

HOLD FOR SECURITY TITLE

WHEN RECORDED, RETURN TO:  
SunCor Development Company  
Attention: Julie Elliott  
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Phoenix, AZ 85004

PROP RSTR (RS)

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OF MARICOPA COUNTY, ARIZONA  
JUN 27 '91 - 4 30  
HELEN PURCELL, County Recorder  
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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
ANCALA CASITAS RESORT

SECURITY TITLE AGENCY

DATED JUNE 27, 1991

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Declaration of Covenants, Conditions and Restrictions  
of  
Ancala Castles Resort  
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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
ANCAIA CASITAS RESORT

THIS DECLARATION, made on the date hereinafter set forth by SECURITY TITLE AGENCY, an Arizona corporation, on behalf of SUNCOR DEVELOPMENT COMPANY, an Arizona corporation and First Beneficiary under that certain Second Revised Amended Trust Agreement dated March 8, 1991, Security Title Agency Trust No. 5919, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the fee title owner of certain property in the County of Maricopa, State of Arizona, which is more particularly described as Ancala Casitas Resort, according to the Plat thereof recorded in Book 344 of Maps, Page 13, records of the Maricopa County, Arizona Recorder (the "Property").

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions (hereinafter collectively sometimes called "restrictions"), which are for the purpose of enhancing and protecting the value, desirability and attractiveness of, and which shall run with the land and be binding on all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. This Declaration hereby establishes a plan for the individual ownership of real property estates, consisting of a Lot or Lots as hereinafter described and the improvements contained thereon, and the maintenance by a homeowner association as hereinafter provided of Common Areas and part of the landscaping on the Lots.

ARTICLE I

DEFINITIONS

Section 1. Association. "Association" shall mean and refer to Ancala Casitas Resort Homeowners Association, an Arizona nonprofit corporation, its successors and assigns.

Section 2. Board of Directors. "Board of Directors" shall mean the members of the Association duly elected to act on behalf of any and all members of the Association.

Section 3. Common Area and Common Areas. "Common Area" and "Common Areas" shall be synonymous and shall mean all of the real property now or hereafter to be owned by the Association for the common use and enjoyment of

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the Owners, including, but not limited to, all of the above-referenced Property excepting land specifically designated as a "Lot" as defined in Article 1, Section 6 below.

**Section 4. Declarant.** "Declarant" shall mean and refer to SUNCOR DEVELOPMENT COMPANY, an Arizona corporation, its successors and assigns.

**Section 5. Builder.** "Builder" shall mean and refer to GOLDEN HERITAGE CORPORATION, an Arizona corporation, or to any other contractor designated by Declarant who builds for resale at least ten (10) houses on Lots within the Property.

**Section 6. Lot.** "Lot" shall mean and refer to a separately designated and legally described freehold estate consisting of any plot of land and the improvements thereon as designated on the Plat of the Property described in Article 1, Section 9 below with the exception of the street and tracts shown thereon.

**Section 7. Member.** "Member" shall mean and refer to every person or entity who holds membership in the Association. Each member is subject to the provisions of this Declaration.

**Section 8. Owner.** "Owner" shall mean and refer to the record owner of a Lot or Lots, whether one or more persons or entities of equitable title in fee simple (or legal title if equitable title has merged) which is a part of the Property. Owner shall not include a person or entity having an ownership interest merely as security for the performance of an obligation or a lessee or tenant of a Lot unless otherwise provided hereinbelow.

**Section 9. Plat.** "Plat" shall refer to that subdivision plat of Ancala Castas Resort and any replat thereof recorded in Book 344, Page 13, records of the Maricopa County, Arizona Recorder depicting the Lots.

**Section 10. Property.** "Property" shall mean and refer to the Common Areas, Lots or any individual Lot within that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 11. Yard Lot Area or Yard Lot Areas.** "Yard Lot Area" or "Yard Lot Areas" shall mean or refer to the area of any Lot which is not Common Area but for maintenance purposes is to be maintained by the Association. Yard Lot Area includes those landscaping portions in the front of the Lot which are on the street side of the residence constructed or to be constructed thereon. Yard Lot Area does not include driveways or sidewalks.

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ARTICLE II

## THE ASSOCIATION

Section 1. Organization.

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

b. Board of Directors, Officers, Architectural Review Committee. The affairs of the Association shall be conducted by a Board of Directors and such Officers as the Directors may elect or appoint, in accordance with the Articles and the Bylaws, as the same may be amended from time to time. The Board of Directors shall also appoint members to the Architectural Review Committee in accordance with the provisions set forth in the Articles and Bylaws for the Association.

Section 2. Powers and Duties. The Association, including the Architectural Review Committee shall have such rights, duties and powers as set forth in the Articles and Bylaws, as the same may be amended from time to time.

Section 3. Rules. By a majority vote <sup>Unofficial Document</sup> of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the "Rules". The Rules may restrict and govern the use of any area by any Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Said Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4. Personal Liability. No member of the Board or any Committee or the Association, or any officer of the Association, or any manager, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, any manager, or any other representative or employee of the Association, or the Architectural Review Committee, or any other committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without wilful or intentional misconduct.

Section 5. Qualification for Membership. Membership in the Association, except for membership of the Incorporators, Declarant and the Board of Directors, shall be limited to Owners of Lots constructed or planned to be constructed on or

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within the Property. An Owner of a Lot shall automatically, upon becoming the Owner of a Lot, be a member of the Association, and shall remain a member of the Association until such time as his ownership of the Lot shall cease, at which time his membership in said Association shall automatically terminate. Ownership of a Lot shall be the sole qualification and criteria for membership.

**Section 6. Restrictions.** A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of such Lot and then only to the purchaser thereof, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal processes. The Association shall record the transfer upon the books of the Association and thereupon the old membership outstanding in the name of the former Owner shall be null and void.

**Section 7. Number of Memberships.** The Owner of each Lot shall be entitled to one membership in the Association, and there shall be no more than one membership for each Lot, which membership shall be subject to all of the provisions of the Association's Articles of Incorporation, Bylaws, and/or any management agreement executed by the Board, and these restrictions, as now in effect or duly adopted or amended, and any rules and regulations promulgated by the Board of Directors.

**Section 8. Assessment of Members.** Every Owner of a Lot, except for the Declarant, which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

### ARTICLE III

#### VOTING RIGHTS

**Section 1. Class of Voting Members.** The Association shall have two (2) classes of voting membership:

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

**Class B.** The Class B members(s) shall be the Declarant who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier occurrence of either of the following events:

- a. When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
- b. Five (5) years from the date of this Declaration.



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Section 2. Effect of Arrearages in Payment of Assessments. In the event any Owner is in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of fifteen (15) days, or shall be in default in the performance of any of the terms of this Declaration for a period of fifteen (15) days, that Owner's right to vote as a member of the ANCALA CASITAS RESORT HOMEOWNERS ASSOCIATION and any other rights and privileges of Membership shall without notice thereof be suspended and shall remain suspended until such time as all payments are current and all defaults remedied.

#### ARTICLE IV

##### PROPERTY RIGHTS

Section 1. Ownership. Every Owner shall have a right of enjoyment in and to his Lot, subject to the Association's easement thereon for Yard Lot Area maintenance and other encumbrances. It is expressly acknowledged and agreed by all parties concerned that this Article IV is for the mutual benefit of all Owners and of the ANCALA CASITAS RESORT HOMEOWNERS ASSOCIATION and is necessary for the protection of said Owners. It is understood and agreed that the rights of use and enjoyment of a Lot may be exercised by any person legally in possession of a Lot in a manner not in violation of the provisions hereof, but nothing herein shall be deemed to alter or amend the definition of "Owner" under ARTICLE I, Section 8 hereof, or to affect the provisions of Article III hereof with respect to voting rights. Such right of enjoyment shall be subject to reasonable rules and regulations as from time to time are promulgated or amended by the Board of Directors which may include, but shall not be limited to, the right of the Association to impose fines and suspend voting rights for nonpayment of assessments during any period when any assessment against the Owner's Lot remains unpaid, or to impose the same sanctions for other breaches of this Declaration or its published rules and regulations.

Section 2. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Lot or by abandonment of his Lot.

#### ARTICLE V

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Property hereby covenants, and each Owner of any Lot, by acquiring an ownership interest therein, whether or not it shall be so expressed in the conveying document, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments as authorized by the Association's Board of Directors, such assessments to be established and collected as provided herein.

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The annual and special assessments, together with interest, costs of collection and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lots against which each such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors-in-title unless expressly evidenced by the records of the Maricopa County, Arizona Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed or recorded with the County Recorder. No Lot shall be sold, transferred or conveyed by any Owner without all assessments then due having first been paid in full, whether or not a lien has been recorded.

**Section 2. Purpose of Assessment.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners of the Property and for the improvement, maintenance and repair of the Common Area. Without limiting the generality of the foregoing, such purposes shall include the payment for the following:

- a. Water, sewer, garbage, electrical, lighting, telephone, gas and other necessary utility service for the Common Area;
- b. Maintenance and repair Unofficial Document drains, sanitary sewers and private streets lying within the Common Area;
- c. Maintenance, repair and replacement of landscaping on the designated portion of the improved Lots known as Yard Lot Areas;
- d. Fire and casualty insurance covering the Common Area and at the election of the Board of Directors, a blanket fire and casualty insurance policy or policies covering the improvements on the Lots;
- e. Public liability insurance insuring the Association against any liability to the public or to any Owner, their invitees or tenants, incident to their occupation and/or use of the Common Area with such limits of coverage as may be determined by the Board;
- f. Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws, and any other insurance deemed necessary by the Board of Directors of the Association;
- g. Standard fidelity bonds covering those certain members of the Board, the officers, and those certain employees of the Association who are authorized to sign checks on behalf of the Association, in such amounts as the Board may determine from time to time;
- h. Painting, maintenance, repair and replacement of the Common Area;
- i. Reserves for repair and replacement of improvements on the Common Area and for exterior maintenance;

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j. Reimbursement for reasonable expenses incurred by members of the Board and officers in the discharge of their duties;

k. Reimbursement to the Ancala Homeowners Association, the association responsible for administering the adjacent development, in an amount equal to ten percent (10%) of its budget for the maintenance of entryways, streets and common areas, insurance on the foregoing, guard service for the controlled access gate and patrolling, if any, of the Ancala Project, and maintenance of the pool and tennis facilities to be constructed; provided, however, that such monthly amount shall not exceed Twenty Dollars (\$20.00) per month for each Lot within the Property upon which a residence has been completed and said Lot sold to a third-party Owner. Should the Ancala project be expanded at some future date to encompass additional lots or property, the ten percent (10%) contribution as described herein shall be reduced proportionately to reflect such additional lots or property; and

l. Such other and further items of expense relating to any services, facilities, improvements, replacement or repairs which may be necessary or which the Board may deem advisable or expedient to administer this Declaration and carry out the intent, purpose and objections of the Association as set forth in this Declaration.

**Section 3. Establishment of Assessment.**

a. Each Lot's prorata share <sup>Unofficial Document</sup> of one-forty-second (1/42) of the total amount of assessments due. The amount to be prorated among the members of the Association shall be established after the Board of Directors has met with the management corporation, if any, as hereinafter provided, and has examined the annual report to be prepared by said management corporation;

b. An annual report shall be prepared by the management corporation or by such other party as the Board of Directors shall order. The exact date for the annual report shall be determined by the Board of Directors. The Board of Directors shall meet with the management corporation or other party preparing said report within forty (40) days following the preparation of same to discuss and set the rate of annual assessment for the current year;

c. At the time of the first conveyance of each Lot and from time to time thereafter, the Board of Directors, or the designated representative, shall notify the Owner of each Lot as to the amount of the estimated annual assessment and each quarter collect for each Lot, one-fourth (1/4) of said Lot's proportional share of said annual assessment;

**Section 4. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner (other than Declarant), the maximum annual assessment per each Lot conveyed shall be One Thousand Eight Hundred and No/100 Dollars (\$1,800.00).

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- a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Board may, without a vote of the membership of the Association, increase the maximum annual assessment during each fiscal year of the Association by an amount not to exceed Twenty-five Percent (25%) of the prior year's assessment.
- b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by an amount greater than the maximum increase allowed pursuant to subsection (a), only with the approval of a majority of Owners of the votes of each class of membership who are voting in person or by proxy at a meeting duly called for such purpose.
- c. The Board may fix the annual assessment at any amount not in excess of the maximum.
- d. The above assessment does not include any assessment made by the Ancala Homeowners Association as provided in Section 2(k) above, which will be an additional assessment hereto.

Section 5. Special Assessment <sup>Unofficial Document</sup> Landscaping and Other Capital Improvements. In addition to any other assessments authorized by this Declaration, the Association may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying in whole or in part, the cost of any street repairs or replacement, landscaping or construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas or Yard Lot Areas, including fixtures and personal property related thereto; provided that any such assessment shall be authorized by an affirmative vote of two-thirds of the Board of Directors, at a duly called meeting, at which a quorum is present, and ratified and approved by the affirmative vote of sixty-six percent (66%) of the Members present at a duly called meeting at which a quorum is present.

Section 6. Assessment of Declarant. Anything herein to the contrary notwithstanding, the Declarant shall not be responsible for any assessment, annual or special, up until such time as each Lot is fully developed and the home constructed on the Lot is occupied and/or sold.

Section 7. Notice and Quorum for any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 and 5 of this Article V shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. For the purposes of Article V, Sections 4 and 5, the presence at a duly called meeting of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at the initial meeting, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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**Section 8. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots (Declarant's Lots are excluded).

**Section 9. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the individual Lot to the Lot Owner. Each Lot Owner for himself, his heirs, successors, grantees and assigns, covenants that with respect to charges so determined during the period that he is the Owner, he will remit these charges directly to the management corporation or to such other party or parties as directed by the Association's Board of Directors. The first annual assessment for each Lot shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment on each Lot shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

**Section 10. Effect of Nonpayment of Assessments; Remedies of the Association.** Each Owner of any Lot shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any installment on such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may accelerate the entire unpaid balance of any such annual or special assessment and may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

a. **Enforcement by Lawsuit.** The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner or Member to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner or Member.

b. **Enforcement by Lien.** There is hereby created a claim of lien, with power of sale, on each and every Lot within the Property to secure payment to the Association of any and all assessments levied against any

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and all Owners of such Lots covered by the Declaration, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (1) The name of the delinquent Owner;
- (2) The legal description and street address of the Lot against which claim of lien is made;
- (3) The total amount <sup>Unofficial Document</sup> claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs and reasonable attorneys' fees (with any proper offset allowed);
- (4) That the claim of lien is made by the Association pursuant to the Declaration; and
- (5) That a lien is claimed against said Lot in the amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 11 hereinafter. Any such lien may be foreclosed by appropriate action in Court in the manner provided by law for the foreclosure of a realty mortgage or by the exercise of a power of sale in the manner provided by law under a trust deed, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event

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of such foreclosure, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first mortgage, deed of trust or assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, deed of trust sale, or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Exempt Property. The following property, subject to this Declaration, shall be exempt from the assessments created herein: (a) all Properties dedicated to and accepted by a local public authority; (b) the Common Areas; (c) all portions of the Property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Arizona; and, (d) all Lots and improvements owned by the Declarant until such time as the same are occupied and/or sold.

Section 13. Payment of Declarant's Maintenance Expenses. The Declarant and/or Builder will provide landscaping maintenance services for the Association before the Association may be capable of paying for such services and other services necessary to provide proper management. The amount spent on such repairs and services shall be reimbursed to the Declarant and/or Builder as soon as the Association is capable of maintaining an operating budget and a reimbursement program. The reimbursement period shall not exceed five (5) years from the recordation of this Declaration.

#### ARTICLE VI

##### MAINTENANCE BY ASSOCIATION

Section 1. Common Area Maintenance. The Association may at any time, as to any Common Area, conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:

- a. Reconstruct, repair, replace or refinish any improvement or portion thereof upon such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) in accordance with (a) the last plans thereof approved by the Board, (b) the original plans for the improvement, or (c) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed;

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b. Construct, reconstruct, repair, replace or refinish any street improvement or surface upon any portion of such area used as a road, street, walk or parking area;

c. Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

d. Place and maintain upon any such area such signs, markers and lights as the Board may deem appropriate for the proper identification, use and regulation thereof, subject to the approval of the Architectural Review Committee;

e. Remove all papers, debris, filth and refuse from the Common Area and wash or sweep paved areas as required; clean and relamp lighting fixtures as needed;

f. Repaint striping, markers, directional signs, etc., as necessary;

g. Pay all real estate taxes and assessments on the Common Area;

h. Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Area;

i. Pay for and keep in force at the Association's expense public liability insurance in companies acceptable to the Association in amounts and with limits of liability desired by the Owners or required of the Owners pursuant to any other recorded document affecting the Property, such insurance to name the Association or the Owners or both as named insureds;

j. Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration;

k. Nothing herein shall be construed so as to preclude the Association from delegating its powers set forth above to a manager or agent or to other persons, firm or corporation.

**Section 2. Exterior Maintenance.** The Association shall care for and maintain all landscaping on the Yard Lot Areas. No Owner shall remove, alter, injure, or interfere, in any way, with any shrubs, trees, grass, or plantings placed upon any Yard Lot Areas by Declarant or the Association without the written consent of the Board having been first obtained and no additional landscaping or plantings shall be placed thereon without the approval of the Board or the Architectural Review Committee as provided herein. Builder, the Association and their authorized agents shall have the right to enter upon such Yard Lot Areas at all reasonable times for such purposes, and they shall not be liable for trespass for so doing. As used herein "Yard Lot Areas" shall mean that portion of the Lots



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which face toward a private or public street, including side yards on corner Lots, excluding such portions of a Lot that may be enclosed by a fence or wall, arched opening or other similar structure dividing a Lot.

**Section 3. Optional Maintenance.** The Association shall have the right, but not the duty, at any time and from time to time, to undertake the care and maintenance of the following items:

- a. All or any portion of the landscaping on any part of the Lots not covered by Section 2 above;
- b. Exterior of the improvements located on Lots of Owners; and
- c. Roofs of all improvements located on Lots of Owners.

#### ARTICLE VII

##### MAINTENANCE BY LOT OWNER

Each Owner shall be responsible for keeping and maintaining in first-class condition all areas, features or parts of his Lot and improvements thereon, including but not limited to, driveways and walkways located on the Lot, not otherwise maintained by the Association as provided specifically herein. All fixtures and equipment installed within or upon any improvement on the Lot shall be maintained and kept in first-class condition and repair by the Owner thereof. Termite control shall be the responsibility of the Owner. An Owner shall do no act nor any work that will impair any easement, hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Lots or other Owners. In the event that the Association's Board of Directors determine that any Owner has not properly repaired or kept his Lot or improvements in such condition as reflects the intention of this Article VII, then, and in that event, after fifteen (15) days written notice by the Association to said Lot Owner, the Association may perform such necessary maintenance or repairs. The actual cost of such repairs or maintenance, so performed by the Association, shall be charged to the individual Lot Owner as a special assessment.

#### ARTICLE VIII

##### DAMAGE OR DESTRUCTION OF PROPERTY

**Section 1. Yard Lot Area Damage.** In the event any Common Area or Yard Lot Area is damaged or destroyed by the act of an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby irrevocably authorize the Association to repair or replace the damaged area in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association, upon demand, in the amount actually expended for such repairs, and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

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**Section 2. Other Damages.** In the event any house or adjacent property within the Property is damaged or destroyed by natural causes, by the actions of an Owner or any of his guests, tenants, invitees, agents or members of his family, or from any other cause, such Owner shall, within thirty (30) days from the date of the occurrence of the damage or destruction, repair and rebuild the exterior of said house or other destroyed improvements on the Lot in conformance with the original plans and specifications used in the construction of said house or improvements. In the event such Owner refuses or fails to so repair and rebuild any or all of such damage to the exterior of the house and adjacent property within said thirty (30) day period, the Association, by and through its Board of Directors, is hereby authorized by such Owner to repair and rebuild any such house and/or adjacent property in a good workmanlike manner, in conformance with the original plans and specifications of the house. The Owner shall then repay the Association, upon demand, the amount actually expended for such repairs and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

**Section 3. Charges for Repairs.** Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the repair work, shall be delinquent and shall become a lien until fully paid. The lien shall be subordinate to any first mortgage or encumbrance on the Owner's Lot. Said charges shall bear interest on and from the date of delinquency at the rate of eighteen percent (18%) per annum. The amount of principal and interest owed by the Owner to the Association shall be a <sup>Unofficial Document</sup> debt and shall be collected according to the laws of the State of Arizona.

**Section 4. Enforcement of Liens.** Each such Owner, by his acceptance of the conveyance document regarding the improved Lot, hereby expressly vests in the Association or its agent, the right and power to bring all actions against such Owner for the collection of said charges, and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such Owner hereby expressly grants to the Association a power of sale in connection with the lien.

**Section 5. Liability of Insurance Carrier.** Nothing contained in this Article VIII shall be construed in any way so as to relieve an insurance company from the payment of any and all amounts which would be payable under any policy or policies, had not this Article been inserted.

**Section 6. Arbitration.** In the event of a dispute between an Owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then, upon written request of the Owner, addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association or its Board of Directors. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators, one (1) chosen by the Board, one (1) chosen by the Owner, and these two (2) arbitrators shall then choose a third arbitrator. If the two (2) arbitrators cannot agree as to the selection of the third arbitrator, then he shall be chosen by any Judge of the Superior Court of Arizona, for Maricopa County. A determination by any two (2) of

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the three (3) arbitrators shall be binding upon the Owner and the Association, who shall share the cost of arbitration equally. In the event either party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then the other party shall have the right and power to choose both arbitrators.

#### ARTICLE IX

#### INSURANCE

Section 1. Authority to Purchase Insurance. The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain such insurance for all improvements or landscaping situated on the Common Areas and Yard Lot Areas as it shall from time to time deem appropriate, including without limitation, coverage against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement costs in the event of damage or destruction from any hazard and shall also obtain a broad form public liability insurance covering the streets, Common Areas and all Yard Lot Areas, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be common expenses. All such insurance coverage obtained by the Board of Directors shall be written in the name of Ancala Casitas Resort Homeowners Association.

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Section 2. Insurance Provided by Owners. Each Owner is required to carry sufficient insurance to cover the replacement cost of his individual residence, all Lot landscaping and all other improvements on his Lot. Insurance on individual houses obtained by such Owners may be written in the name of the individual Owners. Should any Owner fail to maintain such insurance, the Board of Directors shall have the right to obtain coverage. Premiums for insurance obtained by the Board of Directors on individual residences and related improvements shall not be part of the common expense, but shall be an expense of the specific Lot so covered and a debt owed by the Owner, and shall be collectible by any lawful procedure permitted by the State of Arizona. In addition, if said debt is not paid within twenty (20) days after notice of such debt, such amount shall automatically become a lien until fully paid. This lien shall be subordinate to the lien of any first mortgage and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments.

Section 3. Optional Insurance. In addition to the aforesaid insurance required to be carried by the Owners and/or the Association, any Owner may, if he wishes, at his own expense, insure his own house for his own benefit and carry any and all insurance he deems advisable. It shall be the individual responsibility of each Owner, at his own expense, to provide as he sees fit, homeowner's liability insurance, theft, and other insurance covering personal property damage and loss.

Section 4. Repair of Damaged Property. In the event of damage or destruction by fire or other casualty to any property covered by insurance written

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In the name of Ancala Casitas Resort Homeowners Association, the Board of Directors shall, upon receipt of the insurance proceeds, contract to repair or replace such damaged or destroyed portion of the Property to as good condition as formerly existed. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institutions are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors. The Board of Directors shall contract with any licensed contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed property. In the event the insurance proceeds are insufficient to pay all of the costs of repair or replacement, to restore an individual residence to the same condition as formerly, the Board of Directors shall levy a special assessment against the Owner of the damaged building or improvements to make up any deficiency. In the event such insurance proceeds exceed the cost of repair or replacement, such excess shall be paid over to the respective mortgagees and Owners, as their interests may then appear.

#### ARTICLE X

##### LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 1. Permitted Uses and Restrictions - All Property. The permitted uses, easements and restrictions for all Property covered by this Declaration shall be as follows:

- a. Single Family Residential Use. All Lots within the Property shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any such Property. Nothing herein shall be deemed to prevent the leasing of any such Property and/or the lock-off unit which is a part thereof, to a single family respectively from time to time by the Owner thereof, subject to all of the provisions of this Declaration. No structure whatever, other than one private single family residence and a lock-off unit which is a part thereof, together with a private garage for not more than three (3) cars, shall be erected, placed or permitted to remain on any Lot. Lots owned by Builder may be used as model homes, and for sales and construction offices for the purpose of enabling the Declarant or Builder to sell Lots within the Property, until such time as all of the Lots owned by Declarant have been sold to Public Purchasers.
- b. Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Property whether attached to a building, structure or otherwise, unless approved by the Board.
- c. Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including

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telephone, television and radio signals shall be erected, placed or maintained anywhere in or upon any Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures approved by the Architectural Review Committee.

d. Improvements and Alterations. No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of any Property or the improvements located thereon from its natural or improved state existing on the date such Property was first conveyed or transferred to a purchaser shall be made or done without the prior approval of the Architectural Review Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Review Committee or any committee established by the Architectural Review Committee for such purpose. Pursuant to its rule-making power, the Architectural Review Committee shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement. The Architectural Review Committee shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed for erection of the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned on the outlook from the adjacent or neighboring Property. All subsequent additions to, changes or alterations in any building, fence, wall or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the Architectural Review Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Review Committee. All decisions of the Architectural Review Committee shall be final and no Lot Owner or other parties shall have recourse against the Architectural Review Committee or any of its members, for or with respect to any decisions made in good faith.

e. Maintenance of Lawns and Plantings. In addition to the maintenance which the Association shall perform pursuant to Article VI above, the Association shall maintain the lawns and plantings on all Common Areas, and for this purpose, Builder and the Association shall have the right, at any time, to plant, replace, maintain and cultivate landscaping, shrubs, trees, grass and plantings on any Common Area and on the Yard Lot Areas, regardless of whether any Owner or the Association is responsible hereunder for maintenance of such areas. No Owner shall remove, alter, injure or interfere in any way with any landscaping, shrubs, trees, grass or plantings

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placed upon any Common Area or Yard Lot Area by Builder, Declarant or the Association without the written consent of the Association having first been obtained. The Association or its authorized agents shall have the right to enter upon any Lot, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such landscaping, shrubs, trees, grass or plantings in the Common Areas or Yard Lot Areas, and shall not be liable for trespass for so doing. No planting will be permitted on the Yard Lot Areas other than that done in the original development of the of the Property or that approved by the Association or its delegated agent.

f. Repair of Buildings. No improvement upon any Lot or any other portions of the Property shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in first-class condition and repair and adequately painted or otherwise finished. The Association shall have the right, after thirty (30) days' notice to an Owner, to repair, paint, or otherwise maintain the exterior of any improvement (and without notice in the event of an emergency) which the Association, acting through its Board, determines in its discretion is in violation of this provision. All costs and expenses, including reasonable attorneys' fees, incurred by the Association shall be borne by the Owner, and shall be paid to the Association on demand <sup>Unofficial Document</sup> interest at the maximum lawful rate for contracting parties from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in a like manner as assessments levied pursuant to Article V.

g. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Property except in covered containers of a type, size and style which are approved by the Architectural Review Committee. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and, then, only the shortest time reasonably necessary to effect such collection. The Board shall have the right, in its sole discretion, to require all Owners to subscribe to a trash service. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.

h. Overhangs. No tree, shrub, or planting of any kind on any Property shall be allowed to overhang or otherwise to encroach upon any Common Area from ground level to a height of twelve (12) feet, without the prior approval of the Architectural Review committee.

i. Right of Way. During reasonable hours, Declarant, Builder, any member of the Architectural Review Committee, any member of the Board or any authorized representative of any of them, shall have the right to enter upon and inspect any Lot or Common Area within the Property and the improvements thereon, except for the interior portions of any building, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

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j. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or structures which are within the permitted uses of such Property, and except that which Declarant, Builder or the Association may require for the operation and maintenance of the Common Area.

k. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board. No Lot may be converted into a condominium or cooperative or other similar type of entity without the prior written approval of the Board. This provision shall not, in any way, limit Declarant from subdividing or separating into smaller lots or parcels any Property owned by Declarant. Except for any lock-off units specifically constructed with separate access from the main entrance of any residence constructed on the Lots, no portion of a Lot, but for the entire Lot, together with the improvements thereon, may be rented or leased, and then only to a single family; provided, however, that no Lot may be leased or subleased without the prior written notice to the <sup>Unofficial Document</sup> of the names of the lessee and their family members and the term of the lease, and without compliance with such other rules and regulations as may be established by the Board.

l. Signs. No signs whatsoever which are visible from neighboring property shall be erected or maintained on any Lot except such signs the nature, number and location of which have been approved in advance by the Architectural Review Committee.

m. Animals. No animals, birds, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Property covered by this Declaration and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry or livestock shall be maintained so as to be visible from neighboring property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, fowl, poultry or livestock is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein.

n. Temporary Occupancy. No trailer, basement or any incomplete improvement, building, tent, shack, garage or barn, and no temporary improvement of any kind shall be used at any time for a residence on any

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Property either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such Property shall be removed immediately after the completion of construction.

**o. Trailers and Motor Vehicles.** No mobile home, motorhome, boat, recreational vehicle, trailer of any kind, truck, camper, permanent tent, or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired upon any Lot, Common Area or street (public or private) within the Property, in such a manner as will be visible from neighboring property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Review Committee. Garages shall be used for parking vehicles and storage purposes only, and shall not be converted for living or recreational activities without the written consent of the Architectural Review Committee. Except as provided above, only automobiles in operating condition shall be parked in uncovered parking areas. Automobiles and other motor vehicles owned by Lot Owners shall not be parked in or on the streets or private drives constituting part of the Common Area.

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**p. Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any portion of the Property, and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such Property so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Property.

**q. Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Property unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.

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

**s. Diseases and Insects.** No Owner shall permit any thing or condition to exist upon any portion of the Property which shall induce, breed or harbor infectious plant diseases or noxious insects.



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t. Party Fences. The rights and duties of Owners with respect to Party Fences shall be as follows:

(1) The Owners of contiguous Lots who have a Party Fence shall both equally have the right to use such fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(2) In the event that any Party Fence is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Fence without cost to the other adjoining Lot Owner or Owners.

(3) In the event any such Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such fence to repair such fence at their joint and equal expense.

(4) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(5) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(6) Each Owner shall permit the Owners of adjoining Lots, or their representative, when reasonably required, to enter his Lot for the purpose of repairing or maintaining a Party Fence or for the purpose of performing installations, alterations or repairs to the Property of such adjoining Owners, providing that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this paragraph shall not be deemed guilty of trespass by reason of such entry.

(7) Surfaces of Party Fences on Property which are generally accessible or viewable from only the adjoining Property may be painted against, painted, maintained and used by the adjoining Owners. If such surfaces are viewable from public streets or the Common Area, the color scheme shall not be changed without the written consent of the Architectural Review Committee.

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u. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection, use or maintenance by Builder or Declarant, or its duly authorized agents, of improvements, signs or other facilities necessary or convenient to the development or sale of the Lots within the Property, or other property owned by Declarant.

Section 2. Declarant's/Builder's Use of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Builder to maintain, during the period of construction and sale of said houses, upon such portion of the Property or Lots as Declarant may authorize, such facilities as may be reasonably required, convenient, or incidental to the construction and sale of said houses, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 3. Permitted Uses and Restrictions - Common Areas. T h e permitted uses and restrictions for Common Area shall be as follows:

a. Permitted Uses.

(1) Parking in designated parking spaces and parking areas for the purposes of parking vehicles of the Owner, his guests and invitees; limited, however, for purposes connected with or incidental to any use being made of any portion of any Owner's Lot.

(2) Access for vehicles and pedestrians between public streets and any parking areas situated on the property and any Owner's Lot; limited, however, for purposes connected with or incidental to any use being made of any portion of any Owner's Lot.

(3) Access for pedestrians on any sidewalks or walkways, limited, however, for purposes connected with or incidental to any use being made of any portion of any Owner's Lot.

(4) Access for persons engaged in maintaining any portion of the Common Area or any Owner's Lot.

(5) Such other uses as may be adopted from time to time by the Board and set forth in the Association's rules and regulations.

(6) In general, the Common Area shall be used for the benefit of the Owners, for the furnishing of services and facilities for which the same are reasonably intended and for the enjoyment to be derived from such reasonable and proper use, without hindering the exercise of or encroaching upon the right of any other Owner to utilize the Common Area, provided that no unlawful use shall be permitted.

b. Restricted Uses.

(1) The Common Area shall not be used by Owners for storage of supplies, materials or personal property of any kind.

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(2) Such other restrictions as may be adopted by the Board and set forth in the Association's rules and regulations.

(3) In general, no activity shall be carried on nor condition maintained by any Owner upon the Common Area which spoils the appearance of the Property or hinders or encroaches upon the right of any other Owner to utilize the Common Area as reasonably intended.

**Section 4. Added Insurance Risk.** Nothing shall be done or kept on any Lot which will increase the rate of insurance on any Lot or building or on the contents thereof, without the approval of the Association. No Owner shall permit anything to be done or kept on any Lot which will result in the cancellation of insurance or which would be in violation of any law.

**Section 5. Individual Gardening.** Decoration of and plantings within Lot areas visible from other Lots shall be kept neat, clean and free from weeds and unsightly growth, and nothing shall be affixed to walls, or fences which enclose Lot areas without the approval of the Board of Directors of the Association. No individual planting shall be done except in backyard or side yard areas. Planting by individuals other than that planting installed with the original construction on the Lot must be approved by the Board of Directors.

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**Section 6. Exterior Modifications.** No change, modification or addition of any kind whatsoever (including but not limited to painting, decorating, planting, awnings, and sunshades) shall be made or carried out on the exterior of any residence without approval of the Board of Directors.

## ARTICLE XI

### EASEMENTS

**Section 1. Easement for Ingress and Egress.** There is hereby created a blanket easement upon, across, over and under all Lots for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephones, electricity, television and cable, or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and circuits and conduits, on, in and under the roofs and exterior walls of said residences. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Lots except as initially planned and approved by the Builder of the residence on said Lots as thereafter may be approved by the Association or its delegated agent. This easement shall in no way affect any other recorded easements on the Lots.

**Section 2. Easement for Encroachment.** Each residence shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original Builder. A valid easement for said encroachments and for maintenance of same, so long as it stands, shall and does

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exist. In the event the structure is partially or totally destroyed and then rebuilt, the Owners of residences agree that minor encroachments of parts of the adjacent residences due to construction shall be permitted and that a valid easement for the encroachment and the maintenance thereof shall exist.

**Section 3. Easement for Utilities.** There is hereby dedicated and declared a permanent easement over, across and under any or all of the Lots at such locations and at such widths as may be necessary or incidental to the installation and maintenance of any utility facility, including water, gas, electric, television, sewage, telephone, irrigation and any other similar utility purposes serving said project. All portions of each Lot named herein, on which no building sidewalk or driveway exists, has by these covenants an established easement for purposes of maintenance of plantings, water systems and utilities.

**Section 4. Easement for Maintenance.** There is hereby granted to the Association a maintenance easement upon, across, over and under all portions of the Lots as is necessary for maintenance of the Yard Lot Areas or otherwise as authorized hereunder.

#### ARTICLE XII

##### ASSESSMENTS Unofficial Document AGAINST LOTS

**Section 1. Subordination of Lien.** Each of the Lots shall be subject to the secured lien in favor of the Association, its successors and assigns, or its delegated agent, inferior only to that of any recorded bona fide mortgage lien or deed of trust on said Lot, for any and all monthly, quarterly, annual or special assessments authorized by this instrument which shall be determined, from year to year, solely by the Association, its successors or assigns, or its delegated agent to be necessary and reasonable operating expenses of the Association or its agent.

**Section 2. Assessment Payment.** Assessments shall be payable monthly, quarterly, or annually as may be determined by the Association or its delegated agent. The first payment hereunder shall be for one quarter payable in advance at the close of escrow by the Lot Owner. The broadest collection authority is hereby vested in the Association and its delegated agent to include interest to be charged on delinquent accounts and the assessments of any lien filing fees, court costs and reasonable attorney's fees in the collection of any delinquent assessments.

**Section 3. Declarant Owned Lots.** It is specifically provided, however, that the Association assessments shall not be a lien on any Lots while owned by Declarant, the major developer, during the period ending when the final Lot has been sold, built upon and buyers escrow closed.

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## ARTICLE XIII

## GENERAL PROVISIONS

Section 1. Binding Effect and Enforcement. The covenants, conditions, restrictions, charges, liens, reservations, and easements contained herein shall run with the land and shall be binding upon all persons purchasing, owning, leasing, subleasing, or occupying or otherwise having any interest in the Lots, their heirs, executors, administrators, successors, grantees, and assigns. After the date on which this instrument has been recorded, these restrictions may be enforced by any one or more of the following:

- a. The Association or its Board of Directors which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof;
- b. The Declarant, its successors and assigns;
- c. The Owner or Owners of any Lot;

Any person who acquires title to a Lot, except through delivery of a sheriff's deed as a result of a foreclosure proceeding or by a deed in lieu of foreclosure shall take title to such Lot subject to the <sup>Unofficial Document</sup> thereof for all charges pursuant to the provision of this Declaration, that have accrued prior to such acquisition of title, and subject to the lien hereof for all said charges that shall accrue subsequent to the date said person takes title; and, provided any said restrictions may be enjoined, abated or reviewed by appropriate proceedings, notwithstanding the lien or existence of any such mortgage or deed of trust. The personal obligation to pay the annual and special assessments as provided in this Declaration, shall not pass to a successor in title unless the obligation is expressly assumed by the successor in title, or unless, prior to such transfer of title as evidenced by the records of the Maricopa County Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed in writing with the Maricopa County Recorder or other appropriate governmental agency. All instruments of conveyance of any interest of all or any part of said Lots may contain the restrictions herein by reference to this instrument. However, the terms and conditions of this instrument shall be binding upon all persons affected by its terms, regardless of whether any reference is made to this instrument in the deed or other instrument of conveyance.

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages.

In the event the Builder, the Declarant, its successor or assigns, or the Association, employs an attorney, or attorneys, to enforce said lien or the collection of any amount due pursuant to this Declaration, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the Owner, Owners and parties against whom the action is brought shall pay all attorney's fees

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and costs thereby incurred by any such enforcing party prevailing in such action. Nothing herein shall be deemed to indicate that damages at law constitute an adequate remedy for violation of a restriction herein.

**Section 2. Severability.** The invalidity of any one or more phrases, sentences, clauses, paragraphs or Sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law, and in the event that one or more of the phrases, sentences, clauses, paragraphs or Sections contained therein should be invalid or should operate to render this Declaration invalid, this Declaration shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or Section or Sections had not been inserted.

**Section 3. Gender.** The singular, whenever used herein, shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though each was fully expressed.

**Section 4. Topical Headings.** The marginal or topical headings of the Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Sections or of this Declaration.

**Section 5. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless otherwise agreed by the Owners representing not less than seventy-five percent (75%) of the Lots. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots, and thereafter by an instrument signed by the Owners representing not less than seventy-five percent (75%) of the Lots. Anything contained herein to the contrary notwithstanding, until such time as the Declaration is no longer developing the Lots within the Property, the provisions in Articles X and XII shall not be amended or altered in any manner, and any such attempted amendment or alteration shall not be valid or effective, without the signed and acknowledged concurrence of the Declarant.

**Section 6. Construction.** In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, By-Laws, or Association rules, the provisions of this Declaration shall prevail.

**Section 7. Governing Law.** This Declaration shall be governed by the laws of the State of Arizona. In the event of litigation, each party consents to the jurisdiction of either the state or federal courts located in Arizona and to service of process, either personally or by registered mail, return receipt requested.

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**Section 8. No Waiver.** No failure or delay on the part of any person in exercising any right, power or privilege hereunder and no course of dealing between or among the persons subject thereto, shall operate as a waiver of any provision thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, nor the exercise of any other right, power or privilege. No notice to or demand on any person in any case shall entitle such person to any other or further notice or demand in similar or other circumstances or constitute a waiver of rights to any other or further action in any circumstances.

**Section 9. Violation and Nuisance.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated whether or not relief is sought for negative or affirmative actions, by Declarant, the Association or any Owner or occupant of Lots within the Property. However, any other provision to the contrary notwithstanding, the Declarant, the Association, the Board, or the duly authorized agents of them, may enforce by self-help any of the provisions of this Declaration.

**Section 10. Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation, pertaining to ownership, occupation or use of any property within the Property is hereby declared to be a violation of the Declaration and subject to any or all of the <sup>enforcement</sup> ~~enforcement~~ procedures set forth in said Declaration.

**Section 11. Remedies Cumulative.** Each remedy provided by the Declaration is cumulative and not exclusive.

**Section 12. Delivery of Notices and Documents.** Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: if to the Association, at 2828 N. Central Avenue, Suite 900, Phoenix, AZ 85004; if to the Architectural Review Committee, at 2828 N. Central Avenue, Suite 900, Phoenix, AZ 85004; if to Declarant, at 2828 N. Central Avenue, Suite 900, Phoenix, AZ 85004; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file its correct mailing address of such Association, and shall promptly notify the Association in writing of any subsequent change of address.

**Section 13. Effective Date of this Declaration of Covenants, Conditions and Restrictions.** The recordation of this document shall not make this Declaration effective. The provisions of this Declaration shall become effective only upon the conveyance of the first Lot to an Owner who is not a Declarant or the Builder.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 27th day of June, 1991.

SECURITY TITLE AGENCY, as Trustee  
under its Trust No. 5919 dated  
March 8, 1991

By *Ned Fajkowski*  
Its President

APPROVED:

SUNCOR DEVELOPMENT COMPANY,  
an Arizona corporation

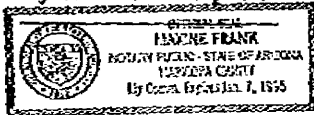
By *William Chamberlain*  
Its V.P.

Unofficial Document

STATE OF ARIZONA                    )  
County of Maricopa                ) ss.

The foregoing instrument was acknowledged before me this 27th day  
of June, 1991 by Ned Fajkowski  
the President of SECURITY  
TITLE AGENCY, an Arizona corporation, on behalf of the corporation.

My commission expires:



*Maine Frank*  
Notary Public