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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
GREENFIELD LAKES

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
GREENFIELD LAKES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GREENFIELD LAKES (the "Declaration") is made and entered into as of the 27th day of March, 1996, by L.R. Capital L.L.C., an Arizona limited liability company ("Declarant").

RECITALS

- A. Declarant is the owner of that parcel of real property situated in Maricopa County, Arizona, more particularly described in *Exhibit "A"* hereto.
- B. Declarant desires to create a planned residential community which will include common facilities for the benefit of the community.
- C. The Project includes a parcel of real property which may be developed as a golf course, which parcel is more particularly described on *Exhibit "B"* attached hereto and incorporated herein.
- D. Declarant desires to submit and subject the Property to the covenants, conditions and restrictions set forth in this Declaration.
- E. Declarant desires to establish for its own benefit, for the benefit of the Designated Builders, and for the mutual benefit of all future owners and occupants of the Property, and every part thereof, certain easements and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof.
- F. Declarant desires and intends that the Owners, mortgagees, beneficiaries and trustees under deeds of trust, Occupants, Designated Builders and all other Persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which shall run with the land and be binding upon the Property and all Persons having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each Owner thereof, and all of which are declared to be in furtherance of a plan to promote and protect the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

DECLARATIONS

NOW, THEREFORE, Declarant, for the purposes above set forth, declares as follows:

1. Definitions.

Defined terms used in this Declaration have the first letter of each word in the term capitalized. Unless the context otherwise requires, defined terms shall have the following meanings:

1.1 "Annual Assessment" means the assessments levied against each Lot or Parcel, and the Owner thereof, pursuant to Sections 7.5 through 7.9 of this Declaration.

1.2 "Architectural Committee" means the committee of the Association appointed by the Board pursuant to Section 12 of this Declaration.

1.3 "Architectural Guidelines" means the rules, guidelines and procedures adopted by the Architectural Committee pursuant to Section 12 of this Declaration, as amended or supplemented from time to time.

1.4 "Areas of Association Responsibility" collectively means (i) the Common Areas, (ii) all land (and the Improvements located thereon) located within the boundaries of a Lot or Parcel, which the Association is obligated to maintain, repair and replace, either pursuant to the terms of this Declaration or the terms of another Recorded instrument executed by the Association, and (iii) all land (and the Improvements located thereon) located in dedicated rights-of-way within the Project, which the Association is required by the Town of Gilbert to maintain.

1.5 "Articles" means the Articles of Incorporation for the Association, and any properly adopted amendments and supplements to them.

1.6 "Assessment" means the Annual Assessments and the Special Assessments, together with any other amounts declared by this Declaration to be a part of an Assessment or declared by this Declaration to be secured by the Assessment Lien.

1.7 "Assessment Lien" means the lien created and imposed by Section 7.3 of this Declaration.

1.8 "Association" means Greenfield Lakes Owners Association, an Arizona nonprofit corporation, its successors (including, but not limited to, a successor by merger or consolidation) and assigns.

1.9 "Association Rules" means the rules adopted by the Board pursuant to Section 14.19 of this Declaration.

1.10 "Board" means the Board of Directors of the Association.

1.11 **"Bylaws"** means the Bylaws of the Association, and any properly adopted amendments and supplements to them.

1.12 **"Common Areas"** collectively means (i) all Tracts designated as common area on any Plat, (ii) all land 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, and (iii) all Improvements located on each of the foregoing areas.

1.13 **"Common Expenses"** collectively means the expenditures made by or financial liabilities of the Association and any allocations to reserves.

1.14 **"Constituent Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules, and the Architectural Guidelines, together with any properly adopted amendments to any of them.

1.15 **"Declarant"** means the above-recited Declarant or any Person to whom Declarant's rights hereunder are hereafter assigned in whole or in part by Recorded instrument.

1.16 **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Greenfield Lakes, as amended from time to time.

1.17 **"Designated Builder"** means any Person who (i) is engaged in the business of constructing and selling residences in the Property to the public, (ii) has acquired or has an Option to acquire one or more Lots or Parcels in connection with and in the course of such business, and (iii) is designated by Declarant in a Recorded instrument as a Designated Builder entitled to enjoy the rights and privileges provided to Designated Builders under this Declaration. The term **"Designated Builder"** shall also include any Person to whom all of a Designated Builder's rights and privileges hereunder are assigned by a Recorded instrument, but only if Declarant's written consent to the assignment is either included in the Recorded instrument of assignment or is evidenced by a separate Recorded instrument signed by Declarant.

1.18 **"Dwelling Unit"** means any building, or portion of a building, situated upon a Lot or Parcel, which is designed and intended for independent ownership and for use and occupancy as a residence.

1.19 **"Eligible Holder"** means any First Mortgagee or Institutional Guarantor that requests notice of certain matters in accordance with Section 15.18 of this Declaration.

1.20 **"Exempt Property"** shall collectively mean the following parts of the Property: (i) any portion of the Property owned in fee by or dedicated to and accepted by the United States of America, the State of Arizona, Maricopa County, the Town of Gilbert, or any political subdivision of any of the foregoing, for so long as any such entity or political subdivision is the fee owner thereof or for so long as said dedication remains effective, and (ii) any portion of the Property owned in fee by the Association.

1.21 **"First Mortgage"** means a Mortgage which is the first and most senior of all Mortgages upon the same property.

1.22 "First Mortgagee" means the holder of the note secured by a First Mortgage.

1.23 "Fractional Interest" means that fraction, the numerator of which is one and the denominator of which is the sum of the number of Lots then in the Property and the number of Units of Density then in the Property.

1.24 "Golf Course" means all of the real property described on *Exhibit "B"* attached hereto, and all improvements thereon, including greens; fairways, traps; bunkers, tees, cart paths, water hazards, grass, trees and shrubbery, rest rooms, parking lots, drives, lakes, and any associated recreational, maintenance and other facilities located on said real property.

1.25 "Improvement" means any building, fence, wall, fixture, improvement or structure, any swimming pool, road, driveway or parking area, and any tree, plant, shrub, grass or other landscaping improvement of every kind and type.

1.26 "Institutional Guarantor" means the Federal Housing Administration ("FHA") and the Veterans Administration ("VA"), including any successor thereto, if such an agency purchases any note, or guarantees or insures the payment of any note secured by a First Mortgage.

1.27 "Interest Rate" means the rate of interest equal to the greater of (i) twelve percent (12%), or (ii) the annual rate of interest then in effect for new first priority single family residential mortgage loans guaranteed by the VA.

1.28 "Lot" means each portion of the Property separately designated and described as a lot on a Plat, together with the Improvements thereon.

1.29 "Master Development Plan" means the map of dedication Recorded in Book 413 of Maps, page 45, as from time to time amended, corrected or supplemented by Recorded instrument.

1.30 "Member" means any Person who is a member of the Association, as provided in this Declaration.

1.31 "Membership" means a membership in the Association. Initially there shall be two Classes of Membership, as provided in Section 5.3 of this Declaration.

1.32 "Mortgage" means any Recorded, filed or otherwise perfected instrument pertaining to a portion of the Property (which is not a fraudulent conveyance under Arizona law), given in good faith and for valuable consideration as security for the performance of an obligation including, but not limited to, deeds of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.33 "Mortgagee" means the holder of a note secured by a Mortgage, including the beneficiary under any deed of trust.

1.34 "Mortgagor" means the party executing a Mortgage as obligor.

1.35 "Occupant" means a Person or Persons, other than an Owner, in rightful possession of a Lot or Parcel.

1.36 "Option" means an exclusive option to purchase one or more Lots or Parcels, where the optionee's rights are held by a Designated Builder, and which option is evidenced by a Recorded memorandum or other Recorded instrument.

1.37 "Owner" means the record owner, whether one or more Persons, of fee simple title to any Lot or Parcel, whether or not subject to any Mortgage; but excluding those having such interest merely as a lessee or as security for the performance of an obligation. If fee simple title to a Lot or Parcel is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et. seq., fee simple title shall be deemed to be in the trustor. If fee simple title to a Lot or Parcel is vested of record in a trustee pursuant to a subdivision trust agreement, dual beneficiary trust agreement, or similar arrangement, the beneficiary of any such trust who, under the terms of the trust, is entitled to possession of the trust property shall be deemed to be the Owner. If a Lot or Parcel is subject to a contract for conveyance of real property under the provisions of Arizona Revised Statutes, Section 33-741 et. seq., the purchaser under such contract (and not the seller) shall be deemed to be the Owner.

1.38 "Parcel" means each area of the Property shown as a separate piece of property on the Master Development Plan; provided, however that in the event a Parcel is split in any manner into portions under separate ownership (other than by subdivision of the Parcel into Lots by recordation of a Plat), each portion under separate ownership shall thereafter constitute a separate Parcel. Any Parcel subdivided into Lots (or Lots and Common Areas) by the Recordation of a Plat thereof shall cease to be a Parcel as of the date of Recordation of such Plat; provided, however, that any remaining portion of such Parcel not so subdivided shall continue to be a Parcel unless and until such remaining portion is so subdivided.

1.39 "Person" means an individual, corporation, partnership, limited liability company, trustee or other legal entity.

1.40 "Plat" means the plat or plats of subdivision Recorded against all or any portion of the Property, as from time to time amended, corrected or supplemented by Recorded instrument.

1.41 "Private Yard" means that portion of a Lot other than the residential structure, which is enclosed or shielded from view by walls, fences, hedges or the like so that it is not generally Visible from Neighboring Property.

1.42 "Property" and "Project" are synonymous, and shall mean the real property described in Exhibit "A" attached hereto and all Improvements now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.43 "Public Purchaser" means any Person, other than Declarant or a Designated Builder, who by means of voluntary transfer becomes the Owner of a Lot with a completed Dwelling Unit thereon, other than a Person who purchases a Lot with a completed

Dwelling Unit thereon and then leases it back to Declarant or any Designed Builder for use as a model in connection with the marketing of other Lots.

1.44 "Public Yard" means that portion of a Lot other than the residential structure, which is generally Visible from Neighboring Property, whether or not it is located in front of, beside, or behind the residential structure including, without limitation, a back yard adjacent to the Golf Course.

1.45 "Record," "Recording" or "Recordation" refers to the act of placing a document or instrument of public record in the office of the County Recorder of Maricopa County, Arizona. "Recorded" refers to a document or instrument which has been so placed of public record.

1.46 "Shortfall" means, with respect to any budget year of the Association in which a reduced Annual Assessment election by Declarant or a Designated Builder is effective as provided in Section 7.9, the amount by which the total Common Expenses of the Association for that budget year exceed the Annual Assessments payable by Owners for that budget year (including Declarant and any Designated Builder at the reduced rate under Section 7.9).

1.47 "Special Assessment" means the assessments levied against each Lot or Parcel, and the Owner thereof, pursuant to Sections 7.10 or 9.5 of this Declaration.

1.48 "Unit of Density" means a Dwelling Unit permitted upon a Parcel pursuant to Town of Gilbert Zoning Case No. Z95-20 or other then-applicable zoning of such Parcel. If a Plat is Recorded with respect to a Parcel or portion thereof, then the Parcel or portion thereof which is so platted shall cease to have any Units of Density as of the date of Recordation of such Plat, and the number of votes and the Assessments attributable thereto shall thereafter be based upon the number of Lots within such Plat rather than the number of Units of Density.

1.49 "Visible from Neighboring Property" means capable of being clearly seen without artificial sight aids by an individual six feet tall standing at ground level on any Lot or Parcel, or any portion of the Common Areas, the Golf Course or on any public street in or abutting the Property.

2. Binding Covenants: Rights and Obligations.

Declarant hereby submits and subjects the Property to the rights, easements, privileges, covenants and restrictions set forth in this Declaration, and hereby declares that all of the Property, including the Lots, Parcels and Common Areas, shall be owned, leased, sold, conveyed and encumbered or otherwise held or disposed of subject to the terms, conditions and provisions of this Declaration. Each grantee of Declarant, by the acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each Person at any time hereafter owning or acquiring any interest in any part of the Property, accepts the interest subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable

servitudes, binding upon any Person having any interest or estate in the Property at any time, and inuring to the benefit of the grantee, purchaser or Person as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument whereby each such Person acquires an interest in the Property.

3. Property Rights and Rights of Enjoyment in the Common Areas.

3.1 Right of Enjoyment of Common Areas.

Subject to the provisions of Section 3.3 of this Declaration, every Owner shall have a right and easement of enjoyment in and to the Common Areas. The easement shall be appurtenant to, and shall pass with the title to, every Lot and Parcel.

3.2 Conveyance of Common Areas.

At such time as the Improvements on the Common Areas (or any individual phase thereof) have been completed and the Association has been formed and is able to operate and maintain the Common Areas, legal title to the Common Areas (or individual phase) shall be conveyed by Declarant (or the Designated Builder, if title thereto is then held by the Designated Builder) to the Association, free and clear of all liens and encumbrances except the lien for (i) real property taxes (if any) not yet due and payable, and (ii) any street light improvement district. Declarant (or the Designated Builder, as applicable) shall at its expense provide to the Association a title insurance policy insuring good and marketable title in the Association to the Common Areas (or the Common Areas in individual phases).

3.3 Limitations.

The rights and easements of enjoyment created in this Declaration (including, but not limited to, those relating to the Common Areas) shall be subject to the following:

(a) The right of the Association to dedicate, convey, transfer, or encumber the Common Areas, subject to the consent requirements of Section 15.3(4) of this Declaration;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure in the event of default upon any Mortgage covering them;

(c) The right of the Board to suspend such rights and easements of enjoyment (including, but not limited to, those relating to the Common Areas) and the voting rights of any Owner (and any Occupant or other Person claiming through such Owner) for any period during which any Assessment or other charge hereunder assessed to such Owner or his Lot or Parcel remains delinquent and unpaid, and for any period not to exceed 30 days or any infraction of this Declaration, the Architectural Guidelines, or the Association Rules (subject, however, to renewal for continuing infraction); provided, however, that no such suspension shall prevent reasonable access to a Lot or Parcel across Common Areas; and

(d) The right of the Board to regulate the use of the Common Areas through the Association Rules and to prohibit access to portions of the Common Areas, such as landscaped areas, which are not intended for use by Owners, Occupants or other Persons.

3.4 Delegation of Rights.

Any Owner may delegate his rights of enjoyment in the Common Areas to the members of his family who reside upon his Lot or Parcel or to any Occupant of his Lot or Parcel. The Owner shall notify the Association in writing of the name of any Person to whom such rights of enjoyment are delegated and the relationship of such Person to the Owner, provided, however, that such notification shall not be required with respect to any member of the Owner's immediate family. The rights and privileges of any such Person are subject to suspension as provided in this Declaration or any other Constituent Document to the same extent as those of the delegating Owner, and are subject to such further regulation as may be provided in the Constituent Documents.

4. Golf Course.

4.1 Disclaimers Regarding Golf Course. Except as may be specifically provided in an amendment to this Declaration pursuant to Section 4.6 or in an instrument hereafter Recorded and executed by the Owner of the Golf Course:

a. All Persons, including all Owners of a Lot or any other portion of the Project, are hereby advised that no representations or warranties have been or are made by Declarant or any other Person with regard to the ownership, present or future, operation or configuration of, or right to use, the Golf Course, whether or not depicted on any plat or any land use plan, sales brochure or other marketing display or material. No purported representation or warranty, written or oral, in such regard shall ever be effective;

b. Neither ownership of a Lot or any other portion of the Project nor occupancy of a Lot or any other portion of the Project shall confer any ownership in or right to use the Golf Course;

c. The present or future ownership, operation or configuration of, or rights to use, the Golf Course may change at any time and from time to time for reasons including, but not limited to: (i) the purchase or assumption of operations of the Golf Course by an independent Person; (ii) the establishment or conversion of the Golf Course's membership structure to an equity club or similar arrangement whereby the members of the Golf Course or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Golf Course; or (iii) the conveyance, pursuant to contract, option or otherwise, of the Golf Course to one or more affiliates, shareholders, employees or independent contractors of Declarant, the Owner of the Golf Course, or any other Person. As to any of the foregoing or any other alternative, no consent of any Owner or Occupant of any Lot or any other portion of the Project shall be required to effectuate such transfer; and

d. No Owner or Occupant of a Lot or any other portion of the Project shall have any ownership interest in or right to use the Golf Course solely by virtue of his, her or its ownership, use or occupancy of such Lot or other portion of the Project.

4.2 Limitations on Amendments. In recognition of the fact that the provisions of this Declaration are for the benefit of the Golf Course, no amendment to Section 4 of this Declaration and no amendment with respect to the Golf Course or any associated rights or obligations pertaining to the Golf Course may be made, without the Recorded written approval thereof by the Owner(s) of the Golf Course.

4.3 Golf Balls, Disturbances and Nuisances. Each Owner and any Occupant of a Lot or any other portion of the Project, understands and agrees that: (a) the Project is adjacent to or near the Golf Course and related facilities; (b) the facilities which are part of the Golf Course have exterior lighting and amplified exterior sound, and will be regularly used for entertainment and social events on various days of the week, including weekends, during various times of the day, including, but not limited to, early morning and late evening hours; (c) Golf Course-related activities, including, but not limited to, regular course play will be allowed during all daylight hours up to seven (7) days a week, and golf tournaments open to the public at large may be conducted at any time during the year; (d) the Golf Course is open to the public and large numbers of people will be entering, exiting and using the Golf Course during various times of the day, including early morning and late evening hours, seven (7) days a week; and (e) water hazards, facilities and other installations located on the Golf Course may be attractive nuisances to children. Each Owner and any Occupant of a Lot or any other portion of the Project acknowledges that the location of the Project in proximity to the Golf Course may result in nuisances or hazards to persons and property on the Project as a result of use of the Golf Course, Golf Course operations or as a result of any other Golf Course-related activities and that play on the Golf Course may result in damage or injury to persons or property as a result of golf balls leaving the Golf Course, including, but not limited to, damage to window and exterior areas of the Improvements, damage to automobiles and other personal property of Owners, Occupants or others, whether outdoors or within the Improvements and injury to persons. Each Owner and any Occupant of a Lot or any other portion of the Project, covenants and agrees for itself, its Family Members, successors and assigns, that he, she or it does knowingly and voluntarily assume all risks associated with such location, including, but not limited to, the risks of nuisance, inconvenience and disturbance, as well as property damage or personal injury arising from stray golf balls or actions or omissions incidental to the use of the Golf Course, Golf Course operations and any Golf Course-related activities; and that Declarant and any Owner(s) or operator of all or any part of the Golf Course and their respective employees, agents, invitees, licensees, contractors, successors and assigns, shall not be responsible or accountable for, and shall have no liability for, any claims, causes of action, losses, damages, costs or expenses for any nuisance, inconvenience, disturbance or property damage or personal injury arising from stray golf balls or actions or omissions incidental to the use of the Golf Course, Golf Course operations or any Golf Course-related activities. Each Owner and Occupant of a Lot or any other portion of the Project further acknowledges and agrees that the Declarant and any Owner(s) or operator of all or any part of the Golf Course shall have the right, in the nature of an easement or license, to subject all or any portion of the Project to nuisances, inconveniences and disturbances arising from stray golf balls or incidental to the maintenance, operation or use of the Golf Course and to the carrying out of Golf Course-related activities.

4.4 Operation of the Golf Course. Each Owner and Occupant of a Lot or any other portion of the Project acknowledges: that the operation and maintenance of the Golf Course will require that maintenance personnel and other workers required to operate, service and maintain the Golf Course will commence work relating to the operation and maintenance of the Golf Course as early as 5:00 a.m. on a daily basis; and that the operation, maintenance and use of the Golf Course will entail the operation and use of the following: (a) noisy power equipment such as tractors, lawn mowers and blowers on various days of the week, including weekends, during various times of the day, including, but not limited to, early morning and late evening hours; (b) sprinkler and other irrigation systems in operation during the day and at night; (c) electric, gasoline or other power driven vehicles and equipment used by maintenance and operations personnel; (d) application of pesticide and fertilizing chemicals; and (e) refuse removal trucks, delivery trucks and other vehicles entering and exiting the Golf Course on various days of the week, including weekends, during various times of the day, including, but not limited to, early morning and late evening hours. In connection with the foregoing, each Owner and Occupant of a Lot or any other portion of the Project covenants and agrees for itself, its Family Members, successors and assigns: that he, she or it does knowingly and voluntarily assume all risks associated with the foregoing Golf Course operation and maintenance, including, but not limited to, risks of nuisance, noise, disturbance, inconvenience, property damage and personal injury or sickness; and that Declarant and any Owner(s) or operator of all or any portion of the Golf Course, and their respective employees, agents, invitees, licensees, contractors, successors and assigns, shall not be responsible or accountable for, and shall have no liability for, any claims, causes of action, losses, damages, costs or expenses arising in connection with or associated with any nuisances, disturbances, noise, inconvenience or property damage or personal injury or sickness directly or indirectly related to, caused by or associated with such operation and maintenance activities. The Association hereby agrees to maintain any Common Areas adjacent to the Golf Course in a manner reasonably acceptable to the operator of the Golf Course.

4.5 Rental Activities.

a. In the event an Owner of a Lot or any other portion of the Project enters into a Lease or other agreement allowing a Tenant or Occupant to occupy such Lot or other portion of the Project, or any apartments, including, but not limited to, any other dwelling units thereon, then such Owner covenants and agrees that it will, prior to such occupancy, provide to such Tenant or Occupant a true, correct and complete copy of this Declaration.

b. Each Owner of a Lot or any other portion of the Project does hereby indemnify and hold harmless Declarant, any Owner(s) or operators of all or any part of the Golf Course, and their respective shareholders, members, partners, agents, officers, directors, employees, contractors, invitees, licensees, successors and assigns for, from and against any and all losses, damages, costs or liabilities related to or arising in connection with, any claims, actions, causes of action, liability, suits or demands of or by any Tenant or Occupant and their respective guests, invitees, licensees, Family Members, agents, employees, contractors, successors and assigns for disturbance, inconvenience, noise, nuisances, personal injury, sickness or death or property damage, resulting from or associated with the use, maintenance and operation of the Golf Course or any of the activities, occurrences, conditions, states of facts, events or situations described in this Declaration.

4.6 Golf Ball Easement. There is hereby created a blanket easement in, over, above, across and upon the Project for the purposes of permitting the flight of golf balls through the air over each Lot and all other portions of the Project and the entry of golf balls upon, on and/or across each Lot and all other portions of the Project and any Improvements constructed or to be constructed thereon, as an incident to the use of the Golf Course as a golf course. Any golf balls entering upon and occupying any Lot or other portion of the Project shall become the property of the Owner of such Lot or other portion of the Project. Nothing herein contained shall be construed to permit the entry upon any Lot or other portion of the Project by any individual for any purpose including, but not limited to, the retrieval of golf balls. Nothing herein contained shall be construed so as to limit the construction of Improvements on any Lot or other portion of the Project. The easement created by this Section shall be perpetual in duration, and shall be appurtenant to and shall run with title to and benefit the Golf Course. The easement created by this Section shall run with title to and shall burden each Lot and all other portions of the Project and shall be binding on all successive Owners of each Lot and all other portions of the Project.

5. The Association: Membership and Voting Rights.

5.1 Association.

The Association has been, or will be, formed to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Areas of Association Responsibility, the collection of Assessments, and other matters as provided in this Declaration, the Articles and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

5.2 Membership.

Each Owner shall be a Member of the Association so long as he is an Owner. Membership shall automatically terminate when the Owner ceases to be an Owner. Upon the transfer of his ownership interest, the new Owner succeeding to the ownership interest shall likewise automatically succeed to the Membership. A Membership shall not be transferred, pledged or alienated in any way, except upon the sale of the Lot or Parcel to which it appertains (and then only to the purchaser of the Lot or Parcel) or by intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to the Lot or Parcel (and then only to the Person to whom fee simple title is transferred). Notwithstanding the foregoing, if an Owner grants an irrevocable proxy or otherwise pledges or alienates his voting right regarding special matters to a Mortgagee as additional security, only the vote of the Mortgagee will be recognized in regard to the designated special matters if a copy of the proxy or other instrument pledging or alienating the Owner's vote has been filed with the Board. If more than one such instrument has been filed, the Board shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves. Any attempt to make a prohibited transfer of a Membership is void and will not be recognized by or reflected upon the books and records of the Association.

5.3 Classes of Membership; Voting Rights of Classes.

The Association initially shall have two classes of voting Membership:

Class A. Class A Members shall be all Owners but, so long as any Class B Memberships are outstanding, shall not include Declarant. Class A Members shall be entitled to one vote for each Lot owned and one vote for each Unit of Density within each Parcel owned.

Class B. The Class B Member shall be Declarant or, upon a transfer of a Parcel from Declarant to a Designated Builder, Designated Builder. The Class B Member shall be entitled to three votes for each Lot owned by the Class B Member and three votes for each Unit of Density within each Parcel owned by the Class B Member. The Class B Membership shall cease and be converted to Class A Membership, without further act or deed, upon the happening of any of the following events, whichever occurs first:

(i) 120 days following the first date when the total votes entitled to be cast by the Class A Members equal or exceed the total votes entitled to be cast by the Class B Members, or

(ii) ten years following conveyance of the first Lot to a Public Purchaser, or

(iii) the date upon which Declarant voluntarily delivers written notice to the Association electing to convert the Class B Membership to Class A Membership (but Declarant shall not be required to make such an election).

Notwithstanding the foregoing, the Class B voting rights relating to any particular Lot or Parcel shall be converted to Class A voting rights upon the sale or other disposition of the Lot or Parcel by Declarant, other than (i) in connection with a Recorded assignment by Declarant of all or substantially all of its rights under this Declaration, or (ii) a transfer from Declarant of a Parcel or Lot to a Designated Builder. If any lender to whom Declarant has by Recorded instrument assigned, or hereafter assigns, all or substantially all of its rights under this Declaration as security succeeds to the interests of Declarant by virtue of the assignment, the Class B Memberships shall not be terminated, and the lender shall hold the Class B Memberships on the same terms as they were held by Declarant.

5.4 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 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, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member but the Membership as to such Lot or Parcel shall be joint, and such Persons shall jointly designate to the Association in writing one of their

number who shall have the power to vote said Membership, and, in the absence of such designation and until such designation is made, the Board shall either: (i) make such designation, in which event such designation shall be binding for all purposes; or (ii) declare that until all Persons who together hold such Membership jointly make such written designation, the vote(s) attributable to such Membership under this Declaration shall not be cast or counted on any questions before the Members; provided, however, that if any one of such Persons casts a vote or votes representing a certain Lot or Parcel without objection from any other Person sharing ownership of such Lot or Parcel, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot or Parcel unless and until objection thereto is made to the Board, in writing.

5.5 Association Board of Directors.

The Board shall initially be comprised of the individuals specified in the Articles. The terms of office of the members of the Board shall be staggered as provided in the Articles and Bylaws. Each Board member shall serve until his successor is elected and qualified at the next annual meeting of the Association at which vacancies in his group of members is filled or upon his resignation or removal from office, as the case may be. Declarant shall appoint the members of the Board until the first annual meeting of the Association after the date that Class B Membership is converted to Class A Membership. Except for the initial Board and Board members elected or appointed by Declarant, each director shall be an Owner or the spouse of an Owner (or, if an Owner is a corporation, partnership, limited liability company or trust, a director may be an officer, partner, member or beneficiary of the Owner). If a director ceases to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant. Vacancies on the Board caused by any reason shall be filled by a vote of the majority of the remaining Board members though less than a quorum, or by the remaining Board member if there is only one, and each individual so elected shall be a Board member until his successor is duly elected and qualifies. A Board member may be removed from office as provided in the Articles or Bylaws. Except for directors elected or appointed by Declarant; directors shall be elected in the manner and at the times set forth in the Articles or Bylaws.

5.6 Board's Determination Binding.

In the event of any dispute or disagreement between any Owners or other Persons relating to the Project, or any question of interpretation or application of the provisions of this Declaration, or any other Constituent Documents, the determination by the Board shall be final and binding on each and all of such Owners or other Persons (subject to any contrary determination by a court of competent jurisdiction). Unless the Constituent Documents specifically require the vote or written consent of the Members, the approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

5.7 Additional Provisions in Articles and Bylaws.

The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents, members and other interested Persons not inconsistent with law or this Declaration.

5.8 Indemnification.

The Association shall indemnify any and all of its directors and officers, and former directors and officers, against expenses incurred by them, including legal fees, or judgments or penalties rendered or levied against any such Person in a legal action brought against any such Person for acts or omissions alleged to have been committed by any such Person while acting within the scope of his or its authority as a director or officer of the Association, or exercising the powers of the Board, provided that the Board shall determine in good faith that such Person did not act, fail to act, or refuse to act with gross negligence or with wrongful, fraudulent or criminal intent in regard to the matter involved in the action. Notwithstanding anything to the contrary expressed herein, the Board shall have the right to refuse indemnification as to expenses in any instance in which the Person to whom indemnification would otherwise have been applicable shall have incurred expenses without approval by the Board which are excessive and unreasonable in the circumstances and are so determined by the Board, and as to expenses, judgments, or penalties in any instance in which such Person shall have refused unreasonably to permit the Association, at its own expense and through counsel of its own choosing, to defend him or it in the action or to compromise and settle the action. The Association shall also indemnify the employees, committee members and direct agents of the Association in the same manner and with the same limitations as provided above with respect to directors and officers. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such directors, officers, committee members, employees or agents may be entitled.

5.9 Accounting.

The Association shall at all times keep, or cause to be kept, complete and current books, records and financial statements of the Association. Required books, records and financial statements shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise. Upon the prior written request to the Association by any Owner, Institutional Guarantor or First Mortgagee, the Association shall make such books, records and financial statements available for the inspection of such Owner, Institutional Guarantor or First Mortgagee during normal business hours or other reasonable times. Books and records of the Association (including, but not limited to, financial statements) may be audited or unaudited, as determined by the Board; provided, however, that if any Institutional Guarantor submits to the Association a written request for an audited financial statement of the Association for the most recently concluded fiscal year of the Association, the Association shall deliver such an audited financial statement to such Institutional Guarantor as required under Section 15.8 of this Declaration, and the cost of preparing such an audited financial statement shall be a Common Expense. The Board may impose a reasonable charge for photocopies of any such books or records requested by any Owner, First Mortgagee or Institutional Guarantor.

5.10 Constituent Documents.

The Association shall at all times keep, or cause to be kept, complete and current copies of the Constituent Documents. Upon the prior written request to the Association by any Owner, Institutional Guarantor or First Mortgagee, the Association shall make the Constituent Documents available for the inspection of such Owner, Institutional Guarantor or First Mortgagee during normal business hours or other reasonable times. The Board may

impose a reasonable charge for photocopies of any Constituent Documents requested by any Owner, First Mortgagee or Institutional Guarantor.

5.11 Termination of Association.

If the Association is terminated or dissolved, the assets of the Association shall be transferred to a successor owners' association, a public agency or a trust for the benefit of the Owners and Mortgagees, whichever appears to the Board, in its sole and absolute discretion, to then be the most reasonable and equitable distribution thereof consistent with applicable tax and other laws.

5.12 Managing Agent.

All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement. Any agreement for professional management, or any other contract providing for services of Declarant or any other party, shall not provide for compensation to the managing agent or other contracting party in excess of those amounts standard within the community in which the Project is located, nor exceed a term of one year, but the term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon 60 days' written notice; provided, however, that the Association may also terminate the agreement for cause upon 30 days' written notice.

5.13 Mergers, Consolidations.

The Association shall have the right and power to participate in mergers or consolidations with any other non-profit corporations, associations or other entities, regardless of whether the objects, purposes, rights and powers of such non-profit corporations, associations or other entities are the same as those of the Association. Any such merger or consolidation shall require the approval of the Owners holding not less than two-thirds of the votes in each class of Members.

6. Easements and Use of Common Areas.

6.1 Creation of Easement.

There is hereby created a blanket easement upon, across, over and under the Common Areas for installing, constructing, replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sewer, gas, storm drain, telephone, electricity, television cable and/or antenna or other delivery systems, security systems, and communication lines and systems, for the delivering or providing of public or municipal services such as refuse collection and fire and other emergency vehicle access, and for reasonable ingress and egress in connection with each of the foregoing. By virtue of the easement, it shall be expressly permissible for the providing governmental agency or utility company to erect and maintain necessary facilities and equipment on the Common Areas; provided, however, that no easements shall be created, and no sewers, electrical lines, water lines or other facilities for utilities or lines shall be installed or relocated on the Common Areas, except as initially created and approved

by Declarant or thereafter created or approved by the Board. This provision shall in no way affect any other Recorded easements on the Property.

6.2 Authority of Board.

In addition to the blanket easements granted in Section 6.1 of this Declaration, the Board is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and other public or private utility purposes as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot or Parcel resulting from such a grant shall be repaired by either the providing utility or the Association at its expense. The rights of the Board under this Section shall include, without limitation, the right to furnish to any Person furnishing a service covered by the general easement described in Section 6.1 a specific easement by separate Recorded document evidencing the easement rights of such Person.

6.3 General Use Rights.

Except for the use limitations provided in Sections 3.3 and 6.6 of this Declaration, each Owner shall have the non-exclusive right to use the Common Areas in common with all other Owners as required for the purposes of access and use, occupancy and enjoyment of, the respective Lot or Parcel owned by the Owner. The right to use the Common Areas shall extend to each Owner and Occupant and the agents, servants, tenants, family members and invitees of each Owner. The right to use and possess the Common Areas shall be subject to and governed by the provisions of the Constituent Documents.

6.4 Declarant's and Designated Builders' Use.

Declarant shall have the right and easement to maintain sales or leasing offices, management offices and models throughout the portions of the Project owned by Declarant, and each Designated Builder shall have the right and easement to maintain such offices and models throughout the portions of the Project owned by such Designated Builder. Declarant shall have the right and easement to maintain, and to grant to Designated Builders the right to maintain, one or more advertising, identification or directional signs on the Common Areas.

6.5 Wall Easement.

There is hereby created an easement upon, over and across each Lot and Parcel which is adjacent to the perimeter boundaries of the Project, a street, and/or a Common Area, for reasonable ingress, egress, installation, replacement, maintenance and repair of a Project perimeter wall located on the easement. The easement created by this Section 6.5 shall be in favor of Declarant and Designated Builders and appurtenant to the portions of the Project owned by them at any time, as well as in favor of the Association and those Owners whose Lots or Parcels are subject to the easement.

6.6 Exclusive Use Rights.

By action of the Board, minor portions of the Common Areas adjoining a Lot or Parcel may be reserved for the exclusive control, possession and use of the Owner of the Lot or Parcel. If such an area serves as access to and from two Lots or Parcels, the Owners of the two Lots or Parcels shall have joint control, possession and use of the area as reasonably serves both Lots or Parcels. The exclusive use rights created herein are subject to the blanket utility easement described in Section 6.1 and to the maintenance and architectural control provisions contained in this Declaration and to such reasonable rules and regulations with respect to possession, control, use and maintenance as the Board may from time to time promulgate. Easements are hereby created in favor of and running with each Lot or Parcel having such an area, for the creation of such exclusive control and use of each such area. Such easements and the exclusive rights described in this Section may be terminated by the Board at any time in its sole discretion. Each Owner, by accepting title to a Lot or Parcel, shall be deemed to have further ratified the easements and rights to exclusive use created by this Section 6.6.

7. Assessments.

7.1 Creation of Assessment Right.

In order to provide funds to enable the Association to meet its financial and other obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Annual Assessments and Special Assessments shall be for Common Expenses and shall be allocated among all Lots and Parcels as provided in this Section 7.

7.2 Covenants with Respect to Assessments.

Declarant, for each Lot or Parcel owned by Declarant, hereby covenants, and agrees, and each Owner, by acceptance of his, her or its deed (or other conveyance instrument) with respect to a Lot or Parcel, is deemed to covenant and agree to pay the Assessments levied pursuant to this Declaration with respect to such Owner or such Owner's Lot or Parcel, together with (i) interest from the date due at a rate equal to the Interest Rate, (ii) such costs and reasonable attorneys' fees as may be incurred by the Association in seeking to collect such Assessments, whether or not a lawsuit is filed, and (iii) other charges, fines, penalties, or other amounts levied against such Owner or his Lot or Parcel pursuant to this Declaration or any of the Constituent Documents. Each of the Assessments with respect to a Lot or Parcel, together with interest, costs and reasonable attorneys' fees, and charges, fines and penalties as provided in this Section 7.2, shall also be the personal obligation of the Person who or which was the Owner of such Lot or Parcel at the time such amount became due provided, however, that the personal obligation for delinquent Assessments and other amounts shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of its obligation to pay any of the Assessments or other amounts by abandoning or not using its Lot or Parcel or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot or Parcel. However, upon transfer by an Owner of fee title to such Owner's Lot or Parcel, as evidenced by a Recorded instrument, such transferring Owner shall not be liable for any Assessments or other amounts thereafter levied against such Lot or Parcel. The obligation to pay Assessments and other

amounts is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or other amounts or setoff shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles, the Bylaws, or any other Constituent Document, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

7.3 Assessment Lien; Foreclosure.

There is hereby created and established a lien (the "Assessment Lien") against each Lot or Parcel which shall secure payment of (i) all present and future Assessments assessed or levied against such Lot or Parcel or the Owner thereof, (ii) any present or future charges, fines, penalties, late fees or other amounts levied against such Lot or Parcel or the Owner or Occupant thereof pursuant to this Declaration, any of the Constituent Documents or from time to time approved by the Board, (iii) such costs and reasonable attorneys' fees as may be incurred by the Association in seeking to collect such Assessments, charges, fines, penalties or other amounts, whether or not a lawsuit is filed, and (iv) interest on the foregoing amounts from the date due at a rate equal to the Interest Rate. The Assessment Lien is and shall be prior and superior to all other liens affecting the Lot or Parcel in questions, except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any First Mortgage. The Assessment Lien may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale and transfer of any Lot or Parcel pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the Assessment Lien as to Assessments and other amounts which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Lot or Parcel from liability for any Assessment or other amounts becoming due after such sale or transfer, or from the Assessment Lien thereof. The Association shall have the power to bid for any Lot or Parcel at any sale to foreclose the Assessment Lien on the Lot or Parcel, and to acquire and hold, lease, mortgage, and convey the same. During the period any Lot or Parcel is owned by the Association, no right to vote shall be exercised with respect to said Lot or Parcel and no Assessment (whether Annual Assessments or Special Assessments) shall be assessed or levied on or with respect to said Lot or Parcel, provided, however, that the Association's acquisition and ownership of a Lot or Parcel under such circumstances shall not be deemed to convert the same into Common Area. The Association may maintain a suit to recover a money judgment for unpaid Assessments and other amounts without foreclosing or waiving the Assessment Lien securing same. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien established hereby, and further Recordation of any claim of an Assessment Lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such Assessment Lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of Assessment Lien in such circumstances as the Board may deem appropriate). All of the provisions of this Section 7.3 relating to the Assessment Lien (including, but not limited to, the subordination provisions) shall apply with equal force in each other instance provided for in this Declaration wherein it is stated that payment of a particular Assessment or other amount shall be secured by the Assessment Lien.

7.4 Commencement.

Assessments provided herein shall commence for all Owners, including Declarant and any Designated Builders, upon the sale and delivery of the first Lot to a Public Purchaser.

7.5 Annual Budget: Adjustment.

Prior to the beginning of each fiscal year of the Association, the Board shall prepare, or cause to be prepared, an annual budget for the Association for the upcoming fiscal year, which budget shall serve as the basis for determining Annual Assessments for the applicable fiscal year (subject to the Board's right to adjust such budget as provided in this Section 7.5, and further subject to the limitations set forth in Section 7.8). The budget shall take into account the estimated Common Expenses and cash requirements of the Association for the fiscal year. ~~The annual budget shall also provide for a reserve for contingencies for the year~~ (and for subsequent fiscal years) and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board, taking into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. Not later than 60 days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause to be delivered or mailed to each Owner a statement of the amount of the Annual Assessments to be levied against such Owner's Lot or Parcel for the fiscal year in question. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Subject to the provisions of this Section 7.5 and of Sections 7.8 and 7.10, neither the annual budget (nor any amended budget adopted pursuant to the following provisions of this Section) adopted by the Board, nor any Assessment levied pursuant thereto, shall be required to be ratified or approved by the Owners or any other Person. If, at any time during a fiscal year of the Association the Board deems it necessary to amend the budget for such year, the Board may do so and may levy an additional Annual Assessment for such year (subject to the limitations imposed by Section 7.8) or may call a meeting of the Members to request that the Members approve a Special Assessment pursuant to Section 7.10. Within 60 days after adoption of an amended budget (if the Board elects to levy an additional Annual Assessment), the Board shall cause to be delivered or mailed to each Owner a statement of the revised Annual Assessment to be levied against such Owner's Lot or Parcel; if, instead, the Board elects to call a meeting of Members to seek approval of a Special Assessment, the Board shall cause a copy of the amended budget proposed by the Board to be delivered or mailed to each Owner with the notice of such meeting, and if a Special Assessment is duly approved by the Members at such a meeting, the Board shall cause to be promptly mailed or delivered to each Owner a statement of the Special Assessment to be levied against such Owner's Lot or Parcel.

7.6 Rate of Assessment.

Subject to the limitations in Section 7.8 and to the provisions of Section 7.9, the amount of the Annual Assessment for each Lot or Parcel shall be as follows:

(a) For each Lot, an amount equal to the Fractional Interest multiplied by the total budget of the Association established by the Board pursuant to Section 7.5.

(b) For each Parcel, an amount equal to the Fractional Interest, multiplied by the total number of Units of Density within such Parcel, multiplied by the total budget of the Association established by the Board pursuant to Section 7.5.

7.7 Due Dates.

Annual Assessments for each fiscal year shall be due and payable in equal periodic installments, payable not more frequently than monthly nor less frequently than semiannually, as determined for such fiscal year by the Board, with each such installment to be due and payable on or before the first day of each applicable period during that fiscal year. Assessments more than 15 days late shall be deemed delinquent and shall accrue late charges and other penalties in addition to any other enforcement rights of the Association.

7.8 Maximum Annual Assessments.

Prior to January 1 of the year immediately following the first conveyance of a Lot to a Public Purchaser, the maximum Annual Assessment which any Owner shall be required to pay with respect to any Lot or Unit of Density may not exceed \$360.00 per year. From and after January 1 of the year immediately following the first conveyance of a Lot to a Public 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) six percent (6%) 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), as published by the United States Department of Labor, Bureau of Labor Statistics (or such other government index with which it may be replaced) (the "CPI"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

X = CPI for September of the calendar year immediately preceding the year in which the Annual Assessments commenced;

Y = CPI for September of the year immediately preceding the calendar year for which the maximum Annual Assessment is to be determined; and

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

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

Notwithstanding the foregoing, if the Owners holding two-thirds of the votes in each class of Members of the Association approve, the maximum Annual Assessment may be increased by an amount greater than otherwise permitted pursuant to this Section 7.8.

7.9 Reduced Assessment Rate.

Notwithstanding anything to the contrary herein, so long as the Class B Membership in the Association is outstanding, Declarant and/or any Designated Builder may elect to pay Annual Assessments for Lots and Parcels owned by it in an amount equal to one-quarter of the Annual Assessments otherwise payable hereunder in the absence of this Section. Declarant or a Designated Builder may make the election provided for in the preceding sentence for any budget year by giving the Association written notice prior to the commencement of the budget year; provided, however, that such an election may be made for the first budget year of the Association by giving notice prior to sale and conveyance of the first Lot to a Public Purchaser or the commencement of the budget year, whichever is later. An election for reduced Annual Assessments made by Declarant or a Designated Builder as provided herein shall remain in effect for all subsequent budget years until it is rescinded by written notice to the Association or the Class B Membership in the Association ceases to be outstanding, in which event the reduced Annual Assessments shall terminate and full Annual Assessments shall be payable as of the commencement of the next following budget year. In the event that Declarant or a Designated Builder makes the election for reduced Annual Assessments provided for herein, then the party making such election shall be obligated to pay, in addition to such reduced Annual Assessments, an amount equal to the Shortfall in the budget year in which its election is effective, which Shortfall may be charged on a quarterly basis, multiplied by the Fractional Interest, multiplied by the number of Lots and Units of Density owned by such party (the sum of such items being herein referred to as the "Electing Party's Assessment"); provided, however, that in no event shall the Electing Party's Assessment be greater than the amount such party would have paid had such party not made such election to pay reduced Annual Assessments. The obligations set forth in the preceding sentence of a party making a reduced Annual Assessment election shall be an Assessment Lien against Lots and Parcels owned by such party pro rata and shall be enforceable by the Association in the same manner as Annual Assessments provided for herein.

7.10 Special Assessments.

In addition to the Annual Assessments authorized by this Section 7, the Association may levy Special Assessments from time to time, provided, however that any Special Assessment shall be effective only with the approval of (i) Owners holding not less than two-thirds of the votes in each class of Members, and (ii) the Designated Builder for each Parcel that will be assessed such Special Assessment so long as such Designated Builder owns at least thirty percent of the Lots in such Parcel. Subject to Sections 7.7 and 7.8, Special Assessments shall be allocated among Lots and Parcels in the ratio established in accordance with Section 7.6. The Special Assessment shall be payable at such time or in installments from time to time, as the Board may determine. The Special Assessments provided for herein shall be secured by the Assessment Lien. Special Assessments approved by the Members as provided in this Section 7.10 shall not be subject to the limitations of Section 7.8 of this Declaration.

7.11 Certificate of Payment.

Any Person acquiring an interest in Lot or Parcel shall be entitled to a statement from the Association setting forth the amount of unpaid Assessments, if any. No Person shall be liable for, nor shall any Assessment Lien attach to a Lot or Parcel in excess of,

the amount set forth in such a statement, except for Assessments which occur or become due after the date thereof and any interest, costs, reasonable attorneys' fees and late charges related to the assessments. The Association may charge a reasonable fee for the preparation of any such statement.

7.12 Transfer Fee.

Each Public Purchaser of a Lot, other than a Public Purchaser purchasing Lots from Declarant or a Designated Builder, shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board.

7.13 Exempt Property.

The Exempt Property shall be exempt from Annual Assessments and Special Assessments and shall not be included in any calculation of Fractional Interests hereunder, and no voting rights in the Association shall attach to Exempt Property; provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Annual Assessments and Special Assessments (prorated as of the date it ceased to be Exempt Property) and included in the Fractional Interest calculation hereunder, and voting rights in the Association shall attach thereto as otherwise determined in this Declaration. Notwithstanding anything to the contrary in this Declaration, the Board shall have the power to exempt any or all of the Exempt Property from any or all of the provisions of this Declaration on such terms and conditions as may be determined by the Board in its sole discretion.

8. Insurance.

Commencing not later than the date of the first conveyance of a Lot to a Public Purchaser, the Association shall maintain, to the extent reasonably available, the insurance coverage required by this Section 8, in accordance with the following provisions:

8.1 Authority to Purchase.

The Association, by and through the Board, shall purchase and maintain the insurance required under Section 8.2 of this Declaration and such other insurance as may be deemed necessary or appropriate by the Board. Provision shall be made for the issuance of certificates of endorsement to any First Mortgagee if requested by it. Such policies and endorsements thereon, or copies thereof, shall be deposited with the Association. The Board shall deliver a copy of certificates of insurance evidencing the Association's coverage or, by and through its agent, advise the Owners of the coverage of the policies, to permit the Owners to determine which particular items are included within the coverage so that each Owner may insure himself at his own expense as he sees fit if certain items are not insured by the Association. The Board may impose a reasonable charge for photocopies of insurance certificates or policies requested by any Owner. Without limiting the generality of the foregoing, it shall be each Owner's responsibility to provide for himself at his own expense (i) such comprehensive public liability insurance as such Owner may desire against loss or liability for damage and any expense of defending against any claim for damages which might result

from the ownership, use or occupancy of such Owner's Lot or Parcel, (ii) such insurance on the Dwelling Unit and other Improvements constructed on his Lot or Parcel and all fixtures and personal property upon such Lot or Parcel or in such Dwelling Unit or other Improvements, and (iii) such other insurance which is not carried by the Association as the Owner desires.

8.2 Coverage.

The Association shall maintain and pay for policies of insurance as follows:

(1) Insurance of a multi-peril type for all insurable Improvements on the Areas of Association Responsibility providing coverage against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for similar types of projects (including those covered by the standard "all risk" endorsement available from time to time in the State of Arizona), and against loss or damage due to vandalism and malicious mischief. Said insurance shall be in an amount not less than 100% of the current replacement cost, from time to time, without deduction for depreciation, of all such insurable Improvements, with such amount to be redetermined annually by the Board with the assistance of the insurer or insurers providing such coverage.

(2) A comprehensive general liability policy covering all of the Areas of Association Responsibility, insuring the Association, each member of the Board and each Owner against any liability to the public or to any Owner or Occupant (and such Owner's or Occupant's invitees, agents, employees, tenants, guests, servants and household members) for death, bodily injury and property damage arising out of or incident to the ownership or use of the Areas of Association Responsibility or incident to the performance by the Association of its maintenance and other obligations hereunder. This insurance shall be in an amount determined by the Board, but in no event less than \$1,000,000.00 per occurrence for personal injury, deaths and/or property damage. This insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying a claim under such policy because of the negligent acts or omissions of the Association any Owner (or any other Person named as an insured or additional insured thereunder). The scope of coverage shall also include non-owned and hired automobiles.

(3) If any part of the Areas of Association Responsibility is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance covering all insurable Improvements on the Areas of Association Responsibility shall be maintained in an amount not less than the lesser of (i) 100% of the current replacement cost, from time to time, of all such insurable Improvement, or (ii) the maximum limit of coverage available for such insurable Improvements under the National Flood Insurance Act of 1968, as amended. Such a flood insurance policy shall be in the form of the standard policy issued by the National Flood Insurance Association.

(4) The Association shall obtain fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers

responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event less than the greater of: (i) one and one-half times the Association's estimated annual operating expenses and reserves or, (ii) the sum of three months' Annual Assessments on all Lots and Parcels then within the Project plus the reserve funds held by the Association. In connection with such coverage, an appropriate endorsement to the policy to cover any Person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(5) A worker's compensation policy, if necessary to meet the requirements of applicable law.

(6) Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for similar projects established by any interested Institutional Guarantor, except to the extent such coverage is not reasonably available or has been waived in writing by the Institutional Guarantor.

8.3 Provisions Required.

The insurance policies purchased by the Association shall, to the extent reasonably possible, contain the following provisions:

(1) The coverage afforded by policies shall not be brought into contribution or proration with any insurance which may be purchased by Owners or First Mortgagees.

(2) The conduct of any one or more Owners shall not constitute grounds for avoiding liability on any policies.

(3) There shall be no subrogation with respect to the Association, the Board, the Owners, Mortgagees, and their respective Occupants, agents, tenants, servants, employees, guests and household members, or the policy or policies should name such people as additional insureds; and, each policy must contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.

(4) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

(5) A statement of the name of the insured shall be included in all policies, in form and substance similar to the following:

"Greenfield Lakes Owners Association, for the use and benefit of the individual owners" [designated by name, if required].

(6) A standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association, for the use and benefit of Mortgagees as their interests may appear, or which must be otherwise endorsed to fully protect the interest of First Mortgagees, their successors and assigns.

(7) For policies of hazard insurance, a standard mortgagee clause shall provide that the insurance carrier shall notify the First Mortgagee named at least ten days in advance of the effective date of any reduction in or cancellation of the policy.

(8) Any "no other insurance" clause shall exclude insurance purchased by Owners or First Mortgagees.

(9) Coverage must not be prejudiced by (a) any act or neglect of Owners when such an act or neglect is not within the control of the Association or (b) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

(10) Coverage may not be cancelled or substantially modified without at least 30 days' (or such lesser period as otherwise provided herein) prior written notice to any and all insureds including First Mortgagees and interested Institutional Guarantors.

(11) Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such an election is not exercisable without the prior written approval of the Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

8.4 First Mortgagee Protection.

(1) The Association shall, upon written request, provide each First Mortgagee with a letter wherein the Association agrees (a) to give timely written notice to each First Mortgagee, or any Person designated by a First Mortgagee, whenever damage (whether arising from casualty, condemnation or otherwise) to the Common Areas and related facilities exceeds \$10,000, (b) to give timely written notice to the First Mortgagee, or any Person designated by a First Mortgagee, whenever damage (whether arising from casualty, condemnation or otherwise) to a Lot or Parcel known to the Association covered by the First Mortgage exceeds \$1,000, and (c) any lapse, cancellation or material modification of any insurance or fidelity bond maintained by the Association.

(2) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better, or if this rating service is discontinued, an equivalent rating by a successor thereto or a similar rating service.

(3) Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

(4) Policies shall not be utilized where: under the terms of the carrier's charter, bylaws or policy, contributions may be required or assessments may be made against the Owner or First Mortgagee or any Person purchasing or guaranteeing any First Mortgage or may become a lien superior to any First Mortgage; by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or, the policy includes any limiting clauses (other than insurance condition) which could prevent any Owner or the First Mortgagee, its successors or assigns, from collecting insurance proceeds.

(5) The mortgagee clause of each insurance policy shall be properly endorsed, and necessary notices of transfer must have been given, and any other action required to be taken must be taken in order to fully protect, under the terms of the policies and applicable law, the interest of all First Mortgagees, their successors and assigns. Where permissible, the insurance carrier shall be required to name the servicer of a First Mortgage, or "[name of servicer], its successors or assigns," as the First Mortgagee under the mortgagee clause. If permissible, where a deed of trust is utilized, the insurance carrier shall be required to use "[name of servicer], its successors or assigns, beneficiary" or "[name of trustee], its successors or assigns, for the benefit of [name of servicer]" instead of only the name of the trustee under the deed of trust.

(6) All insurance drafts, notices, policies, invoices and all other similar documents, or their equivalent, shall be delivered directly to each servicer involved, if any, regardless of the manner in which the mortgagee clause is endorsed. The servicer's address on any First Mortgagee endorsement on a policy shall be used in the endorsements in lieu of the address of the First Mortgagee if requested by the First Mortgagee.

(7) First Mortgagees may pay overdue premiums, or may secure new insurance coverage on the lapse of a policy, with respect to any insurance required to be maintained by the Association as provided in this Section 8, and First Mortgagees making expenditures therefor shall be owed immediate reimbursement by the Association.

8.5 Non-Liability of Association/Board.

Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member or other Person shall be liable to any Owner or Mortgagee if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate. It shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

8.6 Premiums.

Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or Parcel or its appurtenances, or of the Areas of Association Responsibility, by an Owner, or by any Occupant, guest or invitee of an Owner, shall be assessed against that particular Owner.

8.7 Insurance Claims.

The Association, acting by and through its Board, is hereby irrevocably appointed agent and attorney-in-fact for each Owner and for each holder of a First Mortgage or other lien upon a Lot or Parcel, and for each owner of any other interest in the Property, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Association in this regard.

8.8 Benefit.

Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of the Association, the Owners, First Mortgagees and interested Institutional Guarantors, as their interests may appear.

9. Damage, Destruction and Condemnation.

9.1 Definitions.

As used in this Section, the following terms shall have the following definitions:

(a) "Destruction" shall exist whenever the Board determines that, as a result of any casualty, damage or destruction, the Common Areas, or any part thereof, have been damaged.

(b) "Condemnation" means the taking of any property interest in the Common Areas by the exercise of a power of eminent domain, or the transfer or conveyance of such an interest to a condemning authority in anticipation of such an exercise.

(c) "Restoration" in the case of Destruction means the repair or reconstruction of the damaged or destroyed portions of the Common Areas in accordance with the provisions of this Section. "Restoration" in the case of Condemnation means the repair or reconstruction of the remaining portions of the Common Areas, if any, to restore the Common Areas to an attractive, sound, functional and desirable condition, including, if the Board deems it desirable or necessary, the replacement of any Improvements so taken. Insofar as reasonably possible, taking into account the portions of the Common Areas subject to Destruction or taken by Condemnation, Restoration shall be in conformance with the original plans and specifications or, if the Board determines that adherence to original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, such repairs or reconstruction shall be of a kind and quality substantially the same as the condition in which the affected portions of the Common Areas existed before the Destruction or Condemnation. Any Restoration not in accordance with original plans and specifications shall first be approved by a majority of First Mortgagees, based on one vote for each mortgage owned.

(d) "Restoration Funds" in the case of any Destruction means any proceeds of insurance received by the Association as a result of the Destruction of any portion of the Common Areas, but excluding that portion of any proceeds of insurance legally required to be paid to any party other than the Association, including a Mortgagee of all or any part of the Common Areas, Lots or Parcels, and any uncommitted funds or income of the Association other than that derived through Assessments. "Restoration Funds" in the case of Condemnation means the entire amount received by the Association as compensation for any Condemnation including, but not limited to, any amount awarded as severance damages, but deducting therefrom reasonable and necessary costs and expenses including, but not limited to, attorneys' fees, appraiser's fees and court costs, together with any uncommitted funds or income of the Association other than that derived through Assessments.

9.2 Restoration of Common Areas.

In the event of any Destruction or Condemnation of the Common Areas, the Association shall undertake the Restoration of the Common Areas unless the Owners holding not less than 75% of the votes in each class of Members of the Association and not less than 51% of the First Mortgagees (based upon one vote for each Mortgage owned) agree in writing at or prior to the special meeting hereinafter provided that the Association should not undertake the Restoration of the Property.

9.3 Construction Contract.

In the event the Association undertakes the Restoration of the Common Areas, the Board shall contract with a reputable contractor or contractors who shall, if required by the Board, post a suitable performance or completion bond. The contract with such contractors shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of an architect's certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board.

9.4 Restoration Funds.

Upon receipt by the Association of any insurance proceeds, condemnation awards or other funds resulting from the Destruction or Condemnation of any portion of the Common Areas, the Association may cause the Restoration Funds to be paid directly to a bank located in Maricopa County, Arizona, whose accounts are insured by the Federal Deposit Insurance Corporation, or its successor agency, as designated by the Board, as trustee (the "Restoration Funds Trustee") for the Association. Any such funds shall be received, held and administered by the Restoration Funds Trustee subject to a trust agreement consistent with the provisions of this Declaration and which shall be entered into between the Restoration Funds Trustee and the Association. Disbursement of such funds shall be made only upon the signatures of two members of the Board. Disbursements to contractors performing any repair or reconstruction upon the Common Areas shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Maricopa County, Arizona.

9.5 Special Assessment for Restoration.

If the Restoration Funds are, or appear to the Board to be, insufficient to pay all of the costs of Restoration, the Board shall, with the consent of Owners holding not less than two-thirds of the votes in each class of Members of the Association, levy a Special Assessment to make up any deficiency. Such a Special Assessment shall be levied against all Owners to the extent necessary to make up any deficiency for Restoration of the Common Areas. The amount of the required Special Assessment shall be determined by the Board, in its sole discretion. The Special Assessment relating to the Restoration of the Common Areas shall be levied against the Owners in the same proportion as Annual Assessments under Section 7.6. The Special Assessment shall be payable at such time or in installments from time to time, as the Board may determine. The Special Assessment provided for herein shall be secured by the Assessment Lien.

9.6 Special Meeting.

In the event of the Destruction or Condemnation of the Common Areas, the Board, at its election or upon presentation of a petition signed by not less than 10% of the Owners requesting such a meeting, shall convene a special meeting of the Association for resolving whether the Association should undertake the Restoration of the Common Areas in accordance with Section 9.2 of this Declaration.

9.7 Decision Not to Restore.

If the Common Areas are not to be restored following any Destruction or Condemnation, the Board shall use the Restoration Funds to pay all of the Mortgages or other liens or encumbrances of record with respect to the Common Areas which will not be restored. If any Restoration Funds remain after such an application of them, they shall be held by the Association for working capital or reserves, in the discretion of the Board.

9.8 Emergency Repairs.

Notwithstanding any provision of this Section 9, the Board may, without any vote of the Owners or First Mortgagees, undertake any repair which the Board deems reasonably necessary to avoid further damage or destruction which is likely, in the Board's sole opinion, to cause substantial diminution in the value of the Common Areas or which presents an unreasonable risk of injury to persons or property.

9.9 Condemnation of a Lot or Parcel.

In the event of the Condemnation of all or substantially all of a Lot or Parcel so that it is no longer tenantable following reasonable repair or reconstruction, the Lot or Parcel shall cease to be part of the Project, the Owner shall cease to be a Member of the Association, and the Fractional Interest of each remaining Owner shall automatically be recomputed to reflect appropriately the number of Lots and Parcels (and Units of Density) remaining in the Project.

9.10 Destruction of a Lot or Parcel.

In the event that any Lot or Parcel is damaged or destroyed (in whole or in part), the Owner shall promptly undertake or cause to be undertaken the repair or reconstruction of the damaged or destroyed portions of the Lot or Parcel. If a Lot or Parcel is not restored within a reasonable time following notice by the Board to the Owner when restoration is mandatory hereunder, then the Association shall be entitled to exercise any right or remedy available under this Declaration, including affirmative injunctive relief, and shall have the further right to enter into possession of the Lot or Parcel in order to undertake the restoration of the Lot or Parcel in accordance with this Section.

10. Party Walls.

10.1 Rights and Duties.

The rights and duties of the Owners and the Association with respect to a wall or fence located between two Lots, between two Parcels and/or between a Lot and a Parcel (hereinafter referred to as a "party wall") shall, to the extent not inconsistent with the provisions of this Section, be governed by the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions. The cost of reasonable repairs and maintenance of a party wall shall be shared equally by the Owners of the adjoining Lots and/or Parcels.

10.2 Restoration.

If a party wall is destroyed or damaged by fire or other casualty, any Owner whose Lot or Parcel adjoins the wall may restore it, and all of the adjoining Owner(s) shall contribute equally to the cost of restoration, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, or by the negligent or willful act of any of his agents, Occupants, licensees, guests, invitees or family members, causes the party wall to be damaged or to be exposed to the elements shall bear the whole cost of furnishing the necessary restoration or necessary protection against such elements. The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to the Owner's successors in title.

10.3 Disputes.

In the event of any dispute between Owners concerning a party wall, or under the provisions of this Section, upon the written request of any one of the Owners addressed to the Association, the disputed matter shall be decided by the Board, whose decision shall be final and binding upon the Owners.

10.4 Wall Encroachment.

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

10.5 Back Yard Construction.

To the extent necessary in order for an Owner to construct a swimming pool or other Improvements in the back yard of his Lot, an Owner may remove all or a part of a party wall, provided the Owner gives reasonable notice to the adjoining Owner(s) that all or a part of the party wall will be removed. Any Owner removing all or a part of a party wall pursuant to this Section shall rebuild and restore the party wall to its prior condition at such Owner's sole cost and expense within a reasonable time after entry through the party wall is no longer necessary in connection with the construction of Improvements in the back yard of such Owner's Lot.

11. Maintenance, Repairs and Replacements.

11.1 Maintenance of Lots and Parcels.

Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements of his own Lot or Parcel and all Improvements to it. Each Owner shall maintain his Lot or Parcel in a neat and orderly condition, in accordance with such rules and regulations as may be adopted by the Association. All grass, hedges, shrubs, vines and plants of any type on a Lot or Parcel 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 or like kind, unless different foliage is approved by the Architectural Committee as provided in Section 12. No yard equipment, wood piles or storage areas may be maintained so as to be Visible from Neighboring Property. All Lots upon which no Dwelling Unit, buildings or other structures, landscaping or other Improvements have been constructed shall be maintained in a weed-free and attractive manner.

11.2 Maintenance of Areas of Association Responsibility.

Except as otherwise provided herein to the contrary, maintenance, repairs and replacements of the Areas of Association Responsibility shall be furnished by the Association as part of the Common Expenses, subject to the applicable provisions of the Constituent Documents. If, due to the intentional act or negligence of an Owner, any Occupant of his Lot or Parcel, or his invitee, guest, family member or tenant, damage is caused to the Common Areas or to any Lot or Parcel owned by others, or maintenance, repairs or replacements are required which would otherwise be at the Common Expenses, then the Owner shall pay for the damage and for such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's insurance. An authorized representative of the Board, or of the manager or managing agent of the Project, and all contractors and repairmen employed or engaged by the Board or the manager or managing agent, shall be entitled to reasonable access to each of the Lots and Parcels as may be required

in connection with maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures affecting or serving other Lots or Parcels or the Common Areas. No provision of the Constituent Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Areas or the Lots. Owners shall only be responsible for damage to the Common Areas or Lots caused by the Owners' negligence or intentional acts.

11.3 Enforcement of Obligations.

In the event that any Owner fails to maintain and repair his Lot or Parcel and Improvements on it as required hereunder, the Association, following reasonable notice to the Owner (except in emergency situations where such notice is not practical), in addition to all other remedies available to it hereunder or by law, and without waiving any alternative remedies, shall have the right, through its agents and employees, to enter upon the Lot or Parcel at any reasonable time and in any reasonable manner, and to repair, maintain, and restore the Lot or Parcel, including the exterior of the Improvements erected thereon. Each Owner (by acceptance of a deed for his Lot or Parcel) hereby covenants and agrees to repay to the Association the cost of any such repairs immediately upon demand, and the failure of any Owner to make a required payment shall carry with it the same consequences as the failure to pay any Assessment hereunder when due, including the imposition of interest and late charges in accordance with the rules and regulations of the Association, all of which shall be the personal obligation of the Owner and secured by the Assessment Lien.

11.4 Disputes.

If any maintenance, repair, replacement or reconstruction involves more than one Lot or Parcel, and if the Owners of the affected Lots and/or Parcels do not agree as to who should perform the work, or as to the allocation of the cost thereof, the decision shall be made by the Board and the decision shall be final and binding upon the Owners.

12. Architectural Control.

12.1 Architectural Committee.

The Board may establish and appoint the members of an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. Prior to the appointment of the initial members of the Architectural Committee, and at any time when there is no one serving on the Architectural Committee (whether due to death, resignation or removal), the Board shall exercise any and all rights, powers, duties and obligations of the Architectural Committee. The Architectural Committee shall adopt, and may from time to time amend, supplement and repeal, architectural and landscaping rules, guidelines and review procedures (collectively, the "Architectural Guidelines") and shall make the same available to Owners. The Architectural Guidelines may be different for different Parcels within the Project. The Architectural Guidelines shall interpret, implement and supplement this Declaration, shall set forth procedures for Architectural Committee review, and may include, without limitation, provisions regarding:

12.1.1 architectural design, with particular regard to the harmony of the design with surrounding structures and topography;

12.1.2 landscaping design, content and conformance with the character of the Property, and permitted and prohibited plants;

12.1.3 requirements concerning exterior color schemes, exterior finishes and materials; and

12.1.4 signage.

The Architectural Guidelines shall have the same force and effect as the Association Rules. The Architectural Guidelines and all amendments, supplements, repeals or replacements thereof shall be subject to the approval of the Board.

12.2 Submission and Review of Plans.

No construction, building, additions, modifications, improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any Lot or Parcel or the Dwelling Unit or other Improvements located thereon from their natural or improved state existing on the date that this Declaration is first Recorded shall be made or done without the prior approval of the Architectural Committee. All subsequent additions to or changes or alterations in any Improvement (including changes in exterior color scheme) shall be subject to the prior approval of the Architectural Committee. No changes or deviations in or from the plans and specifications once approved by the Architectural Committee shall be made without the prior written approval of the Architectural Committee. Nothing contained herein shall be construed to limit the right of an Owner to make interior alterations within his Dwelling Unit or Private Yard which are not Visible from Neighboring Property.

12.3 Other Approvals; Liability...

No approval by the Architectural Committee of any proposed construction, installation, modification, addition or alteration shall be deemed to replace or be substituted for any building permit or similar approval required by any applicable governmental authority, nor shall any such approval be deemed to make the Architectural Committee (or the Board or the Association) liable or responsible for any damage or injury resulting or arising from any such construction, modification, addition or alteration. Neither Declarant, the Association, the Board nor the Architectural Committee (nor any member thereof) shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

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

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

12.3.3 the development of any Lot or Parcel.

12.4 Fee.

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

12.5 Inspection.

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

12.6 Waiver.

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

12.7 Appeal to Board.

Any Owner or Occupant aggrieved by a decision of the Architectural Committee may appeal the decision to the Board in accordance with procedures to be established in the Architectural Committee's standards and procedures. In the event the decision of the Architectural Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Committee shall be deemed modified to the extent specified by the Board.

12.8 Not Applicable to Declarant and Designated Builders.

The foregoing provisions of this Section 12 shall not apply to any portions of the Property owned by Declarant or any Designated Builder so long as the Improvements constructed thereon (and/or any additions, modifications or alterations thereto) are constructed or made in a good and workmanlike manner and are generally compatible in terms of quality of construction to other Improvements theretofore constructed by Declarant or such Designated Builder.

13. Rental Lots.

Notwithstanding anything herein to the contrary, any Owner may rent or otherwise grant occupancy rights to any Lot or Parcel (but not less than an entire Lot or Parcel) owned by him, with the lessee, renter or other Occupant being entitled to the same privileges of use of the Lot or Parcel and Common Areas and subject to the same restrictions as the Owner of the

Lot or Parcel. All lease or other occupancy agreements, including those for a month-to-month tenancy, shall be in writing and provide that the terms of the agreement shall be subject in all respects to this Declaration and the other Constituent Documents, and that failure to comply with the provisions of such documents shall constitute a default under the agreement. A copy of the agreement shall be delivered by the Owner to the Board on or before the commencement of occupancy under the agreement. Each Owner granting occupancy rights to his Lot or Parcel shall remain jointly and severally liable with the Occupant for the payment of any Assessment required hereunder and compliance with the Constituent Documents, including any fines or penalties levied as a result of a violation thereof.

14. Use and Occupancy Restrictions.

14.1 Residential Use.

No part of the Property shall be used for other than residential and related purposes except that Declarant reserves for itself and for Designated Builders the right to maintain sales offices, model units, and signs on the Property, together with rights of ingress thereto and egress therefrom, until all Lots have had Dwelling Units constructed on them and the Lots and Dwelling Units have been sold and conveyed. Each Lot and Parcel shall be used as permitted by this Declaration and for no other purpose. No religious, professional, commercial or industrial operations of any kind shall be conducted in or upon any Lot, any Parcel, or the Common Areas, except such temporary uses as shall be permitted to Declarant and Designated Builders while Lots and Parcels are being constructed and sold by Declarant and/or Designated Builders. No trade or business may be conducted on any Lot or in or from any Dwelling Unit, except that an Owner or other Occupant of a Dwelling Unit may conduct a business activity within a Dwelling 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 Dwelling Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not invoke persons coming on to the Lot or the door-to-door solicitation of Owners or other Occupants 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 Occupants 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.

14.2 Landscaping.

The landscaping on the portion of each Lot which is Visible from Neighboring Property (including, but not limited to, the front yard of the Lot) shall be completed within six months after the Dwelling Unit on the Lot is first occupied. No landscaping (other than landscaping installed by Declarant or any Designated Builder) shall be erected, placed or maintained anywhere in or upon a Lot unless the plans for such landscaping have been approved by the Architectural Committee as provided in Section 12 of this Declaration.

14.3 Temporary Structures.

No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn, shed or other, shall be used as a residence, or otherwise kept on a Lot or Parcel so as to be Visible from Neighboring Property, at any time except such structures as Declarant or a Designated Builder may find necessary or convenient to the development and sale of Lots or Parcels.

14.4 Cancellation of Insurance.

No Owner shall permit anything to be done or kept in his Lot or Parcel or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.

14.5 Signs.

No sign of any kind shall be displayed to the public view on any Lot, Parcel or any Common Areas without the approval of the Board except (a) such signs as may be used by Declarant or Designated Builders in connection with the development and sale of Lots and Parcels, and (b) one "For Sale" or "For Rent" sign on each Lot, which sign shall have a total face area of five feet or less and the location of which sign may be regulated by rule or regulation of the Board or Architectural Committee.

14.6 Pets.

Subject to the provisions of Sections 14.7 and 14.17 of this Declaration, a reasonable number of small, commonly accepted household pets may be kept in each Lot or Parcel without the prior approval of the Board. All additional pets are prohibited unless approved in advance by the Board. It is hereby approved in advance that Occupants of Lots in Parcel 8 of the Project may, in accordance with applicable zoning laws and ordinances and in such a manner as to not create a nuisance, keep any two of the following animals on such Occupant's Lot: horse, cow or sheep. No animal shall be kept, bred or maintained for any commercial purpose, and, except as otherwise provided above, no animals of any kind shall be raised, bred or kept in any Lot or Parcel or in or upon any Common Areas. No animal shall be allowed to become a nuisance, whether by making an unreasonable amount of noise or otherwise. All pets shall be leashed or otherwise appropriately restrained when in any part of the Property other than in an Private Yard or a residence. Upon the request of any Owner, the Board shall determine, in its sole and absolute discretion, whether, for the purposes of this Section 14.6, a particular animal is a commonly accepted household pet or whether a particular animal is a nuisance. The keeping of pets shall also be subject to such additional rules and regulations with respect thereto as the Association may adopt.

14.7 Nuisances.

No Owner shall permit or suffer anything to be done or kept about or within his Lot or Parcel which will obstruct or interfere with the rights of other Owners or Occupants, or annoy them by unreasonable noises or otherwise, nor commit or permit any nuisance about or within his Lot or Parcel or commit or suffer any illegal act to be committed

therein. Each Owner shall comply with all of the requirements of the health authorities and of all other governmental authorities with respect to his Lot or Parcel and the Common Areas.

14.8 Vehicles.

Except as specifically permitted by the Board, (a) no boats, trailers, motor homes, campers, trucks classed by manufacturer capacity rating as exceeding 3/4 ton, or unlicensed or inoperative vehicles shall be parked or stored in or upon any Lot or Parcel, the Common Areas or the public streets of the Project, other than temporary parking on a Lot, Parcel or the adjacent street for purposes of loading or unloading; and (b) no vehicle shall be repaired or rebuilt in any Lot or Parcel or upon the Common Areas or the public streets of the Project. Notwithstanding the foregoing, Occupants of Lots in Parcels 1, 2, 6 or 8 of the Project may store, in accordance with applicable zoning ordinances, on such Lots boats, trailers, motor homes and campers, so long as such items are not utilized for additional living quarters and such Occupant reasonably attempts to keep such items from being Visible from Neighboring Property.

14.9 Lighting.

Except as initially installed by Declarant or a Designated Builder, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot or Parcel which will allow light to be directed or reflected in any manner on the Common Areas, or any part thereof, or any other Lot, Parcel or public streets in the Project.

14.10 Air Conditioners.

No window air conditioners or portable units of any kind Visible from Neighboring Property shall be installed in any Lot or Parcel. No heating, cooling, ventilating or air conditioning units, or solar panels or equipment, shall be placed on any Lot or Parcel so as to be Visible from Neighboring Property unless approved by the Board.

14.11 Reflective Materials.

No reflective materials including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be permitted to be installed or placed on the outside or inside of any windows which are Visible from Neighboring Property without the prior written approval of the Board.

14.12 Antennas.

No radio, television or other antennas of any kind or nature shall be placed or maintained upon any Lot or Parcel except as may be permitted by the Board. All cable television lines serving a Lot or Parcel shall be placed so as to not be Visible from Neighboring Property. Each Owner shall pay for any damage to the Common Areas (including, but not limited to, landscaping therein) caused by any installation of cable television lines serving the Owner's Lot or Parcel.

14.13 Trash Collection.

The Association may maintain trash and garbage collection bins or similar facilities in such areas of the Common Areas as the Board determines. No garbage or trash shall be kept, maintained or contained in any Lot or Parcel so as to be Visible from Neighboring Property except in sanitary containers with lids or covers. Sanitary containers placed in public view for collection shall be promptly stored out of public view after collection.

14.14 Clotheslines.

Outside clotheslines or other facilities for drying or airing clothes shall not be erected, placed or maintained on the Property unless they are within the Private Yard on a Lot and are not Visible from Neighboring Property.

14.15 Vegetation.

No shrub, tree or other vegetation belonging to any Owner shall be allowed to overhang another Lot or Parcel without the consent of the Owner. Consent may be revoked at any time after having been given.

14.16 No Mining.

No portion of the Property shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

14.17 Safe Condition.

Without limiting the foregoing, each Owner shall maintain and keep his Lot or Parcel and any Common Areas subject to his exclusive control at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or Parcels or the Common Areas.

14.18 Enforcement.

The Board or its authorized agents may enter any Lot or Parcel in which a violation of these restrictions or the rules and regulations of the Association exists and may correct such violation at the expense of the Owner of the Lot or Parcel. The Board may enact and impose a reasonable system of fines, penalties and/or fees for violation of these restrictions or the Association Rules, which fines, penalties and/or fees shall be secured by the Assessment Lien.

14.19 Association Rules.

The Board may from time to time, and subject to the provisions of this Declaration, adopt, amend, approve and repeal rules and regulations relating to (i) the management, operation and use of the Areas of Association Responsibility, (ii) minimum

standards for the maintenance of Lots and Parcels, (iii) the health, safety or welfare of Owners and Occupants, (iv) any purpose for which this Declaration provides that such rules and regulations may be enacted, and (v) reasonable and generally applicable restrictions on or regulations of the use and occupancy of the Property or any portion thereof. All remedies described in Section 18 of this Declaration and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, or his guests, invitees, licensees, family members, or tenants, or any Occupant or other Person of any provision of this Section 14 or the Association Rules.

15. Rights and Duties of First Mortgagee.

Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, rules and regulations of the Association, and management agreements, the following provisions shall apply to and benefit each holder of a First Mortgage:

15.1 No Right of First Refusal.

None of the Constituent Documents shall provide that the right of an Owner to sell, transfer or otherwise convey his Lot or Parcel will be subject to any right of first refusal, or similar restriction, in favor of the Association. Any "right of first refusal" that may ever be contained in the Constituent Documents shall not impair or affect the rights of a First Mortgagee to foreclose or take title to a Lot or Parcel pursuant to the remedies provided in the First Mortgage, to accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, or interfere with a subsequent sale or lease of a Lot or Parcel so acquired by the First Mortgagee.

15.2 Mortgagee in Possession.

A First Mortgagee who comes into possession of a mortgaged Lot or Parcel by virtue of foreclosure of the Mortgage, or through any equivalent proceedings, such as, but not limited to, the taking of a deed or assignment in lieu of foreclosure or acquiring title at a trustee's sale under a first deed of trust, or any third party purchaser at a foreclosure sale or trustee's sale, will not be liable for the Lot's or Parcel's unpaid Assessments and other amounts which may accrue prior to the time the First Mortgagee or third party purchaser comes into possession of the Lot or Parcel. Any such Person shall acquire title free and clear of any Assessment Lien authorized by or arising out of the provisions of this Declaration which secures the payment of any Assessments or other amounts accrued prior to the time the Person came into possession of the Lot or Parcel. Any such unpaid Assessments or other charges against the Lot or Parcel foreclosed shall be deemed to be a Common Expense. Nevertheless, in the event the Owner against whom the original Assessment or charge was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association for the amount of the unpaid Assessments and other amounts that were due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment or other amount shall continue to exist as the personal obligation of the defaulting Owner to the Association, and the Board may use reasonable efforts to collect from the Owner even after he is no longer a Member of the Association.

15.3 Consent of Mortgagees Required.

Unless at least two-thirds of the Eligible Holders (based upon one vote for each First Mortgage owned), including, in the case of the partition or subdivision of any Lot, the holder of the First Mortgage for the Lot, and the Owners holding not less than two-thirds of the votes in each Class of Members, or such higher percentage as required in this Declaration or by applicable law, have given their prior written approval, neither the Owners nor the Association shall be entitled to:

(1) By act or omission, seek to abandon or terminate this Declaration, except where provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

(2) Change the pro rata Fractional Interest or obligation of any individual Lot for the purpose of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards (except as provided in Section 9.9 of this Declaration, relating to Condemnation of a Lot).

(3) Partition or subdivide any Lot.

(4) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Project shall not be deemed a transfer within the meaning of this clause).

(5) Use hazard insurance proceeds payable or paid to the Association due to losses to the Common Areas or the Lots or portions thereof for other than the repair, replacement or reconstruction of such areas, except as provided herein or by statute in case of substantial loss to the Common Areas. First Mortgagees shall have the right to participate in the adjustment and settlement of any claim under any insurance maintained by the Association.

15.4 Tax Liens.

All taxes, assessments and charges which may become liens prior to a First Mortgage under local law shall relate only to the individual Lot or Parcel and not to the Project as a whole.

15.5 Priority of Mortgage.

No provision of the Constituent Documents shall give an Owner, or any other party, priority over any rights of the First Mortgagee of a Lot or Parcel pursuant to its First Mortgage in the case of a distribution to the Owner of insurance proceeds or condemnation awards for losses to or a taking of Lots, Parcels and/or Common Areas.

15.6 Amenities.

Amenities (if any) pertaining to the Project (such as parking, recreation and service areas) are a part of the Project.

15.7 Notice of Default.

Upon request, each First Mortgagee and Institutional Guarantor shall be entitled to written notification from the Association of any default in the performance by its Mortgagor under the Constituent Documents, if the default is not cured within 30 days. All First Mortgagees and Institutional Guarantors shall be entitled to written notification by the Association upon the commencement of any condemnation proceedings against all or any part of the Property or the Lot or Parcel securing its Mortgage.

15.8 Review of Records.

First Mortgagees and Institutional Guarantors shall have the right upon reasonable written request to: (a) examine the books and records of the Association at reasonable times; (b) receive an annual financial statement of the Association within 90 days following the end of any fiscal year of the Association, which shall be audited by an independent accountant if required by the regulations of any Institutional Guarantor; and (c) receive written notice of all meetings of the Association and designate a representative to attend all such meetings.

15.9 No Personal Liability.

A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or other amount, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 15.

15.10 Enforcement Against Successors.

An action to abate the breach of any of these covenants, restrictions, reservations and conditions may be brought against a purchaser who has acquired title through foreclosure of a First Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to any such purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Lot or Parcel.

15.11 Exercise of Owner's Rights.

During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to a power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may (but need not exercise) any or all of the rights and privileges of the defaulting Owner of the Lot or Parcel

including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner.

15.12 Mortgagee Subject to Declaration.

At such time as a First Mortgagee comes into possession of or becomes record Owner of a Lot or Parcel, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all Assessments and other amounts accruing thereafter, in the same manner as any other Owner.

15.13 Lien Subordinate to First Mortgage.

The Assessment Lien provided for herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Lot or Parcel; provided that the First Mortgage is in favor of a bank, savings and loan association, insurance company, mortgage banker, other institutional lender, or Institutional Guarantor and their successors or assigns; and provided further that subordination shall apply only to the Assessments and other amounts which have accrued prior to a sale or transfer of the Lot or Parcel to which the First Mortgage relates pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure.

15.14 No Impairment of Mortgage.

Notwithstanding any provision in the Constituent Documents to the contrary, no provision of this Declaration or the other Constituent Documents related to costs, use, set-back, minimum size, building materials, architectural, aesthetic or similar matters shall ever provide for reversion or foreclosure of title to a Lot or Parcel in the event of violation thereof. No breach or violation of any provision of the Constituent Documents shall affect, impair, defeat or render invalid the interest or lien of any First Mortgagee.

15.15 Amendment.

Notwithstanding and prevailing over all other provisions hereof, no amendment to this Declaration shall be made or become effective which in any way adversely affects, materially diminishes or materially impairs any of the rights, privileges or powers granted to any First Mortgagee or which is in any way materially inconsistent with the customary rules, regulations or requirements of institutional First Mortgagees affected or their successors or assigns without the prior written consent of all affected institutional First Mortgagees. Upon written request, each First Mortgagee and Institutional Guarantor shall be entitled to timely written notice of any proposed action which requires the consent of a specified percentage of Mortgagees.

15.16 Enforcement.

First Mortgagees shall have the right to enforce against Owners, the Association and all others, any and all provisions of this Declaration including, but not limited to, this Section 15. Enforcement by First Mortgagees may be by injunction, mandatory or prohibitory, or any other lawful procedure. This Declaration shall be interpreted to the extent reasonably possible in conformity with all rules, regulations and requirements of any Institutional

Guarantor of a Mortgage on any Lot or Parcel in effect as of this date, or as they may be hereafter amended, and any provision hereof which is materially inconsistent therewith shall be deemed modified to conform thereto to the extent reasonably possible.

15.17 Articles and Bylaws.

The Articles, Bylaws and all Association Rules shall be governed by this Declaration and all provisions thereof which are inconsistent herewith shall be void.

15.18 Eligible Holders.

Notwithstanding anything in this Declaration to the contrary, any First Mortgagee or Institutional Guarantor may submit a written request to the Association, which identifies the name and address of the First Mortgagee or Institutional Guarantor and the particular Lot(s) or Parcel(s) subject to its rights as First Mortgagee or Institutional Guarantor, to receive timely written notice of all or any of the matters specified below. Any First Mortgagee or Institutional Guarantor which submits a request in the manner provided herein shall be considered an "Eligible Holder" for purposes of this Declaration. Those matters for which any First Mortgagee or Institutional Guarantor may request notice are:

(a) Any condemnation or casualty loss that affects either a material portion of the Project or a material portion of the Lot or Parcel subject to its rights as First Mortgagee or Institutional Guarantor;

(b) Any 30-day delinquency in the payment of Assessments or charges owed by the Owner of the Lot or Parcel subject to its rights as First Mortgagee or Institutional Guarantor;

(c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action that requires the consent of a specified percentage of Eligible Holders.

16. Mortgages.

Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his Lot or Parcel. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot or Parcel.

17. Exemption of Declarant from Restrictions.

Notwithstanding anything contained in this Declaration to the contrary (except that, in the event of a conflict with the provisions of Section 15 of this Declaration, those provisions shall be controlling), none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant or a Designated Builder, or any of their employees, agents and subcontractors, in connection with the construction, completion,

marketing, sale or leasing of the Project or any portion thereof, or the repair or maintenance of any Lot or Parcel as required either by this Declaration or by any contract of sale with Owners.

18. Remedies.

18.1 Power to Enforce.

In the event of any default by any Person under the provisions of this Declaration, or the other Constituent Documents, the Association, or its successors or assigns, and the Board, or its agents, and an Owner of a Lot or Parcel shall have each and all of the rights and remedies which may be provided for in this Declaration or the other Constituent Documents, and which may be available at law or equity, and may prosecute any action or other proceedings against the defaulting Person for enforcement or foreclosure of its lien and the appointment of a receiver for a Lot or Parcel, or for damages or injunction, whether mandatory or prohibitory, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of a Lot or Parcel and to rent the Lot or Parcel and apply the rents received to payment of unpaid assessments and interest accrued thereon, and to sell it as hereinafter in this Section 18 provided, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or Parcel or the solvency of the defaulting Person.

18.2 Expenses.

The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs including, but not limited to, reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments and other amounts hereunder or any Assessment Lien hereunder shall be paid to the Owner or the Mortgagees of the Lot or Parcel, as their interests may appear. Upon the confirmation of the sale, the purchasers shall be entitled to a deed to the Lot or Parcel and to immediate possession of the Lot or Parcel and may apply to the court for a writ of restitution for the purpose of acquiring possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

18.3 Lien Rights.

All expenses of the Association in connection with any action or proceeding described or permitted by this Section 18, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the Interest Rate, until paid, shall be charged to and assessed against such defaulting Owner and shall be added to and deemed part of his respective share of the Common Expenses, and the Association shall have an Assessment Lien for all such sums, as well as for nonpayment of his respective share of the Common Expenses, upon the Lot or Parcel of the defaulting Owner and upon all of his additions and Improvements thereto.

18.4 Self Help.

In the event of a default by any Person, the Association and the Board, and the manager or managing agent, if authorized by the Board, shall have the authority to correct the default and to do whatever may be necessary, and all expenses in connection therewith shall be charged to and assessed against the defaulting Person. Such a charge shall constitute an Assessment Lien against a defaulting Owner's Lot or Parcel as provided for in Section 7 of this Declaration. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board. To the extent that summary abatement or enforcement rights are herein reserved to Declarant or a Designated Builder, the Association or any other Person, judicial proceedings for enforcement must be instituted before any items of construction can be altered or demolished.

18.5 Warning Notice.

If any Person (either by his conduct or by the conduct of any Occupant of his Lot or Parcel, or the Owner's family, guests, invitees or tenants to the extent the Owner may be held legally responsible therefor) violates any of the provisions of this Declaration, or any Constituent Documents, as then in effect, and the violation continues for 10 days after notice in writing to the defaulting Person or occurs repeatedly during any 10 day period after written notice, then the Board or any affected or aggrieved Owner shall have the power to file an action against the defaulting Person for a judgment or injunction, whether mandatory or prohibitory, requiring the defaulting Person to comply with the provisions of this Declaration, or the Constituent Documents, and granting other appropriate relief, including money damages.

18.6 Mortgage Priority.

Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of reentry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot or Parcel but, except as herein specifically provided, each and all of the covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Lot or Parcel whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

19. Amendment.

Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. So long as there is outstanding any Class B Membership in the Association, any amendment other than one authorized by Section 19.4 of this Declaration must be approved by all Institutional Guarantors.

19.1 Adoption.

Except as otherwise provided herein, amendments, whether or not uniform in effect, may be adopted with or without a duly held meeting of the Owners upon the written approval of Owners of not less than 75% of the Lots (with each Unit of Density within a Parcel being considered a "Lot" for purposes of such 75% calculation). In the event that no meeting

of Owners is held, the requisite number of Owners must consent in writing to the amendment. Amendments properly adopted shall bear the signature of the president of the Association and shall be attested by the secretary, and shall be acknowledged by them as officers of the Association. Properly adopted amendments shall be effective upon Recording in the appropriate governmental offices or at such later date as may be specified in the amendment. Notwithstanding the foregoing, any amendment of this Declaration which is deemed to be "material" under the requirements of Institutional Guarantors, including, but not limited to, any amendment which would change the Fractional Interest of any Owner, may be adopted only with the foregoing affirmative vote or consent of Owners and the consent of Eligible Holders representing at least 51% of all First Mortgages held by Eligible Holders (based upon one vote for each First Mortgage held).

19.2 Effect.

It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise required by law or specifically provided in the section being amended or the amendment itself.

19.3 Required Percentages.

If this Declaration, the Articles or Bylaws requires the consent or agreement of all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or any specified percentage of them, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such an action shall be signed by no lesser percentage of the Owners and/or lienholders and trustees and/or beneficiaries under trust deeds.

19.4 Declarant Powers.

Notwithstanding any provision of this Section 19, for so long as any Class B Membership in the Association is outstanding, Declarant reserves the right, and shall be authorized and empowered, acting alone, to amend this Declaration as necessary to comply with, or conform this Declaration to, the requirements or guidelines of an Institutional Guarantor and governmental authorities (e.g., FNMA or FHLMC) (including, but not limited to, requirements to qualify the Property and offer it for sale); provided, however, that Declarant shall obtain the approval of any interested Institutional Guarantor or governmental authority to such an amendment. Upon the adoption and Recording of any such amendment by Declarant, a copy of the amendment shall be made available for the inspection of every Owner and every Eligible Holder.

19.5 Institutional Guarantors.

Anything to the contrary herein notwithstanding, no amendment shall be effective to materially modify, change, limit or alter the rights expressly conferred upon Mortgagees in this Declaration, or which is in any way materially inconsistent with the rules,

regulations or requirements of any interested Institutional Guarantor, unless the amendment is approved in writing by the Institutional Guarantor.

20. Notices.

Notices provided for in this Declaration, or the Bylaws or rules and regulations of the Association, shall be in writing and shall be addressed to the Association or the Board, as the case may be, at an address to be established by the Board. The Association or the Board may at any time designate a different address or addresses for notices to them respectively by giving written notice of the change of address to all Owners. All notices to Owners shall be to their respective Lots or Parcels. Any Owner may designate a different address or addresses for notices to him by giving written notice of his change of address to the Board. Notices addressed as above shall be deemed delivered when mailed by United States mail, first class with postage prepaid, or when delivered in person. Upon written request to the Board, a Mortgagee of a Lot or Parcel shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner of the Lot or Parcel subject to the Mortgage.

21. Captions and Exhibits: Construction.

Captions given to various sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. Any exhibits referred to herein are incorporated as though fully set forth where the reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the ownership and operation of the Property under the provisions of Arizona law.

22. References to VA, FHA, and Institutional Guarantors.

In various places throughout this Declaration and the other Constituent Documents, references are made to the FHA, the VA and Institutional Guarantors, and, in particular, to various consents or approvals required by the FHA, the VA and/or Institutional Guarantors. Such references are included so as to cause the Constituent Documents to meet certain requirements of such agencies should Declarant or any Designated Builder request approval of the Project by any of such agencies. Unless and until the FHA or the VA have approved the Project as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, cancelled or suspended and there is no outstanding Mortgage Recorded against a Lot or Parcel to secure payment of an insured or guaranteed loan by either the VA or the FHA, all references herein to required approvals or consents of the VA, the FHA and/or Institutional Guarantors shall be deemed null and void and of no force and effect.

23. Severability.

If any provision of this Declaration, the Articles, Bylaws or rules and regulations of the Association, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws or the rules and regulations, and of the application of any such provision,

section, sentence, clause, phrase or word in any other circumstances, shall not be affected, and the remainder shall be construed as if the invalid part were never included therein.

24. Power of Attorney.

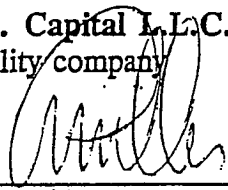
Whenever the Association or the Board is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association in accordance with the Articles and Bylaws. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association or the Board is empowered to take any action or do any act including, but not limited to, action or acts in connection with the Common Areas, the Owners and each of them hereby constitute and appoint the Association, acting through its Board, as their attorney-in-fact for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by the acceptance of a deed for a Lot or Parcel or by signing a contract for purchase of a Lot or Parcel or by succeeding in any other manner to the ownership of a Lot or Parcel, each Owner shall be deemed and construed to have ratified and expressly granted the above power of attorney.

25. Disclaimer of Representations.

Notwithstanding any contrary provision of this Declaration or any other Constituent Document, neither Declarant nor any Designated Builder makes any representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

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

L.R. Capital L.L.C., an Arizona limited liability company

By: 
Its: 17 11

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 9th day of April, 1996, by Larry L. Miller, the Manager of L.R. Capital L.L.C., an Arizona limited liability company, for and on behalf of the Company.

Linda Duval
Notary Public

My Commission Expires:

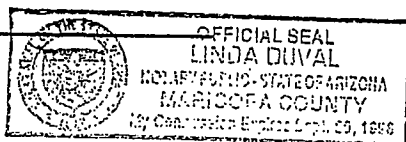


Exhibit A

Parcels 1A, 1B, 1C, 2A, 2B, 2C, 3, 4A, 4B, 4C, 4D, 5, 6 and 8, GREENFIELD LAKES, as shown on Map of Dedication recorded in Book 413 of Maps, Page 45, records of Maricopa County, Arizona.

Exhibit B

Parcels 7A, 7B, 7C, 7E and 7F, GREENFIELD LAKES, as shown on Map of Dedication recorded in Book 413 of Maps, page 45, records of Maricopa County, Arizona.