

Unofficial Document

WHEN RECORDED, RETURN TO:

Donald E. Dyekman, Esq.
Dyekman & Meda, P.L.C.
6750 E. Camelback Road
Suite 104
Scottsdale, Arizona 85251

201-800-676020
13-14



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
95-0467017 08/07/95 04:34
TONY 106 OF 138

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LAS SENDAS

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
LAS SENDAS**

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE 1	DEFINITIONS	1
1.1	"Additional Property"	1
1.2	"Annual Assessment"	1
1.3	"Apartment Development"	1
1.4	"Architectural Review Committee"	1
1.5	"Areas of Association Responsibility"	1
1.6	"Articles"	2
1.7	"Assessable Property"	2
1.8	"Assessment"	2
1.9	"Assessment Lien"	2
1.10	"Assessment Period" <small>Unofficial Document</small>	2
1.11	"Association"	2
1.12	"Association Rules"	2
1.13	"Board"	2
1.14	"Bylaws"	2
1.15	"Common Expenses"	2
1.16	"Condominium Development"	2
1.17	"Condominium Unit"	3
1.18	"Declarant"	3
1.19	"Declaration"	3
1.20	"Design Guidelines"	3
1.21	"Developer"	3
1.22	"Development Plan"	3
1.23	"Exempt Property"	3
1.24	"First Mortgage"	3
1.25	"First Mortgagee"	3
1.26	"Improvement"	3
1.27	"Land Use Classification"	4
1.28	"Lessee"	4
1.29	"Lot"	4
1.30	"Maintenance Standard"	4
1.31	"Master Common Area"	4
1.32	"Member"	4

		<u>Page</u>
1.33	"Neighborhood Association"	4
1.34	"Neighborhood Common Area"	4
1.35	"Neighborhood Declaration"	4
1.36	"Owner"	4
1.37	"Parcel"	5
1.38	"Person".....	5
1.39	"Plat"	5
1.40	"Property" or "Project"	5
1.41	"Project Documents"	5
1.42	"Purchaser"	5
1.43	"Recording"	5
1.44	"Rental Apartments"	5
1.45	"Resident"	6
1.46	"Residential Lot"	6
1.47	"Residential Parcel"	6
1.48	"Residential Unit"	6
1.49	"Single Family"	6
1.50	"Special Assessment"	6
1.51	"Subdivision Assessment"	6
1.52	"Subdivision Assessment Area"	6
1.53	"Subdivision Common Area"	6
1.54	"Subdivision Expe ^{Unofficial Document} "	6
1.55	"Subdivision Services"	7
1.56	"Supplemental Declaration"	7
1.57	"Visible From Neighboring Property"	7
ARTICLE 2	PLAN OF DEVELOPMENT	7
2.1	Property Initially Subject to the Declaration	7
2.2	Supplemental Declarations	8
2.3	Annexation of Additional Property	8
2.4	Withdrawal of Property	9
2.5	Disclaimer of Implied Covenants	9
2.6	Development Plan	9
2.7	Golf Course and Related Facilities	9
ARTICLE 3	USE RESTRICTIONS	10
3.1	Land Use Classifications	10
3.2	Architectural Control.	10
3.3	Temporary Occupancy and Temporary Buildings	13
3.4	Nuisances; Construction Activities	13
3.5	Diseases and Insects	14

3.6	Antennas	14
3.7	Mineral Exploration	14
3.8	Trash Containers and Collection	14
3.9	Clothes Drying Facilities	14
3.10	Utility Service	14
3.11	Overhead Encroachments	14
3.12	Residential Use	14
3.13	Animals	15
3.14	Machinery and Equipment	15
3.15	Signs	15
3.16	Restriction on Further Subdivision, Property Restrictions and Rezoning	16
3.17	Vehicles and Parking	16
3.18	Towing of Vehicles	17
3.19	Variances	17
3.20	Drainage	18
3.21	Garages and Driveways	18
3.22	Rooftop Air Conditioners Prohibited	18
3.23	Basketball Goals and Backboards	18
3.24	Playground Equipment	18
3.25	Rights of Developers	18
3.26	Fire Truck Access <small>Unofficial Document</small>	19
ARTICLE 4	EASEMENTS	19
4.1	Easement for Use of Master Common Area	19
4.2	Utility Easement	20
4.3	Declarant's Use for Sales and Leasing Purposes	20
4.4	Declarant's Easements	20
4.5	Easement in Favor of Association	21
ARTICLE 5	THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS	21
5.1	Formation of Association	21
5.2	Board of Directors and Officers	21
5.3	The Association Rules	22
5.4	Personal Liability	22
5.5	Implied Rights	22
5.6	Identity of Members	22
5.7	Allocation of Memberships	22
5.8	Voting	24
5.9	Voting Procedures	24

5.10	Transfer of Membership	24
5.11	Architectural Committee	25
5.12	Conveyance or Encumbrance of Common Area	25
5.13	Suspension of Voting Rights	26

ARTICLE 6	COVENANT FOR ASSESSMENTS AND CREATION OF LIEN	26
-----------	---	----

6.1	Creation of Lien and Personal Obligation of Assessments	26
6.2	Annual Assessments	26
6.3	Determination of Assessment	28
6.4	Special Assessments	30
6.5	Subdivision Assessments	30
6.6	Assessment Period	30
6.7	Rules Regarding Billing and Collection Procedures	31
6.8	Effect of Nonpayment of Assessments: Remedies of the Association	31
6.9	Evidence of Payment of Assessments	32
6.10	Purposes for which Association's Funds May Be Used	33
6.11	Surplus Funds .. <small>Unofficial Document</small>	33
6.12	Working Capital Fund	33
6.13	Transfer Fee	33

ARTICLE 7	MAINTENANCE	34
-----------	-------------------	----

7.1	Areas of Association Responsibility	34
7.2	Lots and Parcels	34
7.3	Assessment of Certain Costs of Maintenance and Repair	34
7.4	Improper Maintenance and Use of Lots	35
7.5	Boundary Walls	35
7.6	Maintenance of Walls other than Boundary Walls	36

ARTICLE 8	INSURANCE	37
-----------	-----------------	----

8.1	Scope of Coverage	37
8.2	Certificates of Insurance	38
8.3	Payment of Premiums	38
8.4	Payment of Insurance Proceeds	38
8.5	Repair and Replacement of Damaged or Destroyed Property	38

ARTICLE 9	GENERAL PROVISIONS	39
9.1	Enforcement	39
9.2	Term; Method of Termination	39
9.3	Amendments	39
9.4	Rights of First Mortgagees	40
9.5	Interpretation	42
9.6	Severability	42
9.7	Rule Against Perpetuities	42
9.8	Change of Circumstances	42
9.9	Notice of Violation	42
9.10	Laws, Ordinances and Regulations	43
9.11	References to this Declaration in Deeds	43
9.12	Gender and Number	43
9.13	Captions and Titles	43
9.14	FHA/VA Approval	44
9.15	No Absolute Liability	44
9.16	References to VA and FHA	44

Unofficial Document

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

LAS SENDAS

This Declaration of Covenants, Conditions, and Restrictions for Las Sendas (the "Declaration") is made this ____ day of _____, 1995, by CRM Holdings, L.L.C., an Arizona limited liability company.

ARTICLE 1

DEFINITIONS

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

1.1 "**Additional Property**" means any real property, together with the Improvements situated thereon, other than the real property described on Exhibit "A" attached hereto, which is within the area covered by the Development Plan.

1.2 "**Annual Assessment**" means the assessments levied against each Lot or Parcel pursuant to Section 6.2 of this Declaration.

1.3 "**Apartment Development**" means a Parcel which is limited by a Supplemental Declaration to residential use, and contains Rental Apartments and surrounding area which are intended, as shown by the site plan therefor approved by the City of Mesa and the Architectural Review Committee or otherwise, as one integrated apartment operation under the same ownership.

1.4 "**Architectural Review Committee**" means the committee of the Association to be created pursuant to Section 5.11 of this Declaration.

1.5 "**Areas of Association Responsibility**" means (i) all Master Common Area; (ii) all real property, and the Improvements situated thereon, located within the boundaries of a Lot or Parcel which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association; (iii) all real property, and the Improvements situated thereon, within the Project located within

dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas; (iv) all real property, and the Improvements situated thereon, designated on a Plat signed or ratified by the Association as an area to be maintained, repaired or replaced by the Association; and (v) all real property, and any Improvements situated thereon, within the Project which the Association has agreed in a Recorded document signed by the Association to maintain, repair or replace.

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

1.7 "**Assessable Property**" means any Lot or Parcel, except such part or parts thereof as may from time to time be Exempt Property.

1.8 "**Assessment**" means an Annual Assessment, Special Assessment or Subdivision Assessment.

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

1.10 "**Assessment Period**" means the period set forth in Section 6.5 of this Declaration.

1.11 "**Association**" means the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

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

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

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

1.15 "**Common Expenses**" means the actual or estimated expenses incurred, or anticipated to be incurred, by the Association, together with any allocations to reserves.

1.16 "**Condominium Development**" means a condominium established pursuant to the Arizona Condominium Act, A.R.S. § 33-1201, et seq.

1.17 "**Condominium Unit**" means a unit within a Condominium Development.

1.18 "**Declarant**" means CRM Holdings, L.L.C., an Arizona limited liability company, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

1.19 "**Declaration**" means this Declaration of Covenants, Conditions, and Restrictions, as amended from time to time.

1.20 "**Design Guidelines**" means the rules and guidelines adopted by the Architectural Review Committee pursuant to Section 5.11 of this Declaration, as amended or supplemented from time to time.

1.21 "**Developer**" means any Person who purchases one or more Lots or Parcels for the purpose of later sale in the ordinary course of such Person's business or for the purpose of constructing Improvements thereon for later sale in the ordinary course of such Person's business.

1.22 "**Development Plan**" means the Development Plan for the project as approved by the City of Mesa, Arizona, on December 15, 1986, Case No. Z86-112, as amended in December, 1987, Case No. Z86-112, and as the plan may be amended from time to time.

Unofficial Document

1.23 "**Exempt Property**" means (i) all real property and improvements owned by, or dedicated to and accepted by the United States, State of Arizona, the County of Maricopa, Arizona, or any political subdivision thereof, so long as such entity or political subdivision is the owner thereof or for so long as said dedication remain effective; (ii) all Master Common Area; (iii) all Neighborhood Common Area; (iv) all Subdivision Common Area; and (v) all real property which is part of the common elements of the Condominium Development, but the undivided interest in the common elements allocated to each Unit shall not be considered Exempt Property.

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

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

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

1.27 "**Land Use Classification**" means the classification established by a Recorded Supplemental Declaration which designates the type of improvements which may be constructed on a Lot or Parcel and the purposes for which such Lot or Parcel, and any Improvements situated thereon, may be utilized.

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

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

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

1.31 "**Master Common Area**" means all real property, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Master Common Area shall not include any Lot or Parcel which the Association may acquire through foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

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

1.33 "**Neighborhood Association**" means any homeowners association, condominium association or similar association formed or organized pursuant to any Neighborhood Declaration.

1.34 "**Neighborhood Common Area**" means all real property, and all Improvements located thereon, owned or leased by a Neighborhood Association for the common use and benefit of the members of the Neighborhood Association.

1.35 "**Neighborhood Declaration**" means any Declaration of Covenants, Conditions and Restrictions, Condominium Declaration or similar instrument other than this Declaration or a Supplemental Declaration recorded against any part of the Project.

1.36 "**Owner**" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot or Parcel. Owner shall not include Persons having an interest in a Lot or Parcel merely as security for the performance of an obligation or a Lessee. Owner shall

include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 *et. seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots or Parcels subject to a Deed of Trust Recorded pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the Owner. In the case of the Lots or Parcels the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.37 "**Parcel**" means each separately owned contiguous area of real property within the Project which (i) is not a Lot; and (ii) is subject to a Supplemental Declaration.

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

1.39 "**Plat**" means any subdivision plat or condominium plat recorded against all or any part of the Project, and all amendments, supplements and corrections thereto.

1.40 "**Property**" or "**Project**" means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon, and all real property and all Improvements situated thereon which is annexed and subjected to this Declaration pursuant to Section 2.3 of this Declaration.

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

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

1.43 "**Recording**" means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and "**Recorded**" means having been so placed of public record.

1.44 "**Rental Apartments**" means dwelling units within one or more buildings consisting of four or more commercially integrated dwelling units under single ownership on one or more contiguous Parcels, each of which is designed and utilized, other than as a hotel or

some other transient basis, for rental or leased residential purposes to non-owners on a non-cooperative basis.

1.45 "**Resident**" means each natural person occupying or residing in a Residential Unit.

1.46 "**Residential Lot**" means a Lot having a Land Use Classification of Single Family Residential Use or Residential Condominium Development Use together with all Improvements situated thereon.

1.47 "**Residential Parcel**" means a Parcel having a Land Use Classification of Single Family Residential use or Condominium Development Use.

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

1.49 "**Single Family**" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.50 "**Special Assessment**" means any assessment levied and assessed pursuant to Section 6.4 of this Declaration. Unofficial Document

1.51 "**Subdivision Assessment**" means an assessment levied against less than all of the Lots and Parcels in the Project pursuant to Section 6.5 of this Declaration.

1.52 "**Subdivision Assessment Area**" means a portion of the Project designated in a Supplemental Declaration as an area containing Subdivision Common Area or as an area in which the Association will provide Subdivision Services.

1.53 "**Subdivision Common Area**" means real property, and the Improvements situated thereon, which are part of the Master Common Area and which are designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project. Subdivision Common Areas may include, without limitation, private streets, drainage or retention areas or landscape medians. Unless expressly provided to the contrary in a Supplemental Declaration, private streets, card activated gates and street lights within Parcels consisting of Residential Lots are not Subdivision Common Area but are Master Common Area.

1.54 "**Subdivision Expenses**" means the actual or estimated expenses, including allocations to reserves, incurred or anticipated to be incurred by the Association for the

maintenance, repair and replacement of Subdivision Common Area or to provide Subdivision Services to the Owners, Lessees and Residents in a Subdivision Assessment Area.

1.55 "**Subdivision Services**" means services designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project. Subdivision Services may include, without limitation, guard services (including the maintenance of guard gates or guardhouses) and landscape maintenance services for landscaping situated on Lots or Parcels.

1.56 "**Supplemental Declaration**" means a Declaration recorded pursuant to Section 2.2 of this Declaration.

1.57 "**Visible From Neighboring Property**" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of any adjoining Lot, Parcel or Common Area.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 ^{Unofficial Document}
Property Initially Subject to the Declaration. Declarant is the Owner of the Property, and Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement and desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. Declarant hereby declares that all the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value and desirability of and which shall run with the Property. Declarant further declares that this Declaration shall be binding upon all Persons having any right, title or interest in the Property or any part thereof, their successors, successors in title and assigns and shall inure to the benefit of each Owner thereof. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully

understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenant and agree that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot or Parcel even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Parcel.

2.2 Supplemental Declarations. Declarant reserves the right, but not the obligation, to record one or more Supplemental Declarations against portions of the Property. A Supplemental Declaration may (i) designate Common Areas, Neighborhood Common Areas, Subdivision Common Areas, Subdivision Services, and Subdivision Assessment Areas; (ii) establish the Land Use Classification for the property subject to the Supplemental Declaration; and (iii) impose such additional covenants, conditions and restrictions as the Declarant determines to be appropriate for the property subject to the Supplemental Declaration. If a Supplemental Declaration designates any Subdivision Common Areas or Subdivision Services, the Supplemental Declaration shall also designate the Subdivision Assessment Area containing Lots and Parcels which will be subject to a Subdivision Assessment pursuant to Section 6.7 of this Declaration. A Supplemental Declaration may only be amended by a written instrument executed by (i) the Owners representing more than seventy-five percent (75%) of the votes in the Association held by the Owners of all of the Lots and Parcels subject to the Supplemental Declaration, (ii) the Association, and (iii) the Declarant so long as the Declarant owns any Lot or Parcel in the Project. The Association shall have the right to record a Supplemental Declaration for any part of the Additional Property which is annexed and subjected to this Declaration by the Association pursuant to Section 2.3.3 of this Declaration.

2.3 Annexation of Additional Property.

2.3.1 At any time on or before the date which is ten (10) years after the date of the Recording of this Declaration, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person or the Association. The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording a Declaration of Annexation setting forth the legal description of the Additional Property being annexed, stating that such portion of the Additional Property is annexed and subjected to the Declaration and describing any portion of the Additional Property being annexed which will be Common Area.

2.3.2 The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The property annexed by the Declarant pursuant to this Section 2.3 need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any portion of the Property shall not bar the further exercise

of the right of annexation as to any other portion of the Additional Property. The Declarant makes no assurances as to which, if any, part of the Additional Property will be annexed.

2.3.3 After the Declarant no longer owns any part of the Property or any part of the Additional Property which the Declarant still retains the right to annex and subject to this Declaration, the Association may annex and subject all of any part of the Additional Property to this Declaration by executing and Recording a Declaration of Annexation containing the information required for a Declaration of Annexation Recorded by the Declarant pursuant to Section 2.3.1 of this Declaration.

2.4 **Withdrawal of Property.** At any time on or before the date which is ten (10) years after the date this Declaration is Recorded the Declarant shall have the right to withdraw property from the Project without the consent of any other Owner or Person. The withdrawal of all or any portion of the Project shall be affected by the Declarant Recording a Declaration of Withdrawal setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from the Project pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

2.5 **Disclaimer of Implied Covenants.** Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen representing the Declarant or any Developer shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration or any part of the Additional Property. Unofficial Document

2.6 **Development Plan.** Notwithstanding any other provision of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the Development Plan with respect to any property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the property owned by the Declarant or changing the nature or extent of the uses to which the property may be devoted.

2.7 **Golf Course and Related Facilities.** The Development Plan provides for the construction and operation within Las Sendas of a golf course and the golf course clubhouse, maintenance facility and other related recreational facilities (the "Golf Course Facilities"). The Golf Course Facilities shall not be subject to this Declaration and shall not be part of the Master Common Area. No Owner, Lessee or Resident shall acquire any right, title or interest in or to the Golf Course Facilities or to the use of the Golf Course Facilities solely by virtue of purchasing a Lot or Parcel or by becoming a Lessee or Resident thereof. Each Owner, by purchasing a Lot or Parcel, acknowledges and agrees that such Owner is fully aware of the fact that the acquisition of a Lot or Parcel adjacent to or in the vicinity of the Golf Course Facilities has certain risks, including, but not limited to, the risk that from time to time golf balls may be hit onto portions of the Lot or Parcel and cause damage to the Residential Unit or other Improvements situated on the Lot or Parcel or cause

personal injury to the Owner or other persons present on the Lot or Parcel. Each Owner, Resident and other persons present on a Lot or Parcel at any time agree to assume such risk and agree that no claim for any damage or personal injury caused or occasioned by golf balls or any of the other hazards associated with the maintenance, operation and use of the Golf Course Facilities shall be made against the Declarant, a Developer, the owner, operator or designer of the Golf Course Facilities or the Association or any of its directors, officers, employees or agents. Each Owner, by becoming an Owner of a Lot or Parcel, also acknowledges and agrees that the operation of the Golf Course Facilities involves certain activities which may interfere with, annoy or disturb such Owner, the Residents of the Lot or Parcel and their respective guests and invitees. These activities include, but are not limited to, the activities necessary to properly maintain the Golf Course Facilities which activities may be conducted very early in the morning or very late in the evening and may involve the operation of machinery or equipment causing loud noises, the presence of golf course maintenance personnel close to the Project, the operation of golf carts and the presence of golfers close to the Project. Each Owner and resident agrees not to assert any claim for damage or injury arising from such activities or to seek to enjoy or restrain such activities.

ARTICLE 3

USE RESTRICTIONS

3.1 ^{Unofficial Document} **Land Use Classifications.** The uses for which property within the Project may be used shall be determined by the Land Use Classification of the property as established by a Recorded Supplemental Declaration covering the property. The Land Use Classifications for property in the Project shall be: (i) Single Family Residential Use; (ii) Apartment Development Use; (iii) Residential Condominium Development Use; (iv) Commercial Condominium Development Use; (v) Master Common Area Use; (vi) Commercial Office Use; (vii) General Commercial or Retail Use; (viii) Resort Use; (ix) Neighborhood Common Area Use; and (ix) Village Center Use. In the event of any conflict or inconsistency between the Land Use Classification for a Lot or Parcel as established by a Recorded Supplemental Declaration and statements or notations on a Plat with respect to the uses which may be made of a particular Lot or Parcel, the Recorded Supplemental Declaration for the Lot or Parcel shall prevail. A Recorded Supplemental Declaration may define and specify the style, type and size of Residential Units or buildings that may be constructed on the Lots and Parcels subject to the Supplemental Declaration and may specify the permitted and prohibited uses of the Lots and Parcels subject to the Declaration.

3.2 **Architectural Control.**

3.2.1 No excavation or grading work shall be performed on any Lot or Parcel without the prior written approval of the Architectural Review Committee.

3.2.2 No Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot or Parcel without the prior written approval of the Architectural Review Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any part of a Lot or Parcel, or any Improvements located thereon, which are Visible From Neighboring Property, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Review Committee. Any Owner desiring approval of the Architectural Review Committee for the construction, installation addition, alteration, repair, change or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Review Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Review Committee shall also submit to the Architectural Review Committee any additional information, plans and specifications which the Architectural Review Committee may request. In the event that the Architectural Review Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with any fee payable pursuant to Section 3.2.6 of this Declaration and all supporting information, plans and specifications requested by the Architectural Review Committee, have been submitted to the Architectural Review Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. The approval by the Architectural Review Committee of any construction, installation, addition, alteration, repair, change or other work shall not be deemed a waiver of the Architectural Review Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.2.3 In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Review Committee, the Architectural Review Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish grade elevation. The Architectural Review Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Review Committee pursuant to this Section 3.2 if the Architectural Review Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guideline; (iii) the proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Review Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect the appearance of the Project; or

(vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Project.

3.2.4 Upon receipt of approval from the Architectural Review Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Review Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Review Committee.

3.2.5 Any change, deletion or addition to the plans and specifications approved by the Architectural Review Committee must be approved in writing by the Architectural Review Committee.

3.2.6 The Architectural Review Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 3.2, which fee shall be payable at the time the application for approval is submitted to the Architectural Review Committee.

3.2.7 All Improvements constructed on Lots or Parcels shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot or Parcel.

Unofficial Document

3.2.8 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant.

3.2.9 The approval required of the Architectural Review Committee pursuant to this Section 3.2 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.2.10 The approval by the Architectural Review Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section 3.2 shall not be deemed a warranty or representation by the Architectural Review Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.2.11 The Architectural Review Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications (other than Developers who shall not be subject to the provisions of this Subsection)

to furnish to the Association a bond or other security acceptable to the Architectural Review Committee in an amount determined by the Architectural Review Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (ii) to repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Any such bond shall be released or security shall be fully refundable to the Owner upon: (i) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Review Committee; and (ii) the Owner's written request to the Architectural Review Committee, provided that there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors.

3.2.12 If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Architectural Review Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

3.3 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. No temporary construction buildings or trailers may be installed or kept on any Lot or Parcel without the prior written approval of the Architectural Review Committee. Any such temporary buildings or trailers approved by the Architectural Review Committee shall be removed immediately after the completion of construction.

3.4 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during the construction of Improvements may be kept only in areas approved in writing by the Architectural Review Committee, which

may also require screening of the storage areas. The Architectural Review Committee in its sole discretion shall have the right to determine the existence of any such nuisance.

3.5 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.6 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot or Parcel without the prior written approval of the Architectural Review Committee.

3.7 Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

3.8 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style which are approved by the Architectural Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots or ^{Unofficial Document} Parcels and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

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

3.10 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Review Committee.

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

3.12 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Residential Lot or in or from any Residential Unit, except that an Owner, Lessee or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.13 Animals. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except for dogs, cats, parakeets, ^{Unofficial Document} or similar household birds not to exceed a total of three (3) may be kept on a Residential Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or other pets permitted under this Section shall be confined to an Owner's Lot except that a dog or cat may be permitted to leave an Owner's Lot if such dog or cat is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Architectural Review Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Review Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

3.14 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Residential Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

3.15 **Signs.** Except signs required by legal proceedings, no signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel without the prior written approval of the Architectural Review Committee.

3.16 **Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot or Parcel shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot or Parcel shall be conveyed or transferred by any Owner, without the prior written approval of the Architectural Review Committee. No further covenants, conditions, restrictions or easements other than a Declaration of Annexation or Supplemental Declaration shall be recorded by any Owner, Lessee, or other Person against any part of the Property without the provisions thereof having been first approved in writing by the Board. No application for rezoning, variances or use permits pertaining to any Lot or Parcel shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration.

3.17 **Vehicles and Parking.**

3.17.1 As used in this Section 3.17, the term "Motor Vehicle" means a car, van, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle.

3.17.2 ^{Unofficial Document} No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer, boat or other similar equipment may be parked, kept or stored on any Residential Lot or the Master Common Area, Neighborhood Common Area or Subdivision Common Area without the prior written approval of the Architectural Review Committee.

3.17.3 Except as permitted by Subsection 3.17.4 or 3.17.5, no Motor Vehicle may be parked, kept or stored on any Residential Lot, Residential Parcel, Master Common Area, Neighborhood Common Area or Subdivision Common Area without the prior written approval of the Architectural Review Committee.

3.17.4 Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Residential Lot must be parked in the garage of the Residential Unit unless there is insufficient space within the garage for the parking of all such Motor Vehicles, in which case such Motor Vehicles may be parked in the driveway situated on the Lot provided such Motor Vehicles do not exceed 7 feet in height and do not exceed 18 feet in length, are not used for commercial purposes and do not display any commercial name, phone number or message of any kind. No Motor Vehicle of any kind may be stored on a Residential Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Master Common Area, Neighborhood Common Area or Subdivision Common Area. For purposes of this Subsection 3.17.4, a Motor Vehicle should be deemed stored if it is covered by a car cover, tarp or other material. Recreational vehicles, motor

homes and similar vehicles owned or leased by an Owner, Lessee or Resident which exceed 7 feet in height and/or exceed 18 feet in length may be parked in the driveway on a Lot for the purpose of loading or unloading, but in no event shall such recreational vehicle, motor home or similar vehicle be parked in the driveway for more than twenty-four (24) consecutive hours or for more than seventy-two (72) hours within any seven (7) day period.

3.17.5 Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Residential Lot or on a public or private street for a period not to exceed 72 hours within any seven (7) day period.

3.17.6 The Board of Directors shall have the right and power to adopt rules and regulations governing the parking of Motor Vehicles on Residential Lots, Residential Parcel, Master Common Area, Neighborhood Common Area of Subdivision Common Area and implementing the provisions of this Section 3.17. In the event of any conflict or inconsistency between the provisions of this Section 3.17 and the rules and regulations adopted by the Board of Directors, the provisions of this Section 3.17 shall control.

3.17.7 No Motor Vehicle shall be constructed, reconstructed or repaired on any Residential Lot, Residential Parcel, Master Common Area, Neighborhood Common Area or Subdivision Common Area in such a manner as to be Visible From Neighboring Property and no inoperable vehicle may be stored or parked on any Residential Lot, Residential Parcel, Master Common Area, Neighborhood Common Area or Subdivision Common Area in such a manner as to be Visible From Neighboring Property.

3.18 Towing of Vehicles. The Board shall have the right to have any mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, truck, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of said amounts in the same manner provided for in their Declaration for the collection of Assessment.

3.19 Variances. The Architectural Review Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Review Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners,

Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

3.20 **Drainage.** No structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot or Parcel as shown on the drainage plans on file with the county or municipality in which the Project is located. No Person shall alter the grading of a Lot or Parcel or alter the natural flow of water over and across a Lot or Parcel without the prior written approval of the Architectural Review Committee.

3.21 **Garages and Driveways.** Garages situated on Residential Lots shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Review Committee. Garages may be used for the storage of material so long as the storage of material does not restrict the use of the garage for the parking of motor vehicles.

3.22 **Rooftop Air Conditioners Prohibited.** No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building on a Residential Lot so as to be Visible From Neighboring Property.

3.23 **Basketball Goals and Backboards.** No basketball hoop, goal or backboard shall be constructed or installed on any Residential Lot or Residential Parcel without the prior written approval of the Architectural Review Committee.

3.24 **Playground Equipment.** No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot or Parcel without the prior written approval of the Architectural Review Committee.

3.25 **Rights of Developers.** Notwithstanding any other provision of this Declaration to the contrary, a Developer shall have the right to maintain model homes and sales offices on Lots owned or leased by the Developer and to construct and maintain parking areas for the purpose of accommodating persons visiting such model homes and sales offices provided: (i) the plans and specifications for the model homes and sales offices have been approved in writing by the Architectural Review Committee; (ii) the location and design of the parking areas incidental to such model homes and sales offices has been approved in writing by the Architectural Review Committee; (iii) the opening and closing hours for such model homes and sales offices have been approved in writing by the Architectural Review Committee; and (iv) the construction, operation and maintenance of such model homes and sales offices otherwise complies with all provisions of this Declaration. Any home constructed as a model home shall cease to be used as a model home and any sales office shall cease to be used as a sales office at any time the Developer is not actually

engaged in the construction and sale of Residential Units in the Project, and no Residential Unit shall be used as a model home for the sale of Residential Units not located in the Project and no sales office shall be used for the sale of lots or homes not located in the Project. Notwithstanding any other provision of this Declaration to the contrary, a Developer may store supplies of brick, block, lumber and other building materials on the Lot owned by Developer provided such materials are kept in areas approved in writing by the Architectural Review Committee which may require the screening of such storage areas. In addition, normal construction activities of the Developer in connection with the construction of Improvements shall not be considered a nuisance or otherwise prohibited by this Declaration. A Developer constructing Improvements on Lots shall keep the Lots in a clean, safe and neat condition free of weeds, trash and debris.

3.26 **Fire Truck Access.** In order to permit fire trucks access on and over cul-de-sacs shown on the Plats, no obstructions or landscaping shall be constructed, installed or permitted within a radius of fifty-five feet (55') from the center of the cul-de-sac.

ARTICLE 4

EASEMENTS

4.1 **Easement for Use of Master Common Area.**

4.1.1 Every ~~Owner, Lessee and Resident~~ ^{Unofficial Document} shall have a non-exclusive right and easement of use and enjoyment in and to the Master Common Area (including, but not limited to, the right to use any streets which may be part of the Master Common Area for ingress and egress to the Owner's Lot or Parcel) which right shall be appurtenant to and shall pass with the title to every Lot or Parcel, subject to the following:

(i) The right of the Association to dedicate, convey, transfer or encumber the Master Common Area as provided in Section 5.12 of this Declaration.

(ii) The rights and easements granted to the Declarant in this Declaration, including, without limitation, the rights and easements granted to the Declarant in Sections 4.3 and 4.4 of this Declaration.

(iii) The right of certain owners, Lessees and Residents to the exclusive use of Subdivision Common Areas.

(iv) The right of the Board to impose reasonable membership requirements and charge reasonable membership admission fees for the use of any facility situated on the Master Common Area.

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

(vi) The right of the Association to suspend the right of an Owner to use the Master Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot or Parcel) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation. Any suspension of an Owner's right to use the Master Common Area shall also extend to the Lessees and Residents of the Owner's Lot and their guests and invitees.

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

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

4.3 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising, identification or directional signs on the Master Common Area or on the Lots or Parcels owned by Declarant while the Declarant is selling Lots or Parcels. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots or Parcels owned by Declarant and on any portion of the Master Common Area in such number, of such size and in such locations as Declarant deems appropriate. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.4 Declarant's Easements. Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and Parcels owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance

of work respecting the Project. The Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.5 Easement in Favor of Association. The Lots and Parcels (except for the interior of a Residential Unit or other buildings) are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.5.1 For inspection of the Lots and Parcels in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.5.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots or Parcels;

4.5.3 For correction of emergency conditions in one or more Lots or Parcels;

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

Unofficial Document

4.5.5 For inspection of the Lots or Parcels in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of a Lot or Parcel.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

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

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. So long as there is a Class B membership in the Association, the

directors of the Association shall be appointed and may be removed by the Declarant. Following the termination of the Class B membership in the Association, the directors shall be elected by the Members in accordance with the Articles and Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

5.3 The Association Rules. The Board may, from time to time, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for any maintenance of Lots or Parcels; (iii) the health, safety or welfare of the Owners, Lessees and Residents, or (iv) restrictions on the use of Lots and Parcels. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

5.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in wilful or intentional misconduct.

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

5.6 Identity of Members. Membership in the Association shall be limited to the Declarant and the Owners of Lots and Parcels which are Assessable Property. An Owner of a Lot or Parcel which is Assessable Property shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Lot and Parcel which is Assessable Property and may not be separately assigned, transferred or conveyed.

5.7 Allocation of Memberships.

5.7.1 Each Member shall have the following number of Memberships in the Association:

by the Member;

(a) One Membership for each Residential Lot owned

Rental Apartments owned by a Member;

(b) One Membership for each ten (10) completed

(c) In the case of (i) the Owner of a Parcel restricted by a Supplemental Declaration to Apartment Development Use, but as to which construction has not been completed, one Membership for each four (4) Rental Apartments permitted under the Development Plan, or (ii) the Owner of a Parcel restricted by a Supplemental Declaration to Residential Condominium Development Use, but as to which a condominium plat and condominium declaration has not been Recorded, one Membership for each Residential Unit permitted upon the Parcel under the Development Plan. The number of Residential Units permitted under the Development Plan shall be determined on the assumption that the number of Residential Units within a density classification on the Development Plan will be spread evenly over all land within the density classification. If a site plan for a Parcel is subsequently approved by the Architectural Committee and the City of Mesa for a number of Residential Units or Rental Apartments different from the number of Residential Units or Rental Apartments permitted under the Development Plan, the number of Memberships shall be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual number of Residential Units or Rental Apartments authorized by the site plan; and

Unofficial Document

(d) In the case of the Owner of a Parcel restricted by a Supplemental Declaration to Single Family Residential Use, one Membership for each Residential Unit permitted upon the Parcel under the Development Plan. If a subdivision plat or other instrument creating Lots is Recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of Memberships allocated to such Parcel shall be reduced by a number equal to the number of Lots in the Recorded subdivision plat. All Memberships attributable to the Parcel shall cease when the land area ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public and no unplatted residential area remains within the Parcel.

(e) One Membership for each Lot or Condominium Unit which is restricted by a Supplemental Declaration to commercial or office use.

(f) In the case of a Parcel restricted by a Supplemental Declaration to a Land Use Classification of Commercial Office Use, General Commercial or Retail Use or Resort Use, one Membership for each gross acre within the Parcel. If only part of a Parcel restricted by a Supplemental Declaration to a Land Use Classification of Commercial Office use, General Commercial or Retail Use or Resort Use is subdivided into Lots or is subjected to a condominium plat and condominium declaration, then the number of Memberships attributable to the part of the Parcel which is not subdivided or subjected to a condominium plat and condominium

declaration shall be the number of Memberships allocated to all of the property subject to such Supplemental Declaration less the number of Lots and Condominium Units within such property.

5.7.2 In addition to the Memberships allocated to the Declarant pursuant to Section 5.7.1 of this Declaration, the Declarant shall have one (1) Membership for each unit of density allocated by the Development Plan to the Additional Property shown on the Development Plan as available for residential development and which has not yet been annexed and subjected to this Declaration pursuant to Section 2.3 hereof and one (1) Membership for each gross acre of all Additional Property shown on the Development Plan as available for nonresidential development which has not been annexed and subjected to this Declaration pursuant to Section 2.3 hereof.

5.8 **Voting.** The Association shall have the following two classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships except for the Class B Memberships held by the Declarant, and each Owner shall be entitled to one vote for each Class A Membership held by such Owner.

Class B. Class B Memberships shall be all Memberships held by the Declarant. The Declarant shall be entitled to ten (10) votes for each Membership held by the Declarant. The Class B Membership shall Unofficial Document cease and be converted to Class A Memberships on the earlier of the following:

(a) Ninety (90) days after the total votes outstanding in the Class A Memberships equal the total votes outstanding in the Class B Memberships; or

(b) The first day of January, 2010; or

(c) At any time by the Declarant giving written notice to the Association that Declarant wishes to convert its Class B Memberships to Class A Memberships.

5.9 **Voting Procedures.** No change in the ownership of a Lot or Parcel shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote or votes for each such Lot or Parcel must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot or Parcel is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote or votes representing a certain Lot or Parcel, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot or Parcel unless objection thereto is made at the time the vote is cast.

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

5.11 Architectural Review Committee. The Association shall have an Architectural Review Committee to perform the functions of the Architectural Review Committee set forth in this Declaration. The Architectural Review Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant is a Member of the Association, the Declarant shall have the sole right to appoint and remove the members of the Architectural Review Committee. At such time as the Declarant no longer is a Member of the Association, the members of the Architectural Review Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Review Committee, and in that event the Declarant may require, for so long as the Declarant is a Member of the Association, that specified actions of the Architectural Review Committee, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. Unofficial Document The Architectural Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen wall design and appearance. The decision of the Architectural Review Committee shall be final on all matters submitted to it pursuant to this Declaration. The Design Guidelines may contain general provisions which are applicable to all of the Project as well as provisions which vary from one portion of the Project to another depending upon the location, unique characteristics and intended use thereof. The Architectural Review Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Review Committee to approve or disapprove the construction, installation or alteration of Improvements within a specified portion of the Project.

5.12 Conveyance or Encumbrance of Common Area. Except for dedications to the City of Mesa, the Master Common Area shall not be mortgaged, transferred, dedicated or

encumbered without the prior written consent or affirmative vote of (i) Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A members of the Association and (ii) the Declarant so long as the Declarant owns any Lot or Parcel.

5.13 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within thirty (30) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within thirty (30) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

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

6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot and Parcel which is Assessable Property an Annual Assessment. The total amount to be assessed against the Lots and Parcels as an Annual Assessment shall be the amount which is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses (other than Common Expenses pertaining to Subdivision Common Areas and Subdivision Services which are to be assessed as Subdivision Assessments) taking into account other sources of funds available to the Association.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

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

(i) Until January 1 of the year immediately following the conveyance of the first Lot or Parcel to a Purchaser, the maximum Annual Assessment for each Membership shall be \$780.00.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot or Parcel to a Purchaser, the Board may, without a vote of the members, increase the maximum Annual Assessment during each fiscal year of the Association by the greater of (a) 10% of the maximum Annual Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

X = Consumer Price Index for September of the calendar year immediately preceding the year in which the Annual Assessments commenced.

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

$\frac{Y-X}{X}$

X multiplied by the maximum Annual Assessment for the then current fiscal year equals the amount by which the maximum Annual Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the maximum Annual Assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index

or, in the event no such successor index is recommended by the United States government, the index selected by the Board.

(iii) From and after January 1 of the year immediately following the conveyance of the first Lot or Parcel to a Purchaser, the maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (ii) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes in each Class of Membership entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.3 Determination of Annual Assessment. Subject to the limitations set forth in Section 6.2.3 of this Declaration, the amount of the Annual Assessment to be levied against each Lot and Parcel shall be determined as follows:

- (a) For purposes of this Section 6.3, the term "Membership Assessment" shall mean the total amount of any Annual Assessment to be levied against all Lots and Parcels which are Assessable Property divided by the total number of Memberships attributable to the Assessable Property.
- (b) Except for Lots and Parcels covered by Subsections (b) through (h) of this Section 6.3 and except for Lots and Parcels owned by the Declarant which are ^{Unofficial Document} exempt from Assessment under Subsection (i) of this Section 6.3, each Lot and Parcel shall be assessed an Annual Assessment in an amount equal to the number of Memberships attributable to such Lot or Parcel pursuant to Section 5.7 of this Declaration multiplied by the Membership Assessment.
- (c) A Residential Lot shall be assessed 25% of the amount equal to the number of Memberships attributable to the Lot multiplied by the Membership Assessment until the earlier of (i) the completion of a Residential Unit on the Lot, (ii) six months from the commencement of construction of a Residential Unit on the Lot, or (iii) two (2) years from the date the Lot is conveyed by the Declarant or a Developer to an Owner other than a Developer.
- (d) A Lot which is not a Residential Lot shall be assessed 25% of the amount equal to the number of Memberships attributable to the Lot multiplied by the Membership Assessment until the earlier of (i) the completion of the first building on the Lot; (ii) six months from the commencement of the construction of the first building on the Lot; or (iii) two (2) years from the date the Lot is conveyed by the Declarant to an Owner.

- (e) A Parcel restricted by a Supplemental Declaration to Commercial Condominium Development Use, Commercial Office Use, General Commercial or Retail Use or Resort Use shall be assessed 25% of the amount equal to the number of Memberships attributable to the Parcel multiplied by the Membership Assessment, until the earlier of (i) the completion of the first building on the Parcel, (ii) six (6) months from the commencement of construction of the first building on the Parcel, or (iii) two (2) years from the date the Parcel is conveyed by the Declarant to an Owner.
- (f) A Parcel restricted by a Supplemental Declaration to Apartment Development Use (and which has not been converted to Condominiums) or a Residential Condominium Development Use shall be assessed 25% of the amount equal to the number of Memberships attributable to the Parcel multiplied by the Membership Assessment until (i) a site plan has been approved by the Architectural Review Committee and the City of Mesa for any portion of the Parcel and an Apartment Development or Condominium Development has either been completed on the Parcel; (ii) six (6) months have elapsed since construction of the Development was commenced, or (iii) two (2) years from the date the Parcel is conveyed by the Declarant to an Owner.
- (g) A Parcel restricted by a ^{Unofficial Document} Supplemental Declaration to Single Family Residential Use shall be assessed 25% of the amount equal to the number of Memberships attributable to the Parcel multiplied by the Membership Assessment.
- (h) The reduced Assessments referred to in Subsections (b) through (d) of this Section 6.3 will be continued for unimproved portions of Parcels when improvements are to be phased. The portions of the Assessments affected by the phasing shall be determined by the Board.
- (i) So long as there is a Class B Membership in the Association, Lots and Parcels owned by the Declarant shall not be subject to Assessment, but the Declarant shall be required to pay to the Association the difference between the cost of operating and administering the Association (except for costs and expenses which are assessed as a Subdivision Assessment pursuant to Section 6.5 of this Declaration) and the Annual Assessment levied pursuant to this Section 6.3. When the Class B membership ceases in accordance with Section 5.8 of this Declaration, Declarant shall no longer be required to subsidize the cost of operating and administering the Association but all Lots and Parcels owned by

Declarant shall be subject to assessment in the same manner as any other Lot or Parcel.

(j) Notwithstanding the foregoing or anything to the contrary contained in this Declaration, if a Parcel consisting of Residential Lots is developed with public streets, the Association shall reasonably determine the reduced expenses to the Association as a result of the Parcel not including private streets to be maintained by the Association as Master Common Area, and shall appropriately reduce the Annual Assessments and any Special Assessments for the Residential Lots within that Parcel.

6.4 Special Assessments. The Association may levy against each Lot or Parcel which is Assessable Property a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon an Area of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment is approved by Members having more than two-thirds (2/3) of the votes in each Class of Membership entitled to be cast by Members present in person or by proxy at a meeting duly called for such purpose. Special Assessments shall be levied at a uniform rate per Membership.

6.5 Subdivision Assessments.

6.5.1 All Common Expenses of the Association pertaining to the maintenance, repair and replacement of Subdivision Common Areas or to the providing of Subdivision Services shall be shown separately in the budget adopted by the Board. The Common Expenses pertaining to the maintenance, repair and replacement of a Subdivision Assessment Area or to the providing of Subdivision Services shall be assessed solely against the Lots and Parcels within the Subdivision Assessment Area as established by the Supplemental Declaration designating the Subdivision Assessment Area. No Common Expenses pertaining to the maintenance, repair or replacement of Subdivision Common Area or pertaining to providing Subdivision Services shall be used in computing the Annual Assessments to be levied pursuant to Section 6.2 of this Declaration. Unless otherwise provided for in the applicable Supplemental Declaration, Subdivision Assessments shall be levied against the Lots and Parcels within the Subdivision Assessment Area at a uniform rate per Membership. If the Board determines during any Assessment Period that any Subdivision Assessment is, or will, become inadequate to pay all Common Expenses to be paid by the Subdivision Assessment for any reason, including, without limitation, nonpayment of Subdivision Assessments by Owners, the Board may increase the Subdivision Assessment for that Assessment Period and the revised Subdivision Assessment shall commence on the date designated by the Board.

6.5.2 In addition to a Subdivision Assessment assessed pursuant to Subsection 6.5.1, the Association may assess against each Lot and Parcel within a Subdivision Assessment Area a special Subdivision Assessment for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement situated on the Subdivision Common Area. Any such special Subdivision

Assessment shall be assessed against all Lots and Parcels within the applicable Subdivision Assessment Area at a uniform rate per Membership.

6.6 Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Assessments shall commence upon the conveyance of the first Lot or Parcel to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

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

6.8 Effect of Nonpayment of Assessments; Remedies of the Association.

6.8.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve percent (12%) per annum. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

6.8.2 The Association shall have a lien on each Lot or Parcel for: (i) all Assessments levied against the Lot or Parcel; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or Parcel or payable by the Owner of the Lot or Parcel; (iii) all monetary penalties levied against the Owner of the Lot or Parcel; (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot or Parcel; (v) any amounts payable to the Association pursuant to Section 7.3 or 7.4 of this Declaration; (vi) with respect to Lots or Parcels owned by Declarant, any amounts payable by the Declarant to the Association pursuant to Section 6.3(i) of this

Declaration; and (vii) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot or Parcel against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot or Parcel, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments and all other amounts due to the Association by such Owner. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot or Parcel. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot or Parcel against which the Notice of Lien is Recorded a lien fee in an amount to be set from time to time by the Board.

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

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

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

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

6.10 Purposes for which Association's Funds May Be Used. The Association shall use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (i) discharging and performing the Association's duties and obligations under the Project Documents; (ii) exercising the rights and powers granted to the Association by the Project Documents, and (iii) the common good and benefit of the Project and the Owners, Lessees and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners, Lessees and Residents. ^{Unofficial Document} Notwithstanding any other provision of this Declaration to the contrary, so long as there is a Class B membership in the Association, funds of the Association may not be used for the initial construction of Improvements on the Master Common Area.

6.11 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

6.12 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser (other than a Developer) of a Lot or Parcel from the Declarant or a Developer shall pay to the Association immediately upon becoming the Owner of the Lot or Parcel a sum equal to one-sixth (1/6th) of the then current Membership Assessment (as defined in Section 6.3(a) of this Declaration) multiplied by the number of Memberships attributable to the Lot or Parcel. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall

not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

6.13 Transfer Fee. Each Purchaser (other than a Developer) of a Lot or Parcel shall pay to the Association immediately upon becoming the Owner of the Lot or Parcel a transfer fee in such amount as is established from time to time by the Board.

ARTICLE 7

MAINTENANCE

7.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility, but all Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Master Common Area or alter, modify or remove any Improvements situated on the Master Common Area without the approval of the Board. No Owner, Resident or other person shall remove, add to or modify any plants, trees, granite or other landscaping Improvements in the part of their Lot or Parcel which constitutes an Area of Association Responsibility without the prior written approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility, and the Improvements located thereon. The City of Mesa shall not be responsible for and will not accept maintenance of any private utilities, streets, facilities or landscaped areas within the Project.

7.2 Lots and Parcels. Each Owner of a Lot or Parcel shall be responsible for maintaining, repairing or replacing his Lot or Parcel, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot or Parcel which is an Area of Association Responsibility. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots and Parcels upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

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

7.4 Improper Maintenance and Use of Lots or Parcels. In the event any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or Parcels or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner which violates this Declaration; or in the event the Owner of any Lot or Parcel is failing to perform any of his obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.5 Boundary Walls.

Unofficial Document

7.5.1 Each wall or fence which is located between two Lots or Parcels shall constitute a boundary wall and, to the extent not inconsistent with this Section 7.5, the general rules of law regarding boundary walls shall apply.

7.5.2 The Owners of contiguous Lots or Parcels who have a boundary wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner;

7.5.3 The adjoining Owners shall each have the right to perform any necessary maintenance, repair or replacement of the wall and the cost of such maintenance, repair or replacement shall be shared equally by the adjoining Owners except as otherwise provided in this Section; provided, however, that each Owner shall be solely responsible for painting the side of the wall which faces his Lot or Parcel.

7.5.4 In the event that any boundary wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners;

7.5.5 In the event any such boundary wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then,

in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

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

7.5.7 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a boundary wall shall first obtain the written consent of the adjoining Owners;

7.5.8 In the event any boundary wall encroaches upon a Lot or Parcel, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots or Parcels which share such boundary wall.

7.6 Maintenance of Walls other than Boundary Walls.

7.6.1 Unless otherwise provided in a Supplemental Declaration, walls (other than boundary walls governed by Section 7.5 or walls covered by Subsections 7.6.2 and 7.6.3 of this Declaration) located on a Lot or Parcel shall be maintained, repaired and replaced by the Owner of the Lot or Parcel. Walls which constitute a boundary wall between a Lot or Parcel and the Golf Course Facilities shall be maintained, repaired and replaced by the Owner of the Lot or Parcel.

Unofficial Document

7.6.2 Any wall which consists of masonry columns and/or masonry base and wrought iron fencing which separates a Lot or Parcel and an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of the Lot or Parcel, except that the Association shall be responsible for the painting, repair, maintenance and replacement of (i) the top of the masonry wall or columns, (ii) the side(s) of the masonry wall or columns which are visible from the Area of Association Responsibility, and (iii) all portions of any wrought iron fencing. The Owner of the Lot or Parcel shall be responsible for reimbursing the Association for one-half (½) of the cost incurred by the Association in painting, repairing and/or replacing any such wrought iron fencing. Any reimbursement due to the Association from an Owner pursuant to this Subsection shall be paid by the Owner to the Association within fifteen (15) days after receipt of a bill, invoice or other demand from the Association for such reimbursement amount.

7.6.3 If the Association deems it necessary to trim, cut or remove vines, plants, trees, bushes, shrubs or other landscaping planted on a Lot or Parcel in order for the Association to be able to perform its maintenance responsibilities under this Section, the Association shall give notice to the Owner of the applicable Lot or Parcel identifying the work which must be done in order for the Association to be able to perform its maintenance responsibilities and the date by which such work must be completed. If the Owner does not perform the work identified in the notice within the time period set forth in the notice, then

the Association shall have the right to perform the necessary work and charge the Owner for all costs incurred by the Association in the performance of the work. Any such amounts which become payable by an Owner to the Association pursuant to this Subsection shall be paid by the Owner within fifteen (15) days after receipt of a billing, invoice or other demand from the Association for payment of such amount. The Association shall not be liable to the Owner of a Lot or Parcel or to any other Person for any loss or damage to the landscaping or for any change in appearance of a Lot or Parcel as a result of any work performed by the Association on a Lot or Parcel pursuant to this Subsection. The Association shall be liable to the Owner of a Lot or Parcel for any damage to a wall caused by the Association in the exercise of the Association's rights under this Subsection 7.6.

7.6.4 Any wall which is placed on the boundary line between a Lot or Parcel and public right-of-way shall be maintained, repaired and replaced by the Association except that the Owner of the Lot or Parcel shall be responsible for the repair and replacement of the surface of the wall which faces the Lot or Parcel.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot or Parcel to a Purchaser, ^{Unofficial Document} the Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

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

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

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

8.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

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

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

8.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Common Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

8.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not

repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 9

GENERAL PROVISIONS

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

9.2 Term; Method of Termination. This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots or Parcels, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3 Amendments.

9.3.1 Except for amendments made pursuant to Subsection 9.3.2 or 9.3.5 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than seventy-five percent (75%) of the total votes in the Association.

9.3.2 The Declarant, so long as the Declarant owns any Lot or Parcel, and thereafter, the Board, may amend this Declaration, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project or the Project Documents is required by law or requested by the Declarant or the Board.

9.3.3 So long as the Declarant is a Member of the Association, any amendment to this Declaration must be approved in writing by the Declarant.

9.3.4 So long as there is a Class B membership in the Association, any amendment to this Declaration must have the prior written approval of the Veterans Administration or the Federal Housing Administration.

9.3.5 The Declarant, ^{Unofficial Document} so long as the Declarant is a Member of the Association, and thereafter, the Board, may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in the Declaration.

9.3.6 So long as the Declarant holds more than seventy-five percent (75%) of the votes in the Association, any amendment to this Declaration shall be signed by Declarant and Recorded. At any time the Declarant does not hold at least seventy-five percent (75%) of the votes in the Association, any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 or 9.3.5 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 9.3.2 or 9.3.5 of this Declaration shall be signed by the Declarant and Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

9.4 Rights of First Mortgagees.

9.4.1 Any First Mortgagee will, upon written request, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free

of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

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

9.4.3 Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

(i) Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection;

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

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

(iv) Fail to maintain fire and extended coverage on insurance common area on current replacement cost basis in an amount of at least 100 percent of insurable value;

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

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

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

9.4.6 In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Project Documents, the provisions

of this Section shall prevail; provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Project Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Subsection 9.4.3 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided, however, that the Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles of the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant or the Board.

9.5 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. ^{Unofficial Document} In the event of any conflict between the Bylaws and the Association Rules or Design Guidelines, the Bylaws shall control.

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

9.7 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of twenty-one (21) years after the death of the last survivor of the now living descendants of William Clinton, President of the United States.

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

9.9 Notice of Violation. The Association shall have the right to record against a Lot or Parcel a written notice of a violation with respect to any violation of the Project Documents by the Owner, Lessee or Resident of the Lot or Parcel. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating, or responsible for the

violation of, the Project Documents; (ii) the legal description of the Lot or Parcel against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner, Lessee or Resident to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner, Lessee and Resident, and any subsequent purchaser of the Lot or Parcel, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance with shall state the legal description of the Lot or Parcel against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or Parcel or constitute a waiver of any right of the Association to enforce the Project Documents.

9.10 Laws, Ordinances and Regulations.

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

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

9.11 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot, Parcel or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

9.12 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.13 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are

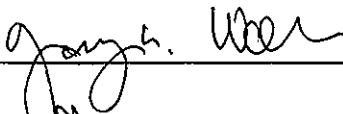
not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

9.14 FHA/VA Approval. So long as there is a Class B membership in the Association, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of common areas, an amendment to this Declaration.

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

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

CRM HOLDINGS, L.L.C., an
Arizona limited liability company

By: 
Its: Manager

State of Arizona)
) ss.
County of)

Acknowledged before me this 4 day of August, 1995, by
Gary K. Walker, the Manager of CRM Holdings, L.L.C.,
an Arizona limited liability company, on behalf of the limited liability company.

Olga E. Robles
Notary Public

My Commission Expires:
April 11, 1996



Unofficial Document

EXHIBIT "A"

NO. 201-800-680226

PARCEL NO. 13:

That portion of the Southwest quarter of the Southeast quarter and the Northeast quarter of Section 30, Township 2 North, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest corner of said Section 30, from which the West quarter corner of said Section 30 bears North 00 degrees 02 minutes 56 seconds East, a distance of 2,640.86 feet;

thence South 89 degrees 40 minutes 39 seconds East along the South line of the Southwest quarter of said Section 30, a distance of 538.08 feet to the beginning of a tangent curve concave Northwesterly, having a radius of 550.00 feet;

thence Northeasterly 807.82 feet along the arc of said curve through a central angle of 84 degrees 09 minutes 15 seconds to the beginning of a reverse curve concave Southeasterly, having a radius of 4,850.00 feet;

thence Northeasterly 882.22 feet along the arc of said curve through a central angle of 10 degrees 25 minutes 20 seconds to a point of tangency;

thence North 16 degrees 35 ^{Unofficial Document} seconds East, 118.95 feet;

thence South 73 degrees 24 minutes 34 seconds East, 589.75 feet to the beginning of a tangent curve concave Northerly, having a radius of 900.00 feet;

thence Southeasterly 127.76 feet along the arc of said curve through a central angle of 08 degrees 08 minutes 00 seconds;

thence North 08 degrees 24 minutes 56 seconds East, 35.00 feet along a radial line to the TRUE POINT OF BEGINNING;

thence North 12 degrees 52 minutes 44 seconds East, 34.71 feet;

thence North 49 degrees 29 minutes 02 seconds East, 116.51 feet;

thence North 35 degrees 56 minutes 15 seconds East, 568.24 feet;

thence North 32 degrees 51 minutes 55 seconds East, 190.79 feet;

thence North 12 degrees 08 minutes 28 seconds West, 352.17 feet;

thence North 80 degrees 25 minutes 05 seconds East, 811.81 feet;

thence North 59 degrees 24 minutes 31 seconds East, 573.63 feet;

thence South 38 degrees 27 minutes 42 seconds East, 67.69 feet;

No: (201-800-680226)

thence South 26 degrees 36 minutes 45 seconds West, 544.08 feet;

thence South 31 degrees 05 minutes 05 seconds West, 402.79 feet;

thence South 34 degrees 03 minutes 21 seconds West, 265.23 feet;

thence South 05 degrees 22 minutes 13 seconds West, 114.56 feet;

thence South 18 degrees 24 minutes 43 seconds East, 116.49 feet;

thence South 02 degrees 16 minutes 50 seconds East, 36.10 feet to the beginning of a non-tangent curve concave Southerly, the center of said curve bears South 12 degrees 28 minutes 18 seconds West, 735.00 feet;

thence Northwesterly 313.66 feet along the arc of said curve through a central angle of 24 degrees 27 minutes 04 seconds to a point of tangency;

thence South 78 degrees 01 minutes 14 seconds West, 618.35 feet to the beginning of a tangent curve concave Northerly, having a radius of 865.00 feet;

thence Westerly 308.56 feet along the arc of said curve, through a central angle of 20 degrees 26 minutes 18 seconds to the TRUE POINT OF BEGINNING;

EXCEPT all uranium, thorium or any other material which is or may be determined to be ^{Unofficial Document}peculiar to the production of fissionable materials, whether or not of commercial value, as reserved in Patent recorded in Docket 444, Page 444.

**CONSENT OF BENEFICIARY
UNDER DEED OF TRUST AND ASSIGNMENT OF RENTS
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LAS SENDAS**

The undersigned, as the Beneficiary under the Deed of Trust and Assignment of Rents recorded at Recording No. _____, records of Maricopa County, Arizona (the "Deed of Trust"), hereby consents to the recording of the foregoing Declaration of Covenants, Conditions and Restrictions for Las Sendas (the "CC&Rs") and acknowledges and agrees that the Deed of Trust shall be subordinate to the CC&Rs and that the CC&Rs shall survive any trustee's sale held pursuant to the Deed of Trust or any execution sale resulting from any foreclosure of the Deed of Trust.

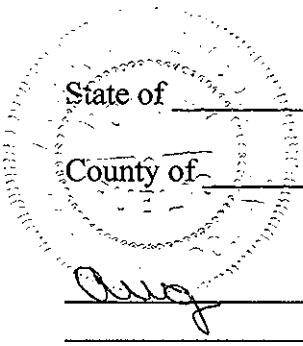
Dated this 21 day of August, 1995.

AMES CONSTRUCTION, INC., a Minnesota corporation

By: _____

Unofficial Document

Its: _____



State of _____)
County of _____) ss.

The foregoing was acknowledged before me this 21st day of _____, 1995, by _____, the _____ of Ames Construction, Inc., a Minnesota corporation, on behalf of the corporation.

Valeria Neumann
Notary Public

My Commission Expires:

My Commission Expires May 15, 1998