

M/

2003-0300370 03/11/03 14:50

1 OF 1

PALUMBOA

WHEN RECORDED, RETURN TO:

Steven D. Flaggman
c/o Great Western Homes
3850 East Baseline Road, Suite 107
Phoenix, Arizona 85206

**DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS & EASEMENTS**

OF

SAGECREST HOMEOWNERS' ASSOCIATION

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("the Declaration") is made this 6th day of MARCH, 2003 by Great Western Communities, Inc., an Arizona corporation, d/b/a Great Western Homes ("Declarant").

RECITALS

A. Declarant is the developer of certain real property located in the City of Phoenix, County of Maricopa, State of Arizona, which is more particularly described as follows:

Lots 1 through 158, inclusive, along with common areas A, B, C, D, E, F, G, H, I, J, K, L, M and N of Sagecrest, more particularly described in the records of Maricopa County, Arizona, Book 622 of Maps, Page 36 ("the Property").

B. Declarant desires that a nonprofit corporation, Sagecrest Homeowners' Association, be formed for the purpose of the efficient preservation of the values and amenities of Sagecrest and to which will be delegated certain powers of administering and maintaining the Common Area, enforcing this Declaration, and collecting and disbursing the Assessment(s) created herein.

C. Declarant desires to establish for their own benefit and for the mutual benefit of all future owners, or other holders of interests in any portion of Sagecrest, certain mutually beneficial covenants, conditions, restrictions and obligations with respect to the proper development, use and maintenance of Sagecrest.

D. Declarant desires and intends that the Owners, mortgagees, beneficiaries, trustees and

D. Declarant desires and intends that the Owners, mortgagees, beneficiaries, trustees and other persons who may acquire any interest in Sagecrest, shall at all times enjoy the benefits of, and shall hold their interest subject to, the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the value, desirability and attractiveness of Sagecrest.

E. IN ORDER TO PROMOTE THE QUALITY AND CONSISTENCY OF MANAGEMENT AND MAINTENANCE OF ALL COMMON AREAS, THIS DECLARATION PROVIDES THAT DECLARANT SHALL MAINTAIN ABSOLUTE CONTROL OF THE ASSOCIATION UNTIL THE ASSOCIATION IS TURNED OVER TO THE HOMEOWNERS', INCLUDING, WITHOUT LIMITATION, THE RIGHT AND POWER TO AMEND THE ARTICLES, APPOINT THE OFFICERS, SELECT THE MEMBERS OF THE BOARD AND IF IT DESIRES TO HAVE AN ARCHITECTURAL COMMITTEE, APPOINT THE MEMBERS THEREOF.

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

ARTICLE I DEFINITIONS

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

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

Unofficial Document

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

Section 1.4 "Assessment or Assessments" shall mean Annual Assessments, Special Assessments, Maintenance Charges, Special Use Fees, Security Fees, or any other fees, fines or charges assessed hereunder.

Section 1.5 "Association" shall mean and refer to SAGECREST HOMEOWNERS' ASSOCIATION, an Arizona non-profit corporation, its successors and assigns.

Section 1.6 "Association Land" shall mean the Common Areas, along with any other part or parts of Sagecrest, together with any buildings, structures and improvements thereon and other real property, that is held by Declarant or by a trustee for conveyance to the Association as may be provided for herein, or that the Association now or hereafter owns in fee or in which the Association now or hereafter has a leasehold or easement interest, for as long as the Association is the owner of the fee, leasehold or easement interest or such property is so held by Declarant for conveyance to the Association. Except as otherwise provided in this Declaration, all Association Land shall be maintained by the Association for the benefit of all of the Owners. From time to time Declarant may convey easements, leaseholds or other property within Sagecrest to the Association and such

property shall automatically be deemed accepted by the Association.

Section 1.7 "Board" shall mean the Board of Directors of the Association.

Section 1.8 "Bylaws" shall mean the Bylaws of the Association, as such may be amended from time to time.

Section 1.9 "Common Area" and "Common Areas" shall mean all areas (including the improvements thereon) owned or to be owned by the Association for the common use and enjoyment of Owners and/or residents of Sagecrest. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows: Tracts A, B, C, D, E, F, G, H, I, J, K, L, M and N.

Section 1.11 "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

Section 1.12 "Declarant" shall mean Great Western Communities, Inc., an Arizona corporation, or any successor or assignee thereof, but only to the extent designated by Declarant, in writing, as a successor or assignee and an assignment of Declarant's Rights is recorded.

Section 1.13 "Declaration" shall mean the covenants, conditions, & restrictions and easements set forth in this document, as such may be amended from time to time.

Section 1.14 "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot or Parcel, which building or portion of a building is designed and intended for use and occupancy as a residence by a Single Family. Unofficial Document

Section 1.15 "Exempt Property" shall mean the following parts of Sagecrest:

(a) All land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, Maricopa County, or any other municipality, or any political subdivision thereof, for as long as any such governmental entity or political subdivision is the owner thereof or for so long as such dedication remains effective; provided, however, that any such land shall be Exempt Property only while it is being used by the governmental entity owner for governmental or public purposes.

(b) All Association Land, for as long as the Association is the owner thereof (or of the interest therein that makes such land Association Land).

(c) Any Lot or property within Sagecrest owned by Declarant or its affiliates, except for property owned by Declarant that is subject to a "contract" (as defined in Arizona Revised Statutes Section 33-741) under which Declarant is the Seller.

(d) Each portion of any and all Residential Areas designated in a recorded subdivision plat, deed, Tract Declaration, or other declaration as an area to be used in common by the Owners and Residents of such subdivision.

All Exempt Property shall be exempted from Assessments and Membership in the Association and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of this Declaration of the applicable Lot. The Board may restrict or prohibit the use of the Common Areas (except any easements, rights-of-way, utility improvements and landscaping, drainage and flood control areas) by the Owners of Exempt Property, except for Declarant, its affiliates, subcontractors, employees, agents, guests and invitees. This subsection may not be amended without the approval of any and all Owners of Exempt Property affected by the amendment.

Section 1.16 "Lot" shall mean any numbered parcel of real property shown upon any recorded plat of the Property together with any improvements constructed thereon, with the exception of the areas designated as lettered tracts and areas dedicated to the public. Each Lot shall be a separate freehold estate.

Section 1.17 "Maintenance Charge" shall mean any and all costs assessed pursuant to Article IV of this Declaration.

Section 1.18 "Maximum Annual Assessment" shall mean the charge levied and assessed against each Lot, Dwelling Unit and Owner pursuant to Article VI, Section 6.3, of this Declaration.

Section 1.19 "Member" shall mean any person, corporation, partnership, joint venture or other legal entity that is a member of the Association.

Section 1.20 "Membership" shall mean a membership in the Association and the rights granted to the Owner's of Lots pursuant to Article V to participate in the Association.

Section 1.21 "Occupant" shall mean any person or entity in actual possession of any Lot.

Section 1.22 "Owner(s)" shall mean the record owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if same have merged) of any Lot. "Owner" shall include the purchaser under a recorded agreement for sale of any Lot. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise herein "Owner" shall not include a lessee or tenant of a Lot. "Owner" shall include Declarant so long as no Termination of Option has been executed between Declarant and Fee Title Owner.

Section 1.23 "Party Walls and Fences" shall mean a wall and/or fence constructed on or immediately adjacent to the common boundary of Lots, Parcels, Common Areas or other areas.

Section 1.24 "Property" or "Properties" shall mean the real, personal, or mixed property described or located on recital A above which is subject to this Declaration.

Section 1.25 "Recorder", "Recordation" and/or "Recording" shall mean placing or the placement of an instrument of public record in the office of the county Recorder of Maricopa county, Arizona, as applicable.

Section 1.26 "Resident" shall mean:

(a) Each buyer under a recorded contract (as defined in Arizona Revised Statutes Section 33-741) covering any part of the Assessable Property, and each Owner, tenant or lessee on any part of the Assessable Property; and

(b) Members of the immediate family of each Owner, lessee, tenant and of each buyer referred to in subparagraph (a) actually living in the same household with such Owner, lessee, tenant or buyer on any part of the Assessable Property.

Subject to such rules and regulations as the Association may hereafter specify (including the imposition of special nonresident fees for the use of Association Land if the Association shall so direct), the term "Resident" also shall include the onsite employees, guests or invitees of any Owner, lessee, buyer or tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

Section 1.27 "Rules" and/or "Association Rules" shall mean the rules and regulations adopted by the Board, if any, as such may be amended from time to time, as further described in Section 4.4.

Section 1.28 "Sagecrest" shall mean such portions of the Property as are from time to time subjected to the purview of this Declaration.

Section 1.28 "Single Family" shall mean an individual living alone, or a group of two or more persons each related to the other by blood, Unofficial Document marriage or legal adoption who maintain a common household in a Dwelling Unit.

Section 1.29 "Special Assessment" shall mean any assessment levied and assessed pursuant to Article VI, Section 6.4.

Section 1.30 "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner, Resident or any other person is obligated to pay to the Association over, above and in addition to any Annual and Special Assessments imposed or payable hereunder. The amount of any Special Use Fee shall be determined in the Board's sole discretion, provided all such fees must be fair and reasonable.

Section 1.31 "Supplemental Declaration" shall mean any Declaration of additional covenants or provisions applicable to the Property which are consistent with this Declaration and which have been approved in writing by Declarant.

Section 1.32 "Visible from Neighboring Property" shall mean, with respect to any given object, visible to a person six feet tall, standing on any part of neighboring property at an elevation no greater than ground level where the object is located (assuming the ground level where the person is standing is at the same height as the ground level where the object is located).

ARTICLE II PROPERTY RIGHTS

Section 2.1 Owners' Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational or storage facilities or areas situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any Assessment(s) against his Lot remains unpaid;

(c) the right of the Association to impose a monetary penalty, not to exceed two hundred dollars (\$200.00), for any unsatisfied, unresolved, or non-complied with infraction of the CC&R'S, and/or suspend the right to use the Common Area for a period not to exceed sixty (60) days for any infraction of the Association Rules and consecutive thirty (30) day periods for so long as the infraction continues;

(d) The right of the Association to limit the number of guests of members using the Common Areas;

(e) the right of the Association to ^{Unofficial Document}change and regulate the use of Common Areas in accordance with Section 4.6;

(f) The right of the Association to change the size, shape or location of the Common Areas, to exchange the Common Areas for other property or interests which become Common Areas in accordance with Section 4.7 hereof; and

(g) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities, and in aid thereof, to mortgage said property in accordance with Section 8.2 (e) hereof. The rights of such mortgagee in said property shall be subordinate to the rights of the Owners hereunder.

Section 2.2 Easements and Encroachments. Each Lot and Parcel, the Common Areas, and all other areas in Sagecrest shall be subject to an easement of not more than five feet for encroachments of walls, ledges, roofs, air conditioners and other structures created by construction, settling and overhangs as originally or subsequently designed and constructed by Declarant or its affiliates and contractors. If any such improvement on the Common Areas encroaches upon any Lot, Parcel or other area, or if any such improvement on any Lot, Parcel or other area encroaches upon any portion of the Common Areas, or if any such improvement on any Lot, Parcel or other area encroaches upon another Lot, Parcel or other area, a valid easement for said encroachments and for the maintenance thereof shall exist. In the event any structure on any Lot, Parcel, Common Area or

other area is repaired, altered or reconstructed in accordance with the original plans and specifications or subsequent plans and specifications of Declarant or its affiliates, similar encroachments shall be permitted and a valid easement for said encroachments and for the maintenance thereof shall exist.

Section 2.3. Rights of Ingress and Egress. Every Owner shall have an unrestricted right of ingress and egress to their Lot(s) and/or Parcel(s) which right shall be perpetual and shall be appurtenant to and shall pass with title to such Lot(s) or Parcel(s) over the following areas:

(a) for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Areas and which are designated as for ingress and egress to such Owner's Lot or Parcel; and

(b) for pedestrian traffic over, through and across the Common Area streets and roadways, if any, which are designated and paved for such purpose.

Any Owner may, in accordance with and subject to this Declaration and the community Rules and the limitations contained therein (if any), delegate their right of ingress and egress to the members of its family, its guests and its tenants (including its tenants family and guests).

Section 2.4 Delegation of Use. Any Owner may delegate, in accordance with and subject to any restrictions contained in the Bylaws, his right of enjoyment to the Common Area and improvements thereon to his tenants, or occupants of his Lot, or guests.

Section 2.5 Title to Common Area. Declarant covenants that it will convey fee simple title to the Common Area to the Association, free of all encumbrances except current real and personal property taxes and other easements, conditions, reservations and restrictions then of record. The conveyance shall be made to the Association prior to the conveyance of the first Lot from the Declarant to any purchaser.

ARTICLE III PROPERTY SUBJECT TO THIS DECLARATION

Section 3.1 General Declaration. Because it is intended that the Property as presently subdivided shall be sold and conveyed to purchasers subject to this Declaration, Declarant hereby declares that the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended from time to time; provided, however, property which is not part of a Lot and which is dedicated or transferred to a public authority or utility pursuant to Section 4.7 shall not be subject to this Declaration while owned by the public authority or utility. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. This Declaration shall run with all of the Property for all purposes

and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Members and their respective successors in interest.

Section 3.2 Annexation of Additional Property. The Property defined in Recital A and hereby subject to the Declaration may constitute only a portion of the real property owned by Declarant and intended to be developed by Declarant as "Sagecrest". Declarant may, but is under no obligation to, add Additional Property to the Property and subject it to this Declaration. Therefore, Declarant may, without obligation to do so, annex Additional Property into Sagecrest and subject it to the terms and conditions of this Declaration, by recording one or more Supplemental Declarations which may incorporate this Declaration and establish such additional covenants, conditions, restriction, Assessment(s), charges, servitudes, liens, reservations and easements with respect to such real property as Declarant may from time to time deem appropriate.

Section 3.3 Association Bound. Upon acceptance by the Arizona Corporation Commission of Articles of Incorporation of the Association, this Declaration shall be binding upon and shall benefit the Association.

ARTICLE IV THE ASSOCIATION

Section 5.1 The Association. The Association is an Arizona non-profit corporation charged with the duties and invested with the Unofficial Document described by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise modified or interpreted so as to be inconsistent with this Declaration.

Section 4.2 The Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws.

Section 4.3 Powers and Duties of the Association. The Association shall have such rights, duties and powers as set forth herein and in the Articles and Bylaws.

Section 4.4. Rules. By action of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Rules". The Rules may restrict and govern the use of the Property provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. The Rules shall have the same force and effect as if they were set forth herein and were a part of the Declaration and may be recorded.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

Section 4.5 Personal Liability. The Articles shall specify such limitations on the personal liability of members of the board as shall be applicable.

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

Section 4.7 Procedure for Transfers of Common Area. The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public authority or utility (i) if the transfer or dedication does not have a substantial adverse effect on the enjoyment of the Common Areas by the Members or the Residents, or (ii) if required by a recorded subdivision plat, a zoning stipulation or an agreement with the City of Phoenix, effective prior to the date hereof. Except as authorized in (i) or (ii) above, no such dedication or transfer shall be effective without the approval of a majority of the vote of each class of Members, Unofficial Document voting in person or by proxy at a meeting called for such purpose. The Association shall have the right to change the size, shape or location of the Common Areas, to exchange the Common Areas for other property or interests which become Common Areas, and to abandon or otherwise transfer Common Areas (to a non-public authority) upon (x) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Area is no longer in the best interests of the Owner and Members, and that the change desired shall be for their benefit and shall not substantially adversely affect them, and (y) the approval of such resolution by a majority of the votes of each class of Members, voting in person or by proxy, at a meeting called for such purpose. Alternatively, the Board upon satisfaction of Subsection (x) above, notify in writing all Members of the proposed transaction and of their right to object thereto and, if no more than ten percent (10%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

Section 4.8 Easements. In addition to the easements specifically granted or reserved herein, the Association is authorized and empowered to grant upon, across or under Association Land such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private purposes, security lines, roadways or other purposes as may be reasonably necessary and appropriate, as determined by the Board.

**ARTICLE V
MEMBERSHIP AND VOTING RIGHTS**

Section 5.1 Membership. Every Owner of a Lot, which is subject to Assessment(s), 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(s).

Section 5.2 Voting Rights. The Association shall have two (2) classes of voting membership:

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

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

(a) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B membership, or

Unofficial Document

(b) The 31st day of December, 2005.

**ARTICLE VI
COVENANT FOR MAINTENANCE ASSESSMENT(S)**

Section 6.1 Creation of the Lien and Personal Obligation of Assessment(s)s. The Declarant covenants for each Lot, and each Owner of any Lot by acceptance of a deed therefore (whether or not is shall be so expressed in such deed) is deemed to covenant and agree to pay to the Association: (1) s and (2) special Assessment(s)s for capital improvements, such Assessment(s)s to be established and collected as hereinafter provided. A Lot owned by the Association, pursuant to Section 6.8 or otherwise, shall not be subject to Assessment(s).

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

Section 6.2 Purpose of Assessment(s). In order to promote civic and social betterment for the common good of the Members of the Association, the Assessment(s) levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and Owners of the Property and for the improvement and maintenance of the Common Area.

Section 6.3 Maximum Annual Assessment. Until January 1, 2002, the Maximum Annual Assessment shall be \$26.00 per Month, Per Lot.

(a) From and after the 31st day of December, 2003, the Maximum Annual Assessment shall automatically increase each year, commencing on January 1. The Maximum Annual Assessment shall increase, without a vote of the members, by an amount which is equal to the greater of: (i) ten percent (10%) of the maximum Assessment(s) for the previous year; or (ii) a percentage equal to the average rate of change of the Consumer Price Index (the "CPI") for the most recent past twelve (12) months. For the purposes hereof CPI shall mean the Monthly Labor Review by the United States Department of Labor Statistics, designated "Consumer Price Index--U.S. City Average for Urban Wage Earners and Clerical Workers, 1982-84 Equals 100, All Items." The Maximum automatically increase each year even if the actual Assessment(s) does not increase. The foregoing notwithstanding, the Board has no obligation to increase the Maximum Annual Assessment

(b) In addition to Section 6.3 (a) above, the maximum during each fiscal year of the Association shall be automatically increased by the amount of any increases in water or other utility charges or any increases to insurance rates charged to the Association; and

(c) From and after 2004, the maximum may be increased above the amount indicated in (a) above by a vote of two-thirds of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose;

(d) The Board of Directors may fix the rate at an amount not in excess of the maximum.

Section 6.4 Special Assessment(s) for Capital Improvements. In addition to the assessments authorized above, the Association may levy in any Assessment(s) year a special Assessment(s) applicable to that year for the exclusive purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; provided, however, that any such Assessment(s) shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 6.5 Notice and Quorum for an Action Authorized Under Sections 6.3 and 6.4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.3 and 6.4 shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days

in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.6 Uniform Rate of Assessment(s). Except as provided herein, the Annual Assessment must be fixed at a uniform rate for all Lots and may be collected on a quarterly basis, as designated by the Board. Declarant shall pay twenty-five percent (25%) of the assessment for each Lot which Declarant owns in equal monthly installments in the same manner established for payment of the amount by other Lot Owners, except that Declarant shall pay and be liable for the full Assessment(s) amount for any Lots owned by Declarant which are being used by Declarant as Model Homes or otherwise being used and occupied for residential purposes (but not sooner than the closing of the first Lot to a residential homebuyer). Notwithstanding the above, any homebuilder in the business of constructing residential improvements on Lots and who buys Lots from Declarant for such purpose shall pay one hundred percent (100%) of the for each Lot which such builder owns or leases and which is not being occupied for residential purposes. Any owner renting or leasing a Lot to Declarant, which is not being occupied for residential purposes, shall pay one hundred percent (100%) of the Maximum Annual Assessment for such Lot.

Section 6.7 Date of Commencement of Annual Assessment(s): Due Date. The Annual Assessment(s) provided for herein shall commence as of the date of conveyance of the first Lot. The first Annual Assessment(s) shall be adjusted Unofficial Document according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment(s) against each Lot at least thirty (30) days in advance of each Assessment(s) period. Written notice of the Annual Assessment(s) 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 Assessment(s) on a specified Lot have been paid. A properly executed certificate from the Association as to the status of any Assessment(s) on a Lot is binding upon the Association as to the matters described therein.

Section 6.8 Effect of Non-Payment of Assessment(s): Remedies of the Association. Any Assessment(s) not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum or such lower rate that is equivalent to the maximum rate allowed by law. No Owner may waive or otherwise escape liability for the Assessment(s) provided for herein by non-use of the Common Area or abandonment of his Lot.

(a) **Enforcement by Suit.** The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such Assessment(s) obligation. Any judgment rendered in any such action shall include the amount of the delinquency together with interest thereon at the rate of twelve percent (12%) per annum or such lower rate that is equivalent to the maximum rate allowed by law, from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(b) **Enforcement by Lien.** There is hereby created a claim of lien on each and every Lot within the Property to secure payment to the Association of any and all Assessment(s) levied against any and all Owners of Lots covered by the Declaration, together with interest thereon at the rate of twelve percent (12%) per annum or such lower rate that is equivalent to the maximum rate allowed by law, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any default in the payment of any such Assessment(s), the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or even without such a written demand being made, the Association may elect to file such claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such claim of lien shall contain substantially the following information: (1) the name of the delinquent Owner; (2) the legal description and street address of the Lot against which the claim of lien is made; (3) the attorneys' fees (with any proper offset allowed); (4) a statement that the claim of lien is made by the Association pursuant to the Declaration, and (5) a statement that a lien is claimed against such Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such claim of lien, and mailing a copy thereof to the defaulting Owner, the lien claimed shall immediately attach and become effective in favor of the Association as a lien upon the Lot ^{Unofficial Document} which such Assessment(s) was levied. Such lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien, except only tax liens for real property taxes and liens, which are specifically described in Section 6.9. Any such lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a realty mortgage or by the exercise of a power of sale in the manner provided by law under a trust deed, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure or trustee's sale and to purchase, acquire, hold, lease, mortgage, and convey any such Lot. In the event of such foreclosure or trustee's sale, reasonable attorneys' fees, costs, fees, interest and all other costs and expenses shall be allowed. Each Owner, by becoming an Owner of a Lot, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 6.9 Subordination of the Lien to First Mortgages. The lien of the Assessment(s) provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment(s) lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, foreclosure or trustee's sale, or any proceeding in lieu thereof, shall extinguish the lien of such Assessment(s) as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any Assessment(s) thereafter becoming due or from the lien thereof.

ARTICLE VII ARCHITECTURAL CONTROL

Section 7.1 Organization, Power of Appointment and Removal of Members.

At a time deemed appropriate by the Board, the Board may, but is not under an obligation to, appoint an Architectural Committee (the "Committee"), which, if appointed, shall be organized as follows:

(a) Committee Composition. The Committee shall consist of such persons as are selected by the Board from time to time or which consist of the entire Board. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board or an officer of the Association.

(b) Terms of Office. Members of the Committee shall serve until they resign, are removed, or are replaced.

(c) Death, Resignation and Removal. In the event of the death, disability or resignation of any Committee Member, the Board has full authority to designate a successor or successors. The members of the Committee shall serve at the pleasure of the Board and may be removed with or without cause by the Board.

(d) Vacancies. Vacancies on the Committee, however caused, shall be filled by the Board.

Unofficial Document

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

Section 7.3 Meetings and Compensation. The Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to Section 7.1 (b), the vote or written consent of any two (2) regular members, at a meeting or otherwise, shall constitute the act of the Committee, unless the unanimous decision of the Committee is otherwise required by this Declaration. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Committee shall not be entitled to compensation for their services.

Section 7.4 Committee Rules. The Committee may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, to be known as "Architectural Committee Rules". Such Rules shall interpret and

implement this Declaration by setting forth the standards and procedures for Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use within the Property.

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

Section 7.6 Time for Approval. In the event the Committee fails to approve or disapprove the plans and specifications, such will be deemed approved within sixty (60) days after their submission.

Section 7.7 Liability. Neither the Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, and the Association hereby indemnifies and holds harmless the Committee and all members thereof, for, from and against any and all damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, or similar documents whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the overall development of the Property, or (d) the execution and filing of any Estoppel Certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by such member, and without willful or intentional misconduct, as would be applicable under local law, and except for those circumstances under which a member of the Board would have liability under Section 4.5. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Committee, or any member thereof, may, but is not required to, consult with or listen to the views of the Association or any Owner with respect to any proposal submitted to the Committee.

ARTICLE VIII USE RESTRICTIONS

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

(a) Single Family Residential Use. All Lots shall be used, improved and devoted exclusively to single-family residential use. No gainful occupation, profession, trade or other non-residential use shall be conducted thereon. Nothing herein shall be deemed to prevent the leasing of any Lot with the improvements thereon to a single family from time to time by the Owner thereof, subject to all of the provisions of the Declaration. No structure whatever shall be erected, placed or permitted to remain on any Lot without the express written approval of the Architectural Committee, provided, however, the Architectural Committee will consider requests for construction of a detached garage, gazebo, guest quarters and other such structures. However, written approval by the Architectural Committee of such structures is essential to construction of such structures must