

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20020444865 04/30/2002 15 43  
ELECTRONIC RECORDING

When recorded return to  
Peter Gooding  
7600 E Doubletree Ranch Road, Suite 220  
Scottsdale, AZ 85258

043002B-37-1-1--  
Esquivela

**043002B**

DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS

**TABLE OF CONTENTS**

**ARTICLE I**

|  |          |
|--|----------|
| <b>DEFINITIONS</b>                     | <b>2</b> |
| 1 1 Architectural Committee            | 2        |
| 1 2 Architectural Committee Rules      | 2        |
| 1 3 Articles                           | 2        |
| 1 4 Association                        | 2        |
| 1 5 Board                              | 2        |
| 1 6 Bylaws                             | 2        |
| 1 7 Common Area(s)                     | 2        |
| 1 8 Declarant                          | 2        |
| 1 9 Declaration                        | 2        |
| 1 10 Lot(s)                            | 2        |
| 1 11 Member(s)                         | 2        |
| 1 12 Owner(s)                          | 3        |
| 1 13 Person(s)                         | 3        |
| 1 14 Property or Properties            | 3        |
| 1 15 Rules                             | 3        |
| 1 16 Visible from Neighboring Property | 3        |

**ARTICLE II**

|   |          |
|---|----------|
| <b>PROPERTY RIGHTS</b>                        | <b>3</b> |
| 2 1 Owners' Easements of Enjoyment            | 3        |
| 2 2 Delegation of Use                         | 4        |
| 2 3 Owner's Easement of Enjoyment Limitations | 4        |
| 2 4 Title to Common Areas                     | 4        |

**ARTICLE III**

|   |          |
|---|----------|
| <b>PROPERTY SUBJECT TO THIS DECLARATION</b> | <b>5</b> |
| 3 1 General Declarant                       | 5        |

**ARTICLE IV**

|  |          |
|--|----------|
| <b>THE ASSOCIATION</b>                 | <b>5</b> |
| 4 1 The Association                    | 5        |
| 4 2 The Board of Directors & Officers  | 5        |
| 4 3 Powers & Duties of the Association | 5        |
| 4 4 Rules                              | 5        |
| 4 5 Indemnification                    | 5        |

|     |  |   |
|-----|--|---|
| 4 6 | Procedure for Transfer of Common Areas | 6 |
| 4 7 | Procedure for Transfer of Common Areas | 6 |
| 4 8 | Areas of Association Responsibility    | 7 |

**ARTICLE V**

|                                       |               |   |
|---------------------------------------|---------------|---|
| <b>MEMBERSHIP &amp; VOTING RIGHTS</b> |               | 7 |
| 5 1                                   | Membership    | 7 |
| 5 2                                   | Voting Rights | 7 |

**ARTICLE VI**

|  |  |    |
|--|--|----|
| <b>COVENANT FOR MAINTENANCE ASSESSMENTS ..</b> |  | 8  |
| 6 1  | Creation of the Lien & Personal Obligation                         | 8  |
| 6 2  | Capital Reserve Fund   | 8  |
| 6 3  | Transfer Fee   | 8  |
| 6 4  | Reserve Studies  | 8  |
| 6 5  | Purpose of Assessments   | 9  |
| 6 6  | Maximum Annual Assessment  | 9  |
| 6 7  | Special Assessment for Capital Improvements                        | 10 |
| 6 8  | Notice & Quorum for any Action Authorized Under Sections 6 6 & 6 7 | 10 |
| 6 9  | Uniform Rate of Assessment   | 10 |
| 6 10   | Date of Commencement of Annual Assessments Due Date                | 10 |
| 6 11   | Effect of Non-Payment of Assessments Remedies of the Association   | 11 |
| 6 12   | Subordination of the Lien to First Mortgages                       | 12 |
| 6 13   | No Offsets   | 12 |

**ARTICLE VII**

|                              |   |    |
|------------------------------|---|----|
| <b>ARCHITECTURAL CONTROL</b> |   | 12 |
| 7 1                          | Organization, Power of Appointment & Removal of Members | 12 |
| 7 2                          | Duties  | 13 |
| 7 3                          | Meetings and Compensation                               | 13 |
| 7 4                          | Architectural Committee Rules                           | 14 |
| 7 5                          | Waiver  | 14 |
| 7 6                          | Time for Approval                                       | 14 |
| 7 7                          | Liability   | 14 |

**ARTICLE VIII**

|                         |   |    |
|-------------------------|---|----|
| <b>USE RESTRICTIONS</b> |   | 14 |
| 8 1                     | Permitted Uses & Restrictions Residential | 14 |
|                         | (a) Single Family Residential Use         | 14 |
|                         | (b) Sewage Systems                        | 15 |
|                         | (c) Antennas                              | 15 |

|   |    |
|---|----|
| (d) Utility Service   | 15 |
| (e) Improvements and Alterations                                | 16 |
| (f) Landscape Irrigation – Pressure Sustaining Valves           | 16 |
| (g) Maintenance of Lawns and Plantings                          | 16 |
| (h) Repair of Buildings   | 16 |
| (i) Trash Containers and Collection                             | 17 |
| (j) Overhangs   | 17 |
| (k) Machinery, Equipment and Structures                         | 17 |
| (l) Restriction on Further Subdivision                          | 17 |
| (m) Signs   | 17 |
| (n) Utility Easements   | 18 |
| (o) Animals   | 18 |
| (p) Temporary Occupancy   | 18 |
| (q) Trailers, Boats, Aircraft, and Motor Vehicles               | 18 |
| (r) Nuisances/Construction Activities                           | 19 |
| (s) Clothes Drying Facilities                                   | 19 |
| (t) Mineral Exploration   | 19 |
| (u) Diseases and Insects  | 19 |
| (v) Party Walls and Fences                                      | 19 |
| (w) Drainage Easement   | 21 |
| (x) Parking   | 21 |
| (y) Right of Entry  | 21 |
| (z) Health, Safety and Welfare                                  | 21 |
| (zz) Declarant's Exemption                                      | 21 |
| 8 2 Permitted Uses, Restrictions and Maintenance - Common Areas | 22 |
| (a) Permitted Uses  | 22 |
| (b) Restricted Uses   | 22 |
| (c) Maintenance by Association                                  | 22 |
| (d) Damage or Destruction of Common Areas by Owners             | 24 |
| (e) Mortgage or Conveyance of Common Areas                      | 24 |

**ARTICLE IX**

|   |    |
|---|----|
| <b>INSURANCE.</b>   | 24 |
| 9 1 Scope of Coverage                                       | 24 |
| 9 2 Certificates of Insurance                               | 24 |
| 9 3 Repair and Replacement of Damaged or Destroyed Property | 24 |

**ARTICLE X**

|  |    |
|--|----|
| <b>ALTERNATIVE DISPUTE RESOLUTION</b>          | 25 |
| 10 1 Alternative Method for Resolving Disputes | 25 |
| 10 2 Claims                                    | 25 |
| 10 3 Mandatory Procedures                      | 25 |
| (a) Notice                                     | 25 |

|  |    |
|--|----|
| (b) Negotiation and Mediation                          | 26 |
| (c) Termination of Mediation                           | 27 |
| 10 4 Member Approval of Association Claims and Actions | 28 |
| 10 5 Waiver  | 28 |

**ARTICLE XI**

|                                  |           |
|----------------------------------|-----------|
| <b>MISCELLANEOUS</b> .....       | <b>28</b> |
| 11 1 The Declaration             | 28        |
| 11 2 Enforcement                 | 29        |
| 11 3 Severability                | 29        |
| 11 4 Term                        | 29        |
| 11 5 Amendment                   | 29        |
| 11 6 Notices                     | 29        |
| 11 7 Condemnation                | 30        |
| 11 8 Waiver, Remedies Cumulative | 30        |
| 11 9 Topical Heading             | 31        |
| 11 10 Prior Approval             | 31        |

When recorded return to  
Peter Gooding  
7600 E Doubletree Ranch Road, Suite 220  
Scottsdale, AZ 85258

DECLARATION OF COVENANTS, CONDITIONS,  
& RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "Declaration") is made this 30<sup>th</sup> day of April, 2002 by Litchfield Ventures, L L C, an Arizona corporation ("Declarant")

RECITALS

A Declarant is the owner and developer of certain real property in the County of Maricopa, State of Arizona, which is more particularly described as follows

Lots 1 through 43 and Lots 1 through 198 inclusive of Litchfield Farms, and Litchfield Farms Unit II more particularly described in the records of Maricopa County, Arizona, Book 587 of Maps, Pages 28 and 29 (the "Property"),

B Declarant desires that an Arizona non-profit corporation, Litchfield Farms Property Owners Association, be formed for the purpose of the efficient preservation of the values and amenities of Litchfield Farms and to which will be delegated certain powers of administering and maintaining the Common Areas, enforcing this Declaration, and collecting and disbursing the assessments created herein

C Declarant desires and intends that the Property shall be held, sold, and conveyed, subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on and for the benefit of all parties having or acquiring any right, title, or interest in the Property or any part thereof, their heirs, successors, or assigns, and shall inure to the benefit of each owner thereof and their heirs, representatives, successors, and assigns

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

ARTICLE I  
DEFINITIONS

In addition to the terms defined elsewhere in this Declaration, the following terms shall have the meanings described herein

Section 1.1 "Architctural Committee" shall mean the committee created pursuant to Article VII hereof

Section 1.2 "Architctural Committee Rules" shall mean the rules, if any, adopted by the Architectural Committee

Section 1.3 "Articles" shall mean the Articles of Incorporation of the Association, as such may be amended from time to time

Section 1.4 "Association" shall mean and refer to LITCHFIELD FARMS PROPERTY OWNERS ASSOCIATION, an Arizona non-profit corporation, its successors and assigns

Section 1.5 "Board" shall mean the Board of Directors of the Association

Section 1.6 "Bylaws" shall mean the Bylaws of the Association, as such may be amended from time to time

Section 1.7 "Common Area(s)" shall mean all areas (including the improvements thereon) owned or to be owned by the Association for the common use and enjoyment of Owners and/or residents of Litchfield Farms

Section 1.8 "County" shall mean Maricopa County, Arizona

Section 1.9 "Declarant" shall mean the Declarant designated above or any person or entity who has succeeded to Declarant's rights and powers hereunder as to all or a portion of the Property and to whom Declarant's rights hereunder have been assigned by recorded instrument

Section 1.10 "Declaration" shall mean the covenants, conditions, restrictions, and easements set forth in this document, as such may be amended from time to time

Section 1.11 "Lot(s)" shall mean any numbered parcel of real property shown upon any recorded plat of the Property together with any improvements constructed thereon, with the

exception of the areas designated as lettered tracts and areas dedicated to the public Each Lot shall be a separate freehold estate

Section 1 12 "Member(s)" shall mean any person, corporation, partnership, joint venture, or other legal entity that is a member of the Association

Section 1 13 "Owner(s)" shall mean the record owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if same have merged) of any Lot "Owner(s)" shall include the purchaser under a recorded agreement for sale of any Lot The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation Except as stated otherwise herein, "Owner(s)" shall not include a lessee or tenant of a Lot "Owner(s)" shall include Declarant so long as Declarant owns any Lot within the Property

Section 1 14 "Person(s)" shall mean an individual, corporation, partnership, limited liability company, trustee, or other entity capable of holding title to real property under Arizona law

Section 1 15 "Property" or "Properties" shall mean the real property described in Recital A above which is subject to this Declaration

Section 1 16 "Rules" shall mean the rules and regulations adopted by the Board, if any, as such may be amended from time to time, as more further described in Section 4 4

Section 1 17 "Visible from Neighboring Property" shall mean, with respect to any given object, visible to a person six feet tall, standing on any part of neighboring property at an elevation no greater than ground level where the object is located (assuming the ground level where the person is standing is at the same height as the ground level where the object is located)

## ARTICLE II PROPERTY RIGHTS

Section 2 1 Owners' Easements of Enjoyment Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions

- (a) the right of the Association to change and regulate the use of Common Areas in accordance with Section 4 6,
- (b) the right of the Association to change the size, shape, or location of the Common Areas, to exchange the Common Areas for other property or interests which become Common Areas, and to abandon, dedicate, or otherwise transfer Common Areas in accordance with Section 4 7 hereof, and



- (c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities, and in aid thereof, to mortgage said property in accordance with Section 8 2(e) hereof. The rights of such mortgagee in said property shall be subordinate to the rights of the Owners hereunder.

Section 2.2 Delegation of Use. Any Owner may delegate, in accordance with and subject to any restrictions contained in the Bylaws, his right of enjoyment to the Common Areas and improvements thereon to his tenants, or occupants of his Lot, or guests.

Section 2.3 Owners' Easement of Enjoyment Limitations

- (a) An Owner's right and easement of enjoyment in and to the Common Areas shall not be conveyed, transferred, alienated, or encumbered separate and apart from an Owner's Lot and such right and easement of enjoyment in and to the Common Areas shall be deemed to be conveyed, transferred, alienated, or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation, or encumbrance may not refer to the Common Areas.
- (b) Except as authorized by Section 2.1(b), the Common Areas shall remain undivided and no action for partition or division of any part thereof shall be permitted.
- (c) Each Owner, his tenant, the occupant of his Lot, and his guests may use the Common Areas in common with the Owners, invitees, tenants, and occupants of the other Lots in accordance with the purposes for which it is intended without hindering or encroaching upon the lawful right of such others and in accordance with the Association Rules established by the Board.

Section 2.4 Title to Common Areas. Declarant covenants that it will convey fee simple title to the Common Areas to the Association, free of all encumbrances except current real and personal property taxes and other easements, conditions, reservations, and restrictions then of record. The conveyance shall be made to the Association prior to the conveyance of the first Lot from the Declarant to any purchaser.

ARTICLE III  
PROPERTY SUBJECT TO THIS DECLARATION

Section 3 1 General Declaration Because it is intended that the Property as presently subdivided shall be sold and conveyed to purchasers subject to this Declaration, Declarant hereby declares that the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved, or transferred in whole or in part, subject to this Declaration, as amended from time to time, provided, however, property which is not part of a Lot and which is dedicated or transferred to a public authority or utility pursuant to Section 4 7 shall not be subject to this Declaration while owned by the public authority or utility This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property This Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Members, and their respective successors in interest

ARTICLE IV  
THE ASSOCIATION

Section 4 1 The Association The Association is an Arizona non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise modified or interpreted so as to be inconsistent with this Declaration

Section 4 2 The Board of Directors and Officers The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws

Section 4 3 Powers and Duties of the Association The Association shall have such rights, duties, and powers as set forth herein and in the Articles and Bylaws

Section 4 4 Rules By action of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Rules" The Rules may restrict and govern the use of the Property, provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, or Bylaws A copy of the Rules, as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each Owner The Rules shall have the same force and effect as if they were set forth herein and were a part of this Declaration and may be recorded

Section 4 5 Indemnification To the fullest extent permitted by law, the Association shall indemnify the following Persons against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon such Person in connection with any proceeding to which such Person may be a party, or in which such Person may become involved,

by reason of such Person being or having served in any capacity on behalf of the Association (or by reason of having appointed, removed, or controlled or failed to control members of the Board or the Architectural Committee)

- (a) every director and officer of the Association and every member of the Architectural Committee and any other committee of the Association,
- (b) Declarant, and
- (c) every person serving as an employee of the Association

Any such Person shall be entitled to indemnification whether or not such Person is a director, officer, or member of the Association or of the Architectural Committee or any other committee of the Association or serving in any other such specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that the Person to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of its duties. The foregoing rights of indemnification shall be in addition to, and not in place of, all other rights to which such Persons may be entitled at law or otherwise.

**Section 4.6 Procedure for Change of Use of Common Areas** Upon (a) adoption of a resolution by the Board stating that the then current use of a specified part of the Common Areas is no longer in the best interests of the Owners and Members, and (b) the approval of such resolution by a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith to take whatever actions are required to accommodate the new use), provided such new use (i) also shall be for the common benefit of the Owners and Members, and (ii) shall be consistent with any recorded tract declaration, deed restrictions, or zoning regulations. Alternatively, the Board upon satisfaction of Subsection 4.6(a) above may, in lieu of calling a meeting, notify in writing all Members of the proposed transaction and of their right to object thereto and, if no more than ten percent (10%) of the Class A Memberships eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

**Section 4.7 Procedure for Transfers of Common Areas** The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public authority or utility (i) if the transfer or dedication does not have a substantial adverse effect on the enjoyment of the Common Areas by the Members or the residents, or (ii) if required by a recorded subdivision plat, a zoning stipulation, or an agreement with the County of Maricopa, effective prior to the date hereof. Except as authorized in (i) or (ii) above, no such dedication or transfer shall be effective without the approval of a majority of the vote of each class of Members, voting in person or by proxy at a meeting called for such purpose. The Association shall have the right to change the size, shape, or location of the Common Areas, to exchange the Common Areas for other property

or interests which become Common Areas, and to abandon or otherwise transfer Common Areas (to a non-public authority) upon (x) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Areas is no longer in the best interests of the Owner and Members, and that the change desired shall be for their benefit and shall not substantially adversely affect them, and (y) the approval of such resolution by a majority of the votes of each class of Members, voting in person or by proxy, at a meeting called for such purpose. Alternatively, the Board upon satisfaction of Subsection 4 7(x) above may, in lieu of calling a meeting pursuant to Subsection 4 7(y) above, notify in writing all Members of the proposed transaction and of their right to object thereto and, if no more than ten percent (10%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

**Section 4 8 Areas of Association Responsibility.** The Association, or its duly delegated representative, shall manage, maintain, repair, and replace the areas within the Property that are the responsibility of the Association ("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, in accordance with the maintenance standard as determined by the Board. The Board shall be the sole judge as to the appropriate maintenance, repair, and replacement of all Areas of Association Responsibility.

## ARTICLE V MEMBERSHIP AND VOTING RIGHTS

**Section 5 1 Membership.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 5 2 Voting Rights.** The Association shall have two (2) classes of voting membership.

**Class A** Class A Members shall be all Owners, with the exception of the Declarant. Each such Owner shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as such Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

**Class B** The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either the following events, whichever first occurs:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) The 31st day of December, 20\_\_ *[TEN YEARS]*

**ARTICLE VI  
COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 6 1 Creation of the Lien and Personal Obligation of Assessments** Declarant covenants for each Lot, and each Owner of any Lot by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay to the Association (1) annual assessments and (2) special assessments for capital improvements or any other special assessments to defray the operating cost of the Association in any one given year said special assessment is assessed, such assessments to be established and collected as hereinafter provided. A Lot owned by the Association, pursuant to Section 6 11 or otherwise, shall not be subject to assessment.

The annual and special assessments, together with interest costs and reasonable attorneys' fees including collection costs, shall be a charge on the Lot and shall be a continuing lien thereon as well as the personal obligation of the Person who was the Lot Owner at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Lot Owner's successors in title, unless expressly assumed.

**Section 6 2 Capital Reserve Fund** To ensure that the Association shall have adequate funds to meet its reserve amounts, each Person who is the initial purchaser of a Lot (other than the Declarant or any developer) shall pay to the Association immediately upon becoming the Owner of a Lot a sum equal to one-quarter (1/4) of the current annual assessment for the Lot ("Capital Reserve Fee"). Funds paid to the Association pursuant to this Section 6 2 are to be used by the Association for the purpose of establishing reserves. Such funds may only be used to establish a replacement and repair reserve account or to apply towards repair and reconstruction of improvements within Areas of Association Responsibility. Payments made pursuant to this Section 6 2 shall be non-refundable and shall not be considered as an advance payment of any assessments levied by the Association pursuant to this Declaration.

**Section 6 3 Transfer Fee** In addition to the Capital Reserve Fee referred to in Section 6 2, each purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot, other than a developer or the first non-developer Owner of the lot, a transfer fee in such amount as is established from time to time by the Board to cover the expenses of the Association (or its management/accounting company) to change its records, to administer the change in ownership, and to pay any ancillary expenses related thereto. The initial transfer fee is set at thirty-five dollars (\$35 00).

**Section 6 4 Reserve Studies** The Board shall periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement.

reserves for the Association, provided, however, (i) no such report or study shall be required until at least three (3) years have elapsed following the date Assessments begin to accrue, and (ii) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study, and (iii) in establishing replacement and repair reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account (a) the past incidences of required repairs at the Property, and (b) projected funds available to the Association pursuant to future Capital Reserve Fees paid pursuant to Section 6 2 of this Declaration

Section 6 5 Purpose of Assessments In order to promote civic and social betterment for the common good of the Members of the Association, the assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents and Owners of the Property and for the improvement and maintenance of the Common Areas

Section 6 6 Maximum Annual Assessment Until December 31, 2004, the maximum annual assessment shall be four hundred and fifty Dollars and No/100 (\$450) per Lot The annual assessment shall be payable annually, semi-annually, quarterly, or monthly as determined by the Board



- (a) From and after January 1, 2005, the maximum annual assessment shall automatically increase effective January 1 of each year without a vote of the members by an amount which is equal to the greater of (i) five percent (5%) of the maximum assessment for the previous year, or (ii) a percentage equal to the average rate of change of the Consumer Price Index (the "CPI") for the most recent past twelve (12) months For the purposes hereof, CPI shall mean the Monthly Labor Review by the United States Department of Labor Statistics, designated "Consumer Price Index--U S City Average for Urban Wage Earners and Clerical Workers, 1982-84 Equals 100, All Items " The maximum annual assessment automatically increases each year even if the actual assessment does not increase
- (b) In addition to Section 6 6(a) above, the maximum annual assessment during each fiscal year of the Association shall be automatically increased by the amounts of any increases in water or other utility charges or any increases to insurance rates charged to the Association, and
- (c) From and after January 1, 2005, the maximum annual assessment may be increased above the amount indicated in Section 6 6(a) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose
- (d) The Board of Directors may fix the annual assessment at an amount not in excess

of the maximum

**Section 6 7 Special Assessment for Capital Improvements** In addition to the annual assessments authorized above, the Association may levy in any assessment year other special assessments to defray the cost of operating the Association, provided, however, that any such assessments shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose

\* **Section 6 8 Notice and Quorum for any Action Authorized Under Sections 6 6 and 6 7** Written notice of any meeting called for the purpose of taking any action authorized under Sections 6 6 and 6 7 shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting At the first such meeting called, the presence of Members or of proxies entitled to cast thirty percent (30%) of all the votes of each class of membership shall constitute a quorum If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting

**Section 6 9 Uniform Rate of Assessment** Except as provided herein, the annual assessments must be fixed at a uniform rate for all Lots and may be collected on an annual, semi-annual, quarterly, or monthly basis, as designated by the Board Notwithstanding the foregoing sentence, Declarant shall pay twenty-five percent (25%) of the annual assessments for each Lot which Declarant owns annually, semi-annually, quarterly, or monthly in the same manner established for payment of the annual assessment amount by other Lot Owners, except that Declarant shall pay and be liable for the full assessment amount for any Lots owned by Declarant which are being used by Declarant as model homes or otherwise being used and occupied for residential purposes (but not sooner than the closing of the first Lot to a residential homebuyer) Notwithstanding the above, any home builder in the business of constructing residential improvements on Lots and who buys Lots from Declarant for such purpose shall pay twenty-five percent (25%) of the annual assessments for each Lot which such builder owns or leases and which is not being occupied for residential purposes Any Owner renting or leasing a Lot to Declarant which is not being occupied for residential purposes shall pay twenty-five percent (25%) of the annual assessment for such Lot

**Section 6 10 Date of Commencement of Annual Assessments Due Date** The annual assessments provided for herein shall commence as of the first day of the month following the conveyance of the first Lot The first annual assessment shall be adjusted according to the number of months remaining in the calendar year The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period Written notice of the annual assessment shall be established by the Board of Directors The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by a representative of the Association setting forth whether the assessments on a specified Lot have been paid A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as to the matters described therein If the amount of the annual assessment is not fixed by the Board thirty (30) days prior to the next fiscal

year, then the current assessment shall be used until the Board establishes the next annual assessment. Failure by the Board to notify the Owners of the new annual assessment shall not relieve said Owners of assessments due the Association.

Section 6.11 Effect of Non-Payment of Assessments Remedies of the Association

Any assessment not paid within fifteen (15) days after the due date shall be subject to a late payment charge equal to the greater of Fifteen Dollars (\$15.00) or ten percent (10%) per annum interest on the amount unpaid, which shall be assessed on the amount owing from the date of delinquency until such time as it is paid, but in no event exceeding the maximum rate or amount allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot. In addition, the Board may, in its discretion, require an Owner and any predecessor in interest who was in arrears at the time of a voluntary conveyance to pay a late charge, in an amount to be determined by the Board, but in no event exceeding the maximum rate or amount allowed by law, for delinquency in the payment of Assessments which are fifteen (15) days or more overdue.

- (a) Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency together with interest thereon at the rate of ten percent (10%) per annum or such lower rate that is equivalent to the maximum rate allowed by law, from the date of delinquency, court costs, reasonable attorneys' fees, late fees, collection costs, and lien fees in such amount as the court may adjudge against the delinquent Owner.
- (b) Enforcement by Lien. There is hereby created a claim of lien on each and every Lot within the Property to secure payment to the Association of any and all assessments levied against any and all Owners of Lots covered by this Declaration, together with interest thereon at the rate of ten percent (10%) per annum or such lower rate that is equivalent to the maximum rate allowed by law, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or even without such a written demand being made, the Association may elect to file such claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such claim of lien shall contain substantially the following information: (1) the name of the delinquent Owner, (2) the legal description and street address of the Lot against which the claim of lien is made, (3) the total interest thereon, collection costs, and reasonable attorneys' fees, (4) a statement that the claim of lien is made by the



Association pursuant to this Declaration, and (5) a statement that a lien is claimed against such Lot in an amount equal to the amount stated

Upon recordation of a duly executed original or copy of such claim of lien, and mailing a copy thereof to the defaulting Owner, the lien claimed shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien, except only tax liens for real property taxes and liens which are specifically described in Section 6 12. Any such lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a realty mortgage or by the exercise of a power of sale in the manner provided by law under a trust deed, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure or trustee's sale and to purchase, acquire, hold, lease, mortgage, and convey any such Lot. In the event of such foreclosure or trustee's sale, reasonable attorneys' fees, court costs, trustee's fees, title search fees, interest, and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 6 12 Subordination of the Lien to First Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, foreclosure, or trustee's sale, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

Section 6 13 No Offsets All assessments and charges shall be payable in the amount specified in the assessment or by notice and no offsets against the specified amount shall be permitted for any reason, including, but not limited to, a claim that (a) the Association, the Board, or Declarant is not properly exercising its duties and powers as provided in this Declaration, (b) assessments for any period exceed expenses for the Association, or (c) an Owner has made, or elects to make, no use of the Common Areas or Areas of Association Responsibility.

## ARTICLE VII ARCHITECTURAL CONTROL

Section 7 1 Organization, Power of Appointment, and Removal of Members There shall be an Architectural Committee, organized as follows:

- (a) Committee Composition The Architectural Committee shall consist of five (5) or three (3) members (in any case, an odd number) the Board so appoints, and two (2) alternate members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member of the

*Architectural Committee need not be, but may be, a member of the Board or an officer of the Association*

- (b) Alternate Members. In the event of the absence or disability of one (1) or two (2) members of said Architectural Committee, the remaining member or members, even though less than a quorum, may designate either or both of the alternate members, if any, to act as substitutes for the absent or disabled Architectural Committee member or members for the duration of such absence or disability, who shall thereupon become Architectural Committee members during such term of designation.
- (c) Terms of Office Subject to Section 7 1(b), members of the Architectural Committee shall serve until they resign, are removed, or are replaced
- (d) Appointment and Removal The right to appoint and remove all appointed and alternate members of the Architectural Committee at any time is hereby vested solely in the Board, provided however, that no member may be removed from the Architectural Committee by the Board except by the vote or written consent of fifty-one percent (51%) of all regular (or alternates sitting as regular) Board members
- (e) Vacancies Vacancies on the Architectural Committee, however caused, shall be filled by the Board

Section 7.2 Duties It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof; to adopt rules and regulations (the "Architectural Committee Rules") and procedures for appeal to the Board, and to carry out all other duties imposed upon it by this Declaration. In doing so, the Architectural Committee may appoint and designate, by a majority vote of the Architectural Committee, a representative (who need not be a Lot Owner) who shall have the authority to exercise those rights and powers and who shall have those duties and liabilities, on behalf of the Architectural Committee, until the Architectural Committee, by a majority vote, shall revoke his appointment and designation

Section 7.3 Meetings and Compensation The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to Section 7 1(b), the vote or written consent of a majority of Architectural Committee members, at a meeting or otherwise, shall constitute the act of the Architectural Committee, unless the unanimous decision of the Architectural Committee is otherwise required by this Declaration. The Architectural Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee may be entitled to compensation for their services

**Section 7.4 Architectural Committee Rules** The Architectural Committee shall adopt, and may, from time to time and in its sole and absolute discretion, amend and repeal, by unanimous vote or written consent, the Architectural Committee Rules. The Architectural Committee Rules shall interpret and implement this Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use within the Property.

**Section 7.5 Waiver** The approval by the Architectural Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

**Section 7.6 Time for Approval** In the event the Architectural Committee fails to approve or disapprove duly submitted plans and specifications, such will be deemed approved within thirty (30) days after their submission.

**Section 7.7 Liability** Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party on account of (a) the approval or disapproval of any plans, drawings, or specifications, or similar documents whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (c) the overall development of the Property, or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct, provided, however, that with respect to the liability of a member, such member has acted in good faith, on the basis of such information as may be possessed by such member, and without gross negligence or willful misconduct. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Committee, or any member thereof, may, but is not required to, consult with or listen to the views of the Association or any Owner with respect to any proposal submitted to the Architectural Committee.

## ARTICLE VIII USE RESTRICTIONS

**Section 8.1 Permitted Uses and Restrictions - Residential** The permitted uses, easements, and restrictions for all Property covered by this Declaration shall be as follows:

- (a) **Single Family Residential Use** All Lots shall be used, improved, and devoted exclusively to single family residential use. No trade or business may be conducted on any Lot except that an Owner may conduct a business activity within the dwelling unit on the Lot so long as (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling unit on the Lot, (2) the business activity conforms to all applicable zoning ordinances or requirements for the Property, (3) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners,

