covered Property), customers (of a business located on the

Covered Property), or guests subject to the limitations set forth herein and in the Association Rules.

3.4 Waiver of Use No Owner may exempt himself from personal liability for Assessments, or release the Lot or Parcel owned by him from the liens or charges arising under this Declaration or any Tract Declaration or by any other Recorded instrument by waiver of his or his Occupants' employees', customers' or guests' rights of use and enjoyment of the Common Areas

3.5 Temporary Sign Easement Declarant hereby reserves to itself and its agents a temporary easement over upon and across those portions of the Common Areas adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs identifying Persons building upon or developing portions of the Covered Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Covered Property, but in no event later than fifteen years after the date this Declaration is Recorded

### 3.6 Use Easement

3.6.1 Declarant hereby creates, grants and conveys to the Owner and Occupants of all Parcels, except those set forth in paragraph 3.6.3, their agents, employees, guests and invitees, a permanent, non-exclusive easement (a "Use Easement") for ingress, egress, access maintenance or repairs to the blank wall to their Dwelling Unit. No pools, spas, structures, etc. may be placed within the Use Easement. No doors, windows or openings of any kind are permitted in Dwelling Unit wall against the Use Easement. The location of such Use Easements are indicated on the recorded subdivision plat or plats for the Parcel or on such other recorded instruments. For itself and the Association, Declarant retains and reserves the right to use each Use Easement for other purposes which are not inconsistent with the uses permitted herein.

3.6.2 Each Owner of the Parcels subject to the Use Easement, its successors, assigns and grantees, hereby agrees to indemnify and hold harmless Declarant, its successors and assigns, and the Association, from and against any and all damages, costs and liabilities, including without limitation, attorneys fees, mechanic's and materialmen's liens, real estate taxes and assessments, arising out of or in connection with the Use Easement appurtenant to such Owner's Parcel.

3.6.3 Parcels No. 7, 9, 10, 19, 23, 24, 25, 33, 34, 43, 45, 46, 48, 49, 51, 52, 54, 55, 57, 58, 60, 61, 63, 64 are not subject to the Use Easement as described in this paragraph 3.6.1. Such lots not subject to the Use Easement are also set forth on Exhibit 1 attached hereto.

3.7 Disclaimer The City of Mesa is not responsible for and will not accept maintenance of any private facilities, streets, landscaped areas, etc. within this project.



#### ARTICLE 4

##### ARCHITECTURAL AND LANDSCAPING RESTRICTIONS AND CONTROL

4.1 Powers and Duties The Review Committee shall have all of the powers, authority and duties conferred upon it by this Declaration or by the Articles, Bylaws or Association Rules, or by any Tract Declaration. Without limiting the generality of the foregoing, it shall be the duty of the Review Committee to consider and act upon all proposals or plans submitted to it pursuant to the provisions hereof, to adopt the Guidelines, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

4.2 Organization of the Review Committee The Review Committee shall be organized as follows:

4.2.1 Committee Composition The Review Committee shall consist of five regular members and two alternate members, provided, however, that the number of members may be increased at any time by a vote of the Board to no greater than thirteen regular members and two alternate members. A member shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent or employee of Declarant.

4.2.2 Alternate Members In the event of the absence or disability of a regular member or members of the Review Committee, the remaining regular members, even though less than a quorum, may designate an alternate member to act as a substitute regular member of the Review Committee so long as any of the regular members remain absent or disabled.

4.2.3 Term of Office Unless a member of the Review Committee has resigned or been removed, his or her term of office shall be for a period of one (1) year, or until the appointment of his or her respective successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members of the Review Committee who have resigned, been removed or whose terms have expired may be reappointed.

4.2.4 Appointment and Removal Except as hereinafter provided, the right to appoint and remove all regular and alternate members of the Review Committee at any time shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Review Committee by the Board except by the vote or written consent of at least 51% of the members of the Board.

A

4 2 5 Resignations Any regular or alternate member of the Review Committee may at any time resign from the Committee by giving written notice thereof to the Board, and

4 2 6 Vacancies Vacancies on the Review Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Review Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member

4 3 Meetings and Compensation of the Review Committee The Review Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the regular members (including any substitute regular member serving pursuant to Section 4 2 2) shall constitute the act of the Review Committee. The Review Committee shall keep and maintain a written record of all actions taken by it. Members of the Review Committee and consultants hired by the Review Committee, if such are authorized by the Board, may be entitled to compensation at the discretion of the Board.

4 4 Review Committee Guidelines Subject to the written approval of the contents thereof by the Board, the Review Committee shall adopt, and may from time to time amend, supplement and repeal, the Guidelines. The Guidelines shall interpret, implement and supplement this Declaration and shall set forth procedures for Review Committee review and the standards for development within the Covered Property. The Guidelines may specify different standards for development in different areas of Lindsay Court Homeowners' Association based on topography, density, housing cost levels and any other factors deemed appropriate by the Review Committee and the Board. The Guidelines may include, without limitation, provisions regarding

4 4 1 the size of Single Family Dwelling Units,

4 4 2 architectural design, with particular regard to the harmony of the design with surrounding structures and topography,

4 4 3 placement of buildings,

4 4 4 landscaping design, content and conformity with the overall character of Lindsay Court Homeowners' Association.

4 4 5 requirements concerning exterior color schemes, exterior finishes and materials, in particular the use of muted colors throughout Lindsay Court Homeowners' Association.

4 4 6 signage, and

4 4 7 perimeter and screen wall design and appearance

The Guidelines shall have the same force and effect as the Association Rules

A

4.5 Obligation to Obtain Approval

4.5.1 Except as otherwise expressly provided in this Declaration or the Guidelines or any applicable Tract Declaration, without the prior written approval by the Review Committee of plans and specifications prepared and submitted to the Review Committee in accordance with the provisions of this Declaration and the Guidelines

(a) no improvements, alterations, repairs, excavation, grading, landscaping or other work shall be done which in any way alters the exterior appearance of any property or improvements thereon from their natural or improved state existing on the date a Tract Declaration for such property is first Recorded, and

(b) no building, fence, exterior wall, pool, roadway, driveway or other structure, improvement or grading shall be commenced, erected, maintained, altered, changed or made on any Lot or Parcel at any time,

4.5.2 No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Review Committee in accordance with the Guidelines,

4.5.3 No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the Review Committee shall be permitted without approval of the change or deviation by the Review Committee

4.6 Waiver The approval by the Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval, of any similar plan, drawing, specification or matter subsequently submitted for approval

4.7 Liability None of Declarant, the Association, the Board or the Review Committee (nor any member thereof) shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of

4.7.1 the approval or disapproval of any plans, drawings or specifications, whether or not defective,

4.7.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications,

4.7.3 the development of any Lot or Parcel or

A

4.7.4 the execution and filing of any estoppel certificate or statement whether or not the facts therein are correct. Provided, however, that with respect to the liability of a member of the Review Committee, such member has acted in good faith on the basis of such information as may be possessed by him.

Without in any way limiting the generality of any of the foregoing provisions of this Section, the Review Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner (other than the Owner applying for consent or approval, whose views the Review Committee shall be required to hear) with respect to any plans, drawings, specifications or any other proposal submitted for review.

4.8 Appeal to Board Except as provided in this Section and in Section 4.11 below, any Owner or Occupant aggrieved by a decision of the Review Committee may appeal the decision to the Board in accordance with procedures to be established in the Guidelines. In the event the decision of the Review Committee is overruled by the Board on any issue or question, the prior decision of the Review Committee shall be deemed modified to the extent specified by the Board.

4.9 Fee The Board may establish a reasonable processing fee to defer the costs of the Review Committee in considering any requests for approvals submitted to the Review Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted.

4.10 Inspection Any member or authorized consultant of the Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Parcel, after reasonable notice to the Owner or Occupant of such Lot or Parcel, in order to inspect the improvements constructed or being constructed on such Lot or Parcel to ascertain that such improvements have been, or are being, built in compliance with the Guidelines, this Declaration, any applicable Tract Declaration, and any approved plans, drawings or specifications.

A

## ARTICLE 5

### ORGANIZATION OF ASSOCIATION

5.1 Formation of Association The Association shall be a non-profit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

5.2 Board of Directors 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. The initial Board and each Board thereafter for so long as there is a Class B Member of the Association shall consist of three (3) Members or other persons and Declarant shall have the right to appoint all such directors. Commencing with the first annual meeting of the Members when there is no longer a Class B Member, the Board shall consist of, and the voting Members shall elect, seven (7) directors, all of whom must be Members (or an individual designated by a corporate, partnership or other non-individual member). The foregoing reference to seven (7) directors shall be subject to increase in the number of directors as provided in the Bylaws. The term of each of the Directors shall be for one (1) year until there is no longer a Class B Member. Thereafter, the initial terms shall be four (4) Directors for a one-year term and three (3) Directors for a two-year term, thus establishing a staggered Board. In succeeding years, all Directors shall be elected for a three-year term. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Areas. The Board shall determine the compensation to be paid to the manager.

5.3 Association Rules By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Areas provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property, the Common Areas and the Limited Common Areas. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules, as adopted, or amended, shall be available for inspection at the office of the Association.

A-

5.4 Personal Liability No Board member, officer, committee member, employee or representative of the Association, or the Association, shall be personally liable to any Owner, or to any other Persons, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 Mergers or Consolidations The Association shall have the right, power and authority to participate in mergers or consolidations with any other non-profit corporation whose objectives, methods and taxable status and format of operation are similar to those of the Association (a "Merger Candidate"). Merger or consolidation of the Association with a Merger Candidate must be approved in advance by Members holding at least two-thirds (2/3) of the votes in each class of Members of the Association, whether in Person or by proxy, at a meeting duly called for such purpose. The Association's properties, rights and obligations shall be transferred to and assumed by the surviving or consolidated corporation by operation of law, or, alternatively, the properties, rights and obligations of the Merger Candidate shall be transferred by operation of law to the Association as the surviving corporation. The surviving or consolidated corporation, at a minimum, shall have the same administrative responsibilities and enforcement rights established by this Declaration in regard to the Covered Property.

## ARTICLE 6

### MEMBERSHIPS AND VOTING

6.1 Votes of Owners of Lots and Parcels Every Owner of a Lot or Parcel which is subject to assessment automatically shall be a Member of the Association, and shall remain a Member for so long as such ownership continues. Each Owner (other than Declarant) shall have the following applicable number of votes in regard to votes of the Members of the Association:

6.2 Declarant Declarant shall be a Member of the Association for so long as it holds a Class A or Class B Membership.

- 13 -

6.3 Voting Classes The Association shall have two classes of voting Members

6.3.1 Class A Class A Members shall be all Owners except Declarant (until the conversion of Declarant's Class B Membership to Class A Membership as provided below). Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 6.1. Notwithstanding the foregoing, a Class A Member shall not be entitled to vote with respect to any Lots, Parcels or Apartment Units in regard to which the Owner is paying only a reduced Assessment pursuant to Section 7.3, and

6.3.2 Class B The Class B Member shall be Declarant. The Class B Member shall be entitled to the number of votes equal to five times the number of votes which would be attributable to Lots and Parcels owned by Declarant as determined pursuant to Section 6.1 above. Subject to the provisions of Section 12.2 below, the Class B Membership automatically shall cease and be converted to a Class A Membership upon the happening of the first of the following events:

(x) the date which is 120 days after the date upon which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Member,

(y) the date which is five (5) years after the date this Declaration is Recorded, or

(z) The date on which Declarant Records a written notice electing to convert the Class B Membership to Class A Membership.

6.4 Right to Vote No change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. The vote for each Member must be cast as a single unit. Fractional votes shall not be allowed. In the event that a Lot or Parcel is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot or Parcel, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot or Parcel unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot or Parcel, all such votes shall be deemed void.

A

6.5 Members' Rights Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, a Tract Declaration and any rules and guidelines adopted pursuant thereto

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

## ARTICLE 7

### ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Assessment Lien, Personal Obligation of Lot or Parcel Owner  
Declarant for each Lot and Parcel constituting part of the Covered Property, hereby covenants and agrees, and each Owner is deemed to covenant and agree, to pay to the Association the following:

7.1.1 the Special Use Fees as provided in Section 3.1, and

7.1.2 the Assessments, as hereinafter established.

The amount and time for payment of the Special Use Fees and the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. The Special Use Fees and the Assessments, together with interest thereon and the costs and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which such Special Use Fees or Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time when such Special Use Fees or Assessments become due and payable. The Assessment Lien is imposed and created by this Declaration and the Recording of a notice specifying the amount of a delinquent Assessment Lien shall not be necessary to create or enforce the Assessment Lien. Notwithstanding any other provision of this Declaration to the contrary, as to each Lot or Parcel owned by Declarant, Declarant shall be obligated to pay only twenty-five percent (25%) of the Assessments which would otherwise be payable in respect of such Lot or Parcel until either an occupied Dwelling Unit or occupied commercial building shall be situated on such Lot or Parcel, provided that during any period when Declarant is paying reduced Assessments pursuant to this sentence, Declarant shall contribute to the Association such funds as may be required from time to time to meet any budget deficit which results from Declarant having paid such reduced Assessments.



1

7.2 Annual Assessments The Association by and through the Board shall levy the Annual Assessments for the purposes set forth hereinbelow. The Annual Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and Occupants, to enhance the quality of life within the Covered Property, to preserve the value of the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Areas, and to otherwise further the interests of the Association as the Board deems appropriate. Subject to the provisions of Section 7.4, the Board may during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with Section 7.9 below. The Annual Assessment for each Apartment Unit shall always equal one-half of the Annual Assessment for each Lot. The Annual Assessment for each Net Acre in a Non-Residential Parcel shall always equal eight (8) times the Annual Assessment for each Lot. The Annual Assessment for a Single Family Parcel which has not yet been subdivided into Lots or a Condominium Parcel as to which a condominium declaration has not yet been Recorded shall be an amount equal to the Annual Assessment for a Lot multiplied by the number of Dwelling Units permitted to be constructed on the Parcel under the applicable Tract Declaration (or, if there is no Tract Declaration under the Master Development Plan).

7.3 Rate of Assessment Subject to Section 7.4 and 7.5 hereof, the amount of the Annual Assessments and Special Assessments shall be fixed by the Board, in its sole discretion, but, subject to this Section, always in the ratios, as among Owners of Lots and Non-Residential Parcels, provided for in Section 7.2. The Annual Assessment for an Assessment Period need not equal the full amount of the Maximum Annual Assessment determined for that Assessment Period pursuant to Section 7.4. In no event, however, shall the Annual Assessment for an Assessment Period be greater than the Maximum Annual Assessment determined for that Assessment Period pursuant to Section 7.4.

7.3.1 The Developer Owner of a Lot shall pay only 25% of the Annual Assessments and Special Assessments for such Lot until the earliest of

(a) the initial conveyance of a completed Dwelling Unit thereon to a different owner,

(b) 12 months from the later of (i) the date on which the Lot was included within the Covered Property or (ii) the date of Declarant's conveyance of the Lot to a Developer Owner.

If the Developer Owner ceases to be entitled to the 25% rate because of 7.3.1(c) above, then thereafter the Developer Owner shall pay only 40% of the Annual Assessments and Special Assessments for such Lot until the earliest of

(c) the initial conveyance of a completed Dwelling Unit thereon to a different Owner,

(d) 12 months after the date the 25% rate terminated.

A

7.3.2 A non-Developer Owner shall not be entitled to the reduced assessment rates provided in Sections 7.3.1 and 7.3.2 and a Developer Owner shall be entitled to such reduced rates only if he is a Developer Owner with respect to the specific Lot or Parcel in question. If a Developer Owner ceases to qualify for the reduced payments provided for hereinabove during an Assessment Period, the Developer Owner shall immediately notify the Board, in writing, of the change in status. The failure of a Developer Owner to notify the Board of the change in status shall not prevent or preclude the reinstatement of the full payment obligation pursuant hereto from taking effect as of the applicable date as provided herein. The Association may from time to time request that any Developer Owner of property being assessed at a reduced rate furnish to the Association evidence that such Developer Owner continues to be entitled to a reduced assessment rate under this Section 7.3, and if such Developer Owner fails to produce such evidence within 30 days following the date of the Association's request, or if such evidence as is furnished is unsatisfactory, in the Board's reasonable discretion to demonstrate such Developer Owner's continued entitlement to the reduced assessment rate, the Board may terminate such reduced assessment rate as of the date reasonably deemed appropriate by the Board.

7.4 Maximum Annual Assessment The Maximum Annual Assessment shall be determined as follows:

7.4.1 For the fiscal year ending December 31, 1995, the Maximum Annual Assessment shall be:

(a) for each Lot, \$ 1,440.00,

7.4.2 Thereafter, except as provided in Section 7.4.3 below, the Maximum Annual Assessment for each Lot and each Non-Residential Parcel for any fiscal year of the Association shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year, increased by the greater of:

(a) Fifteen percent (15%) of the Maximum Annual Assessment for the Lot or Non-Residential Parcel in effect during the immediately preceding fiscal year, or

A

(b) an amount equal to the amount of increase in the Index during the prior year, if any, calculated as follows: If the Comparison Index has increased over the Base Index, the Maximum Annual Assessment for the immediately succeeding Assessment Period shall be calculated by multiplying the then effective Maximum Annual Assessment by a fraction, the numerator of which is the Comparison Index and the denominator of which is the Base Index. In no case, however, shall the Maximum Annual Assessment calculated pursuant to the preceding formula ever be less than the Maximum Annual Assessment in effect prior to the Adjustment Date. If the Index is eliminated or its method of determination is changed, the foregoing formula shall be altered, if possible, so as to achieve substantially the same effect as the foregoing formula. If this is not possible, a new formula shall be adopted by the Board. The Annual Assessment for an Assessment Period need not be equal to the full amount of the Maximum Annual Assessment determined for that Assessment Period pursuant to Section 7.4. In no event, however, shall the Annual Assessment for an Assessment Period be greater than the Maximum Annual Assessment determined for that Assessment Period pursuant to this Section 7.4.

7.4.3 The Maximum Annual Assessment for an Assessment Period may be increased above the Maximum Annual Assessment for such Assessment Period otherwise determined under Section 7.4.2 above by an affirmative vote of Members holding at least two-thirds (2/3) of the votes in each class of Members represented in person or by proxy at a meeting of the Members of the Association duly called for such purpose, except that if the utility charges or insurance premiums paid by the Association in the 12-month period prior to the subject Assessment Period are in excess of those paid during the 12-month period immediately preceding such prior 12-month period, or such utility charges or insurance premiums increase unexpectedly during the course of the subject Assessment Period, the Board may increase the Maximum Annual Assessment otherwise determined under Section 7.4.2 above for the subject Assessment Period by the pro rata share for each Lot or Parcel of the additional utility or insurance costs without the Membership vote described in this Section 7.4.3 (with such pro rata share to be in the same relative proportions, as among Lots and Parcels as the initial Maximum Annual Assessments set forth in Section 7.4.1 above).

7.5 Special Assessments The Association may levy a Special Assessment but only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owned by the Association or for defraying other extraordinary expenses, provided, however, that such Special Assessment shall have the prior assent of two-thirds (2/3) of the votes of each class of Members voting in Person or by proxy at a meeting of the Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners, except as authorized under Section 7.3 hereof.

7.6 Notice and Quorum for Any Action Authorized Under Section 7.4 and 7.5 Written notice of any meeting of the Members of the Association called for the purpose of conducting a vote required under Sections 7.4 or 7.5 shall be sent to all Owners not less than 30 days nor more than 60 days in advance of such meeting. At such meeting, the presence of Members or of proxies entitled to cast 60% of all the votes (exclusive of suspended voting rights) of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting shall be called for such purpose, subject

A

to the foregoing notice requirements, and the required quorum at the subsequent meeting shall be one-half of the quorum required at the initially scheduled meeting. The subsequent meeting shall be held within 60 days following the date of the initially scheduled meeting.

7.7 Maintenance Assessments In addition to any Annual Assessment or Special Assessment and the Assessments arising under Section 7.13, the Board shall have the authority to levy and collect Maintenance Assessments for costs and expenses attributable to the special characteristics or needs of a particular Lot or Parcel, or if the Owner of a Lot or Parcel contracts with the Association for the Association to provide particular maintenance services in regard to such Owner's Lot or Parcel.

7.8 Annual Assessment Period Except as otherwise provided hereinbelow, the Assessment Period shall be the fiscal year commencing on June 1 of each year and terminating on May 31 next following. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence on the date of Recording of this Declaration and terminate on May 31 following the date of Recording. The Assessments provided for hereinabove shall be prorated for the initial Assessment Period.

7.9 Billing and Collection Procedures The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments and Special Use Fees, which procedures may include delegating to one or more subsidiary associations the authority and obligation of billing and collecting some or all of the Assessments and Special Use Fees. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. No Recorded Assessment Lien shall be foreclosed or otherwise enforced until the Owner has been given not less than 30 days written notice thereof prior to the commencement of such foreclosure or enforcement. The notice shall be addressed to the Owner at the address of the Owner on the records of the Association. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Parcel changes during an Assessment Period. Any successor Owner shall be given credit for any unrefunded prepayments made by a prior Owner. In case the Owner of a Lot or Parcel having a right to pay a reduced payment amount as provided herein fails to notify the board at such time as the payment amount should be increased, such Owner shall nonetheless be liable for the full amount of the Assessment and such Owner's failure to notify the Board shall not relieve such Owner of the liability for such full Assessment. No owner shall be entitled to claim any offsets against Assessments for any reason, including, without limitation, a claim that the Association is not properly exercising its duties or responsibilities under this Declaration.

A

7 10 Collection Costs and Interest on Delinquent Amounts Any Delinquent Amount shall have added thereto a late charge of 15% if such Delinquent Amount is not paid within 15 days after its due date. In addition, the Delinquent Amount shall bear interest from its due date until paid at a rate equal to the greater of (a) 12% per annum or (b) the then prevailing interest rate on loans insured by FHA or VA. The Owner shall be liable for all costs, including, but not limited to, attorneys' fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount. The Board may also Record an Assessment Lien against the applicable Lot or Parcel and may establish a fixed fee to be reimbursed to the Association for the Association's cost in Recording such Assessment Lien, processing the delinquency, and Recording a release of Lien. The foregoing fee shall be treated as a collection cost of the Association secured by the Recorded Assessment Lien.

7 11 Statement of Payment Upon receipt of a written request therefore from any Owner or Resident, the Board, within a reasonable time thereafter, shall issue to the requesting party a written statement stating that as of the date of that statement

7 11 1 all Assessments and Special use Fees (including collection fees, if any, in regard thereto) have been paid with respect to such Owner's or Resident's Lot or Parcel, or

7 11 2 if such have not been paid the amount(s) then due and payable

The Association may make a reasonable charge for the issuance of such statement. Any such statement shall be conclusive and binding with respect to any matter set forth therein.

7 12 Exempt Property Exempt Property shall be exempt from Assessments (except as may be provided in Sections 7 13 and 7 14) and the Assessment Lien, and shall have no voting rights in the Association, provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Assessments (prorated as of the date it ceased to be Exempt Property) and the Assessment Lien, and shall have voting rights in the Association as otherwise determined in this Declaration. Notwithstanding any provision to the contrary in this Declaration, a Tract Declaration applicable to Government Property may provide for such Government Property to be totally exempt from all of the provisions of this Declaration for so long as such property remains Government Property.

A

7.13 Assessment of Certain Maintenance Costs In the event the need for maintenance or repair of areas maintained by the Association is caused through the willful or negligent act or omission of any Owner (or of any other Persons for whom such Owner is legally responsible under applicable state) the cost of such maintenance or repair shall be added to and become a part of the Assessments to which such Owner and such Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien, and by a Recorded Assessment Lien if deemed appropriate by the Board.

7.14 Improper Maintenance and Use of Lots and Parcels In the event any portion of any Lot or Parcel is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot, Parcel or other area, or is used in a manner which violates this Declaration or any applicable Tract Declaration, or in the event the Owner of any Lot or Parcel fails to perform such Owner's obligations under this Declaration, any applicable Tract Declaration, the Association Rules, or the Guidelines, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot or Parcel that unless specified corrective action is taken within a specified time period, the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance, including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association is hereby authorized and empowered, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys' fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien, and by a Recorded Assessment Lien if deemed appropriate by the Board.

## ARTICLE 8

### ENFORCEMENT AND THE ASSESSMENT LIEN

8.1 Association Remedies to Enforce Assessments If any Owner fails to pay any Assessments or Special use Fees when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien and Recorded Assessment Lien by taking either or both of the following actions, concurrently or separately (and by exercising either remedy the Association does not prejudice or waive its right to exercise the other remedy).

8.1.1 Bring an action at law against the Owner to recover judgment against the Owner who is personally liable for the Assessments or Special Use Fees, and

A

8.1.2 Foreclose the Recorded Assessment Lien against the appropriate Lot or Parcel in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency) and, at the Association's option, the Association may bid for and purchase the Lot or Parcel at any foreclosure sale. For purposes of the Article, the Assessment Lien shall extend to (and phrases such as "appropriate Lot or Parcel" or "the Lot or Parcel" shall be deemed to include) all Non-Residential Parcels owned by the delinquent Owner and, in the case of a delinquent Developer Owner, to all Lots and Parcels owned by such Developer Owner, regardless of whether the Delinquent Amounts owed by the Owner in question relate to all or less than all of the Lots or Parcels owned by such Owner.

8.2 Subordination of Assessment Lien The Assessment Lien shall be superior to all charges, liens or encumbrances which hereafter are or may be imposed on any lot or Parcel except:

8.2.1 the lien of any first mortgage or deed of trust encumbering the Lots and Parcels which was Recorded prior to this Declaration,

8.2.2 the lien for taxes or other governmental assessments which is deemed superior hereto by applicable law and

8.2.3 the lien of any first mortgage or deed of trust that (a) is guaranteed, insured, or owned in whole or in part by an Agency, or (b) became a first mortgage or deed of trust prior to the Recording of a Recorded Assessment Lien (for purposes of this Section, a mortgage or deed of trust not in first priority shall become a first mortgage or deed of trust upon payment in full and release of record of all prior mortgages and deeds of trust).

Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien, provided, however, the sale or transfer of any Lot or Parcel pursuant to any first mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien only as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Parcel, or the Owner thereof, for liability from any Assessment thereon becoming due nor from the Assessment Lien arising in regard thereto. In addition, no Event of Foreclosure shall impair the Assessment Lien or a Recorded Assessment Lien, except that a Person obtaining an interest in a Lot or Parcel through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest. Notwithstanding the foregoing, a Tract Declaration on Parcels on which no Agencies will be requested to provide loans or loan guarantees may exempt any Lot or Parcel from the effect of subsection 8.2.3(b) and preceding three sentences.

A

8.3 Release of Recorded Assessment Lien Upon the complete curing of any default for which a Recorded Assessment Lien was Recorded by the Association, the Association shall Record an appropriate release of the Recorded Assessment Lien

## ARTICLE 9

### USE OF ASSOCIATION FUNDS

9.1 Use of Association Funds In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all Funds for the common good and benefit of the Covered Property, the Owners and the Occupants. The Funds may be used, among other things, to insure, acquire, construct, alter, maintain, provide and operate, in any manner whatsoever, any and all land, properties, improvements, services, projects, programs, studies and systems, within the Covered Property and the Common Areas, which may be necessary, desirable or beneficial to the general common interests of the Owners and the Occupants

9.2 Borrowing Power The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate

9.3 Association's Rights in Spending Funds from Year to Year The Association shall not be obligated to spend in any year all Funds received by it in such year, and the Board 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

## ARTICLE 10

### RIGHTS AND POWERS OF ASSOCIATION

10.1 Rights, Powers and Duties of the Association In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Tract Declarations, Articles and Bylaws, together with such rights and powers and duties as may be reasonable necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours



A

10.2 Rules and Regulations In addition to the right to adopt, amend and repeal rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, the Articles and the Bylaws. Upon adoption, the Association Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

10.3 Association's Rights of Enforcement The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration. Further, any Owner (including Declarant, so long as Declarant is an Owner) shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

10.4 Contracts with Others Subject to the restrictions and limitations contained herein, the Articles, the Bylaws and the laws of the State of Arizona, the Association may enter into contracts with others including Declarant and Declarant's affiliated companies and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant's affiliated, provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any management contract entered into by the Association must be terminable, without penalty, by the Association for cause at any time and without cause upon reasonable notice. Any contract between the Association and Declarant or Declarant's affiliates must be terminable by the Association without penalty upon no more than 30 days' notice.

10.5 Procedure for Change of Use of Common Areas Upon adoption of a resolution by the Board stating that the then current use of a specified part of the Common Areas is no longer in the best interests of the Owners and Occupants, and the approval of such resolution by not less than two-thirds (2/3) of the votes of each class of Members voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith to take whatever actions are required to accommodate the new use), provided such new use (a) also shall be for the common benefit of the Owners and Occupants, and (b) shall be consistent with any applicable Tract Declaration, Recorded restrictions or zoning regulations.

A

10.6 Procedure for Transfers of Common Areas The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public authority or utility provided that

10.6.1 such a transfer or dedication does not have a substantial, adverse effect on the enjoyment of the Common Areas by the Owners and Occupants or on the easements and licenses with respect to the Common Areas granted by this Declaration to the Owners and Occupants,

10.6.2 it is required by a Recorded subdivision plat, a zoning stipulation or an agreement with the City, and

10.6.3 so long as the Class B Membership shall not have terminated, the transfer or dedication has been approved by VA or FHA, as applicable, to the extent VA or FHA may be involved in the Lindsay Court Homeowners' Association project

Except as authorized above, the Association shall not make any such dedication or transfer or change the size, shape or location of the Common Areas, exchange the Common Areas for other property or interests which become Common Areas or abandon or otherwise transfer Common Areas (to a nonpublic authority) except upon (a) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Area is no longer in the best interests of the Owners and Occupants, and that the change desired shall be for their benefit and shall not substantially, adversely affect them, (b) the approval of such resolution by not less than two-thirds (2/3) of the votes of each class of Members voting in Person or by proxy at a meeting called for such purpose, and (c) approval of the proposed action by VA or FHA, as applicable, to the extent this Declaration has been approved by VA or FHA

10.7 Common Area Use Fees The Association shall have the right to grant non-Members the right to use and enjoy one or more of the Common Areas in exchange for such consideration as the Board may deem appropriate

A

## ARTICLE 11

TERM, AMENDMENTS, TERMINATION

11.1 Term, Method of Termination This Declaration shall be effective upon its Recordation and, as amended from time to time, shall continue in full force and effect for a term of 20 years from the date of its Recordation. Thereafter, this Declaration (as amended from time to time) shall be automatically extended for successive periods of 10 years each, unless there is an affirmative vote to terminate this Declaration by the then Owners casting 90% of the total votes then entitled to be cast at an election held for such purpose within 6 months prior to the expiration of the initial term hereof or any 10-year extension. In addition, this Declaration may be terminated at any time if 90% of the votes then entitled to be cast by each class of Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained the Board shall Record a certificate of termination, duly executed by the president or vice president of the Association and attested to by the secretary of the Association. Upon the Recording of the certificate of termination, this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona.

11.2 Amendments Until the first sale of a Lot within the Covered Property to a Non-Developer Owner for use and occupancy as a Dwelling Unit, this Declaration may be amended by Recorded instrument duly executed by Declarant, without the necessity of calling a meeting of Owners or obtaining the consent of Owners. Thereafter, this Declaration may be amended (either during the initial 20-year term or during any extension thereof pursuant to Section 11.1 above) by Recording a certificate of amendment, duly executed by the president or vice president of the Association, which certificate of amendment shall set forth in full the text of the amendment adopted, and, except as provided in Section 11.3, shall certify that at an election duly called the Owners casting 75% of the votes then entitled to be cast at the election voted affirmatively for the adoption of the amendment. A Tract Declaration may be amended at any time, by a Recorded instrument (or by counterpart instruments) executed by Declarant and the Owners (other than Declarant, if Declarant is an Owner of any Lot(s) or Parcel(s) subject to the Tract Declaration) holding 75% of the Class A votes attributable to all Lots and Parcels subject to the Tract Declaration.

11.3 Right of Amendment if Requested by Governmental Agency or Federally-Chartered Lending Institution Anything in the Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration or a Tract Declaration as may be requested or required by the FHA, VA or any other Agency with whom Declarant elects to do business as a condition precedent to such Agency's approval of this Declaration or an applicable Tract Declaration, or by any federally-chartered lending institution as a condition precedent to lending funds upon the security of any Lot or Parcel or purchasing loans secured thereby. Any such amendment shall be effected by Declarant Recording a certificate of amendment duly executed and acknowledged by Declarant specifying the Agency or the lending institution requesting the amendment and setting forth the requested or required amendment(s). Recordation of such a certificate shall be deemed conclusive proof of the Agency's or institution's request or requirement and such certificate, when Recorded, shall be binding upon all of the Covered Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of planning and development of the Covered Property. If any amendment requested or required pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions which shall be binding upon the Covered Property and Owners without a vote of the Owners. Except as provided in this Section, Declarant shall not have any right to amend this Declaration or a Tract Declaration otherwise than in accordance with and pursuant to the provisions of Section 11.2.

## ARTICLE 12

### ANNEXATION OF ADDITIONAL PROPERTY

12.1 Annexation of Additional Property Declarant may, in its sole discretion at any time and from time to time up to the date which is ten (10) years after the date this Declaration is Recorded, annex to the Covered Property the Additional Property or any portion or portions thereof, provided that the FHA or VA, as the case may be and to the extent they or each of them may be involved with the Covered Property, has determined that the annexation is in accordance with the Master Development Plan (and subject to the written consent of the Owner of the portion or portions to be annexed, if other than Declarant). To effect such annexation, a supplementary declaration, as described in Section 12.2, covering the Additional Property (or the applicable portion or portions thereof) shall be executed and Recorded by Declarant. The Recordation of such supplementary declaration shall constitute and effectuate the annexation of the Additional Property (or the applicable portion or portions thereof) described therein, making such Additional Property (or the applicable portion or portions thereof) and the Owners and Occupant thereof subject to this Declaration and the jurisdiction of the Association. Any

A

annexation to the Covered Property of property not included within the Additional Property shall require an amendment to this Declaration pursuant to Section 11.2 above, provided that such amendment must be approved by (a) Owners holding two-thirds (2/3) of all Class A votes, and (b) Declarant, so long as the Class B Membership is in existence.

12.2 Supplementary Declarations The annexations authorized under Section 12.1 shall be made by Recording a supplementary declaration. A supplementary declaration may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Additional Property (or the applicable portion or portions thereof). No such supplementary declaration shall revoke or conflict with this Declaration or any Recorded Tract Declaration. If so annexed, Declarant shall be entitled to additional votes in accordance with Section 6.3, and the Additional Property (or applicable portion(s) thereof) shall thereupon become fully a part of the Covered Property subject to all provisions of this Declaration (including, but not limited to, provisions hereof regarding Assessments). If the Class B Membership shall have terminated prior to any such annexation by reason of the occurrence of the event described in Subsection 6.3.2(x) above, and if the votes to which Declarant would be entitled with respect to such annexed property pursuant to the preceding sentence, together with the other Class B votes to which Declarant would be entitled under Section 6.3.2 absent termination of the Class B votes, exceed the total number of Class A votes then outstanding, Declarant's Class B Membership shall be reinstated until the earlier of the events described in Subsections 6.3.2(x) and 6.3.2(y).

### ARTICLE 13

#### EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA

13.1 Eminent Domain The term "Taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such Persons as the Board may delegate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association. In the event of a total Taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners (taking into account a reduction in the distribution to those Owners paying reduced amounts for Assessments pursuant thereto), and all holders of liens and encumbrances, as their interest may appear of Record.

A

13.2 Authority to Purchase Insurance The Association shall purchase and maintain such property damage and liability insurance upon the Common Areas and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions. Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers' liability insurance covering all officers and directors of the Association, as well as all regular and alternate members of the Review Committee, in amounts and on terms adequate to permit the Association to meet its obligations to indemnify such persons pursuant to the Articles and Bylaws.

13.3 Individual Responsibilities It shall be the responsibility of each Owner or Occupant to provide insurance for himself on his real or personal property interests on or within the Covered Property, including, but not limited to, his additions and improvements thereto, furnishings and personal property therein, his personal liability to the extent not covered by the property and public liability insurance, if any, obtained by the Association. Each Owner and Occupant shall also provide such other insurance which is not carried by the Association as such Person desires. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

13.4 Insurance Claims The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonable necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein and trustee shall have authority, to negotiate losses under any policy purchased by the Association.

71

## ARTICLE 14

### MISCELLANEOUS

14.1 Enforcement Rights Each Owner (including Declarant, so long as Declarant is an Owner) shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration

14.2 Interpretation of the Covenants Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration and of any Tract 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 or of any Tract Declaration shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration or of the applicable Tract Declaration

14.3 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

14.4 Rule Against Perpetuities If any of the interests, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities or any related rule, then such provision shall continue until 21 years after the death of the last survivor of the now living descendants of the President of the United States in office on the date this Declaration is Recorded

14.5 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

14.6 Declarant's Disclaimer of Representations Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Lindsay Court Homeowners' Association can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Parcel agrees to hold Declarant harmless therefrom

A

14.7 Successors and Assigns Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder. Any such assignment shall be evidenced by a Recorded instrument executed by Declarant and its successor or assignee.

14.8 Gender and Number Whatever 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.

14.9 Captions 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.

14.10 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 any resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified herein or in the resolution of the Boards, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City of Mesa, Arizona. 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.

14.11 FHA/VA Approval If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA in regard to the Covered Property, then for so long as there is a Class B Member of the Association, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: dedication or other changes in configuration or use of Common Areas (except where such dedication or change is required as of the date hereof by the County), and amendments of this Declaration.

14.12 Water Rights The Association shall have the right to receive all water which any Lot or Parcel, or the Owner thereof, is entitled to receive from any irrigation district serving such Lot or Parcel. The Association shall use such water for maintaining the Common Areas and for other appropriate uses for the benefit of the Owners and Occupants generally. Each owner shall execute any assignments or instructions as the Association or any irrigation district may request in order to maintain, increase or obtain allocations of water to which such Owner's Lot or Parcel is entitled and to enable the Association to receive all water which is at any time allocated to the Lot or Parcel. The right to receive such water from an irrigation district is and shall remain appurtenant to the Lot or Parcel. Declarant, for each Lot or Parcel and any portion thereof, covenants and agrees and each owner by acceptance of a deed therefor is deemed to covenant and agree that the irrigation district shall have no obligation or duty to construct or in any way provide ditches for water delivery, regardless of the then current use of the Lot or Parcel. The Association shall pay any and all assessments and charges made by the irrigation



A

district for the delivery and use of water to which the Lot or Parcel is entitled when used by the Association for maintaining the Common Areas and for other appropriate uses for the benefit of the Owners and Occupants generally. Notwithstanding the foregoing, any Owner has the right to require direct delivery of water to which his, her or its land is entitled from any such irrigation district. In the event an Owner requires direct delivery, such Owner, and not the Association, shall bear any and all expenses associated with direct delivery, including, but not limited to, the construction and installation of a delivery system and all future assessments and charges for the delivery and use by such Owner of water to which his, her or its land is entitled.

14 13 Party Walls The rights and duties of Owners of contiguous Lots or Parcels which have shared walls or fences ("Party Walls") shall be as follows:

14 13 1 each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof.

14 13 2 if a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests or family, the Owner or Occupant, as the case may be, shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense (provided that this shall not bar such owner from recovering, or seeking to recover, all or any part of such expense from any Occupant, agent, guest or other person who otherwise may be liable to such owner). Any dispute over an Owner's liability shall be resolved as provided in Subsection 14 13 4 below.

14 13 3 in the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, guest or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owner whose Lots or Parcels adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots or Parcels on the damaged or destroyed Party Wall.

14 13 4 in the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Review Committee, whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final. Notwithstanding any such decision, no Owner is prohibited from seeking indemnity from the party causing the damage.

14.13.5 A

14.13.5 notwithstanding the foregoing and unless otherwise indicated in a Tract Declaration, or unless otherwise expressly agreed in writing by the Association, in the case of walls or fences (i) between Common Areas and Lots or Parcels, or (ii) situated on Common Areas within or adjacent to a Lot or Parcel, the Owners and Occupants of such Lots or Parcels shall be responsible, at their expense, for all maintenance, repair painting and replacement thereof. Further, unless otherwise approved in writing by the Board, any wall situated generally between a Lot or Parcel, and Common Areas shall be situated entirely upon such Lot or Parcel (and not upon the Common Areas) but shall be situated immediately adjacent to such Lot's or Parcel's boundary line with the Common Areas.

14.14 Leasing. A Dwelling Unit may be leased and subleased, but only if said Dwelling Unit is to be occupied as a whole by the lessee (or sublease) and his family, their servants and guests. Except for a lender in possession after a foreclosure proceeding, trustee's sale, or any procedure in lieu thereof, no Dwelling Unit may be leased to transient tenants (i.e., persons leasing or subleasing a Dwelling Unit for an original term contemplated to be less than one (1) month). In no event shall a lease or sublease of a Dwelling Unit exempt or relieve the Owner from his obligations as such, and in all cases any lessee or occupant under such a lease or sublease shall be deemed fully bound by this Declaration and the Association's Articles, Bylaws, and rules and regulations, and the lease or sublease shall specifically so state and shall provide that any failure to abide by the terms of such documents shall be a default under the lease or sublease. Any lessor who leases or subleases a Dwelling Unit shall deliver to his or her tenant a copy of all such documents and shall be jointly and severally bound with such tenant for any breach by tenant of the same. All leases and subleases shall be in writing and a copy delivered to the Association. No lease or sublease shall be for less than an entire Dwelling Unit. The owner of any Dwelling Unit shall utilize the Manager of the association for the leasing of its unit(s). Each owner that desires to lease its unit must execute a separate agreement with Manager for the providing of leasing services regardless of what tenant or relationship with the unit owner may exist.

The purpose of this requirement is to maintain the consistency and integrity of the occupants within the Lindsay Court Homeowners' Association project. All fees incidental to such leasing shall be paid by Unit Owner to Manager.

14.15 Placement of Trash Receptacles. All trash receptacles, related equipment or trash itself, shall be stored in a manner so that they cannot be viewed from any common area or the front of any dwelling unit. Such items shall be moved to the street in front of the dwelling units to which they belong no earlier than 10:00 p.m. on the night previous to their scheduled pickup and removed to their storage area not later than 6:00 p.m. on the day of pickup. The only exceptions thereto shall be in the case of lots 1 through 5 whose owners shall be required to place such items for pickup on the north side of the street directly across from their respective lot and lots 6 through 10 whose owners shall be required to place such items for pickup on the west side of the street directly across from their respective lot.

96-139836

A

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed

HOMES BY JUDI, INC.,  
a Washington Corporation

Judith D. Roland

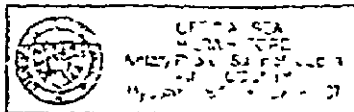
By Judith D. Roland

Its President

STATE OF ARIZONA       )  
                                  ) ss  
County of Maricopa     )

On this, the 22 day of Feb, 1996, before me, the undersigned Notary Public, Personally appeared Judith D. Roland, President of HOMES BY JUDI, INC., a Washington Corporation, and acknowledged to me that they, being authorized to do so, executed the foregoing instrument for the purposed therein contained

IN WITNESS WHEREOF, I have hereunto set my hand and official seal



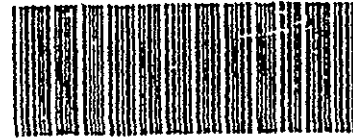
Richard B. Lord  
Notary Public

960132836

*A*

LEGAL DESCRIPTION

Lots 1 thru 64, LINDSAY COURT, recorded in Book 410 of Maps, Page  
42 records Maricopa County, Arizona



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

96-0105530 02/16/96 11:30

When recorded, mail to

City of Mesa  
Real Estate Services  
P.O. Box 1466  
Mesa, Arizona 85211-1466

# COVENANT RUNNING WITH THE LAND

## KNOW ALL MEN BY THESE PRESENTS THAT

WHEREAS, a Subdivision known as Lindsay Court, located within a portion of the northwest quarter of Section 32, Township 1 North, Range 6 East, of The Gila and Salt River Base and Meridian, Maricopa County, Arizona as recorded in Book 410 of Maps, Page 42, Records of Maricopa County, Arizona has been approved by the City Council of the City of Mesa subject to certain requirements and restrictions with respect to drainage, and,

WHEREAS, there is now adequate method of draining the property within the subdivision, and certain parcels will be required to receive rainwater from the subdivision must drain onto Tract C, Tract E, Tract F and Tract G

NOW THEREFORE, in consideration of the approval of the foregoing subdivision plat by the City Council of the City of Mesa, the undersigned make and enter into this Covenant Running With The Land in favor of the City of Mesa and agree as follows:

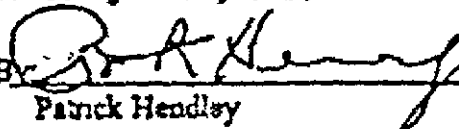
- 1 That all area defined as retention basins on the approved grading plan for shall remain at the grades indicate on the approved grading plan on file with the City of Mesa and that nothing will be constructed to hinder the flow of storm water from public streets to these retention basins. The improvements within the retention areas including, but not limited to, landscaping, irrigation system, storm drains, and bleed-off, will be maintained by the homeowners association.
- 2 That the agreements contained herein shall be a covenant running with the Subdivision and upon recording shall be binding upon any subsequent purchaser or occupier of any part of the subdivision.
- 3 That this Covenant shall be enforced by the City of Mesa, by proceedings at law or in equity against the person or persons violating or attempting or threatening to violate any of these Covenants, to prevent him or them from doing so and to recover damages for such violations. In such proceeding, the City of Mesa shall have the right to recover, in addition to any other damages, a reasonable sum as and for attorney's fees and court costs.

Any covenant, condition or restriction in this document indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin is omitted as provided in 42 U.S.C. § 3604, unless and only to the extent that the restriction (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. § 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

960105530

IN WITNESS WHEREOF, this Covenant Running With The Land has been executed this 13th day of January, 1996.

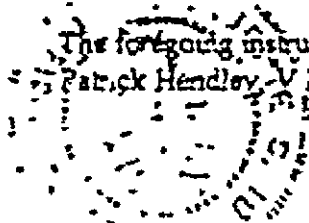
Homes By Judi, Inc.

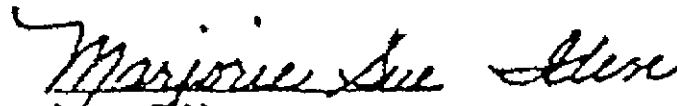
By   
Patrick Hendley

Its Vice President

State of Arizona           )  
                                  ) ss  
County of Maricopa       )

The foregoing instrument was acknowledged before me this 13th day of January, 1996 by Patrick Hendley, V.P., Homes By Judi, Inc., a Washington State corporation.



  
Notary Public

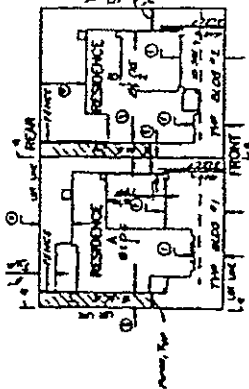
My Commission Expires

My Commission Expires Aug 28, 1999

# LINDSAY COURT

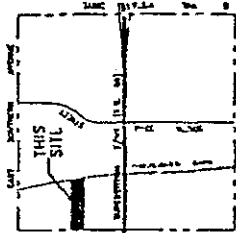
A PORTION OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 5 EAST,  
OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

MIN 410 PM 42  
96-0105529  
MAY 1996



## LEGEND:

- 1. 100' FRONT PORCH
- 2. 100' REAR PORCH
- 3. 100' GARAGE
- 4. 100' DRIVE
- 5. 100' FRONT PORCH
- 6. 100' REAR PORCH
- 7. 100' GARAGE
- 8. 100' DRIVE



## VICINITY MAP

## TYPICAL LOT LAYOUT.

## PROPERTY DESCRIPTION:

1. CONTAINS THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 5 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA. (APPROXIMATELY 100' X 100').

2. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.

3. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.

4. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.

5. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.

## DEVELOPER:

HOMES by JUDI, Inc.  
14015 South Litchfield Drive  
Scottsdale, Arizona 85253  
Telephone (602) 343-1134

## LEGEND & NOTES:

1. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.
2. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.
3. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.
4. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.
5. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.

## ACKNOWLEDGEMENT:

1. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

2. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

3. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

4. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

5. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

## BOARD APPROVAL:

1. THE BOARD OF DIRECTORS OF JUDI, INC. HAS REVIEWED THE INFORMATION CONTAINED IN THIS PLAN AND HAS APPROVED THE SAME.
2. THE BOARD OF DIRECTORS OF JUDI, INC. HAS REVIEWED THE INFORMATION CONTAINED IN THIS PLAN AND HAS APPROVED THE SAME.
3. THE BOARD OF DIRECTORS OF JUDI, INC. HAS REVIEWED THE INFORMATION CONTAINED IN THIS PLAN AND HAS APPROVED THE SAME.
4. THE BOARD OF DIRECTORS OF JUDI, INC. HAS REVIEWED THE INFORMATION CONTAINED IN THIS PLAN AND HAS APPROVED THE SAME.
5. THE BOARD OF DIRECTORS OF JUDI, INC. HAS REVIEWED THE INFORMATION CONTAINED IN THIS PLAN AND HAS APPROVED THE SAME.

## ACKNOWLEDGEMENT:

1. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

2. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

3. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

4. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

5. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

## DEDICATION:

1. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.

2. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.

3. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.

4. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.

5. THE PROJECT IS A RESIDENTIAL DEVELOPMENT CONSISTING OF 100 LOTS, EACH MEASURING APPROXIMATELY 100' X 100'. THE LOTS ARE BOUNDARY LINED BY LINDSAY COURT TO THE NORTH, SALT RIVER TO THE SOUTH, AND THE GILA AND SALT RIVER BASE AND MERIDIAN TO THE WEST AND EAST.

## CERTIFICATION:

1. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

2. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

3. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

4. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

5. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

## APPROVALS:

1. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

2. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

3. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

4. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

5. I, JUDI, INC., DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

LINDSAY COURT

WILSON - PAVETT & ASSOCIATES

SHEET 1 OF 1

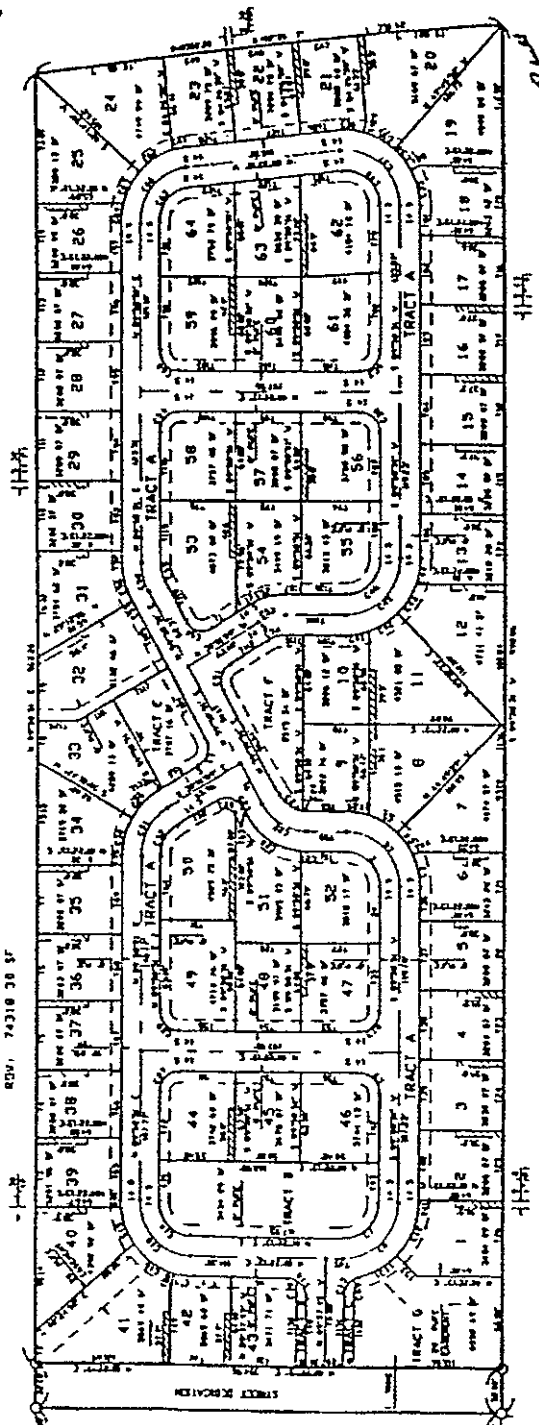
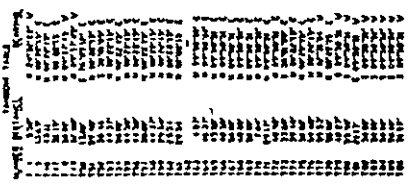
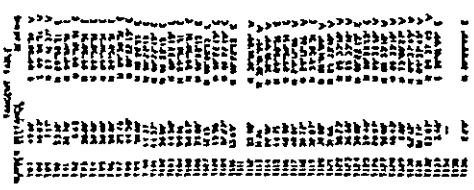
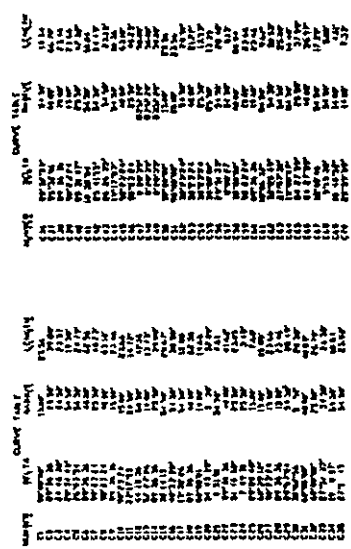
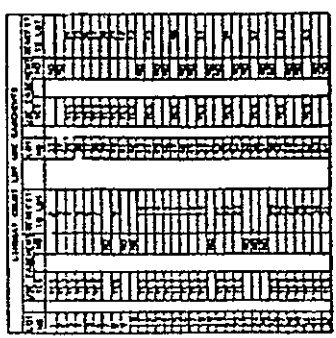
new 410 new 42  
admission, decrease or  
eliminate income tax  
and 100% capital  
96-0105529  
admission 11/20  
new

40.40

[illegible]

NOTE: THE NEW CANTON REGISTRATION SHALL ENTER INTO THE  
SIX MONTH PERIOD OF THE NEW CANTON REGISTRATION

GRASS AREA 37744 30 SF  
GRASS AREA 774 ACRES  
RDV, 74310 30 SF



UNOSAY ROAD







OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

96-0105530 02/16/96 11:30

When recorded, mail to

City of Mesa  
Real Estate Services  
P O. Box 1466  
Mesa, Arizona 85211-1466

# COVENANT RUNNING WITH THE LAND

## KNOW ALL MEN BY THESE PRESENTS THAT,

WHEREAS, a Subdivision known as Lindsay Court, located within a portion of the northwest quarter of Section 32, Township 1 North, Range 6 East, of The Gila and Salt River Base and Meridian, Maricopa County, Arizona as recorded in Book 410 of Maps, Page 42, Records of Maricopa County, Arizona has been approved by the City Council of the City of Mesa subject to certain requirements and restrictions with respect to drainage, and,

WHEREAS, there is now adequate method of draining the property within the subdivision, and certain parcels will be required to receive rainwater from the subdivision must drain onto Tract C, Tract E, Tract F and Tract G

NOW THEREFORE, in consideration of the approval of the foregoing subdivision plat by the City Council of the City of Mesa, the undersigned make and enter into this Covenant Running With The Land in favor of the City of Mesa and agree as follows

1. That all area defined as retention basins on the approved grading plan for shall remain at the grades indicate on the approved grading plan on file with the City of Mesa and that nothing will be constructed to hinder the flow of storm water from public streets to these retention basins. The improvements within the retention areas including, but not limited to, landscaping, irrigation system, storm drains, and bleed-off, will be maintained by the homeowners association.
2. That the agreements contained herein shall be a covenant running with the Subdivision and upon recording shall be binding upon any subsequent purchaser or occupier of any part of the subdivision.
3. That this Covenant shall be enforced by the City of Mesa, by proceedings at law or in equity against the person or persons violating or attempting or threatening to violate any of these Covenants, to prevent him or them from doing so and to recover damages for such violations. In such proceeding, the City of Mesa shall have the right to recover, in addition to any other damages, a reasonable sum as and for attorney's fees and court costs.

Any covenant, condition or restriction in this document indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or marital origin is omitted as provided in 42 U.S.C. § 3604, unless and only to the extent that the restriction (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. § 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

960105530

IN WITNESS WHEREOF, this Covenant Running With The Land has been executed this 15th day of January, 1996

Homes By Judi, Inc.

By *Patrick Hendley*  
Patrick Hendley

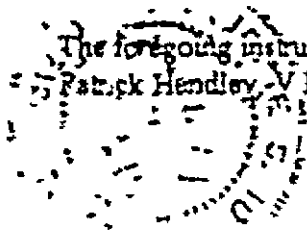
Its Vice President

State of Arizona )

) ss

County of Maricopa )

The foregoing instrument was acknowledged before me this 15th day of January, 1996 by Patrick Hendley, V.P., Homes By Judi, Inc., a Washington State corporation



*Marjorie Sue Allen*  
Notary Public

My Commission Expires

~~My Commission Expires~~ *28, 1999*