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DECLARATION OF COVENANTS, CONDITIONS
 AND RESTRICTIONS FOR CASA TIERRA

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the date hereinafter set forth by LEMON TREE VILLAGE, INC., an Arizona corporation ("Declarant").

W I T N E S S E T H

WHEREAS, Declarant is the holder of legal title, of certain real property located in Maricopa County, Arizona, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter referred to as the "Real Property") and desires to create thereon a residential community with common facilities for the benefit of such community to provide for the preservation of the values and amenities of such community, and to provide for the maintenance of such common facilities; and

WHEREAS, Declarant is the holder of legal title of certain real property located in Maricopa County, Arizona, more particularly described on Exhibit "B" attached hereto and by this reference incorporated herein (the "Additional Property"), and may, from time to time and at its sole discretion, without obligation to do so, subject all or a portion of the Additional Property to the provisions of this Declaration;

WHEREAS, Declarant desires to subject the Real Property, and such additions thereto, as may hereafter be made, together with the improvements constructed and to be constructed thereon (collectively referred to herein as the "Property") to the provisions of this Declaration, each and all of which is and are for the benefit of the Property and each owner thereof; and

WHEREAS, it is hereby declared that these covenants, conditions and restrictions are intended to benefit the owners and their successors of all or any portion of the Property;

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, conveyed, encumbered, leased, used and improved subject to the following restrictions, covenants, conditions, easements and equitable servitudes, all of which shall run with the Property, shall be binding upon all persons having or acquiring any right, title or interest in the Property or any part thereof, shall inure to the benefit of each owner of any portion of the Property or any interest therein, shall inure to the benefit of and be binding upon each successor in interest, and may be enforced as hereinafter provided.

ARTICLE I

Definitions

The terms defined in this Article of this Declaration shall have the meanings herein specified, except as may be expressly otherwise provided herein.

Section 1.1 "Architectural Committee" shall mean the committee which may be created pursuant to Article IX, and, if no such committee is created, shall mean the Board.

Section 1.2 "Articles of Incorporation" or "Articles" shall mean the Articles of Incorporation of the Association, as and if amended.

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Section 1.3 "Assessment" shall mean all assessments authorized and provided by Article VII. "Regular Assessments" shall mean the Assessments pursuant to Section 7.3.A., and "Special Assessments" shall mean the Assessments pursuant to Section 7.3.B.

Section 1.4 "Association" shall mean and refer to Casa Tierra Property Owners' Association, an Arizona non-profit corporation, its successors and assigns.

Section 1.5 "Board of Director" or "Board" shall mean the Board of Directors of the Association.

Section 1.6 "Building" shall mean any building, house, townhouse or similar structure, including any appurtenant garage, carport, patio or similar accessory now or hereafter erected upon the Real Property or any part thereof.

Section 1.7 "Bylaws" shall mean the Bylaws of the Association, as and if amended.

Section 1.8 "Common Area" shall mean that portion of the Common Real Property now or hereafter owned by the Association, together with all improvements and facilities now or hereafter placed thereon and owned, controlled and/or regulated by the Association, including but not limited to recreational facilities and related equipment, walks, and walkways, parking areas, community facilities, trees, exterior lighting, pavement, pipes (including but not limited to all sewer lines and appurtenant facilities placed within the Common Real Property), wires, central patios, swimming pool(s), conduits, water and other public utility lines, and all other property, both real and personal, owned, controlled, and/or regulated by the Association for the common use and enjoyment of the Members of the Association.

Section 1.9 "Common Real Property" shall mean:

Tracts A, B, C and D, Casa Tierra, a subdivision according to the Plat recorded at Book 290 of Maps, page 22, Office of the Maricopa County Recorder, Arizona.

Section 1.10 "Common Expenses" shall have the meaning provided in Section 7.2.

Section 1.11 "Declarant" or "Developer" shall mean and refer to LEMON TREE VILLAGE, INC., an Arizona corporation, its successors and assigns, if such successors or assigns shall acquire more than one (1) Lot from Declarant for the purpose of development thereof.

Section 1.12 "Declaration" means this Declaration of Covenants, Conditions and Restrictions and each and every provision hereof, as such Declaration may from time to time be amended. "Supplemental Declaration" means an instrument by which all or a portion of the Additional Property is submitted to this Declaration and the Property, in accordance with Section 2.2.

Section 1.13 "First Mortgage" shall mean a first deed of trust, as well as a first mortgage, on a Lot or any portion thereof. "First Mortgagee" shall mean the Mortgagee or holder of a First Mortgage, including a beneficiary or trustee under a first deed of trust, its successors and assigns.

Section 1.14 "Lot" or "Unit" shall mean each of the numerically designated Lots shown on the Plat and the

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Buildings and other improvements now or hereafter constructed thereon, but shall not include the Common Area. "Improved Lot" shall mean a Lot on which a single family residence has been completed, as evidenced by certificate of occupancy or equivalent document from the appropriate governmental authority. "Unimproved Lot" shall mean a Lot which is not an Improved Lot. In the event Declarant shall subject all or a portion of the Additional Property to the provisions of this Declaration, "Lot" or "Unit" shall also be deemed to include any lot included within such Additional Property, as shown on the Plat, or any other plat of record respecting the Additional Property.

Section 1.15 "Member" shall mean any person, corporation, partnership, or other legal entity who is a member of the Association as provided in Article IV. "Membership" shall mean the participating interest of a Member in the Association.

Section 1.16 "Mortgage" shall refer to a mortgage as well as a deed of trust and any reference to rights and/or remedies under a Mortgage shall also mean rights and/or remedies under a deed of trust including, but not limited to, trustee's sale and foreclosure. "Mortgagee" shall mean the mortgagee, holder or beneficiary (or trustee) under a Mortgage or deed of trust, as the case may be, and "Mortgagor" shall mean a mortgagor or trustor, as the case may be, under a Mortgage or deed of trust. "Governmental Mortgage" shall mean the Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), Government National Mortgage Association ("GNMA") or other governmental agency or entity which is a Mortgagee or purchaser and/or assignee of a Mortgage. "Institutional Holder" shall mean a mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under Unofficial Document al or state laws, any corporation or insurance company, or any federal or state agency, including but not limited to Governmental Mortgagees.

Section 1.17 "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title, or fee simple title if same has merged, of a Lot regardless of whether such holder actually resides in the Lot, the family, invitees, licensees and lessees of any Owner, and any other person or parties holding a possessory interest granted by such Owner in a Lot. "Owner" shall include the purchaser of a Lot under an executory contract for the sale of property. "Owner" shall not include persons or entities who hold an interest in any Lot solely as security for the performance of an obligation.

Section 1.18 "Person" shall mean a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

Section 1.19 "Plat" shall mean the subdivision plat of Casa Tierra, as recorded in the Maricopa County Recorder's Office in Book 290 of Maps, page 22, an exact reduced copy of which is attached hereto as Exhibit "C". The recorded Plat and Exhibit "C" are by this reference incorporated herein. In the event any submission by Declarant of all or any portion of the Additional Property to this Declaration shall involve a plat of survey, "Plat" shall also mean and refer to such plat of survey.

Section 1.20 "Project" shall mean the Property, as subject to and controlled by the Project Constituent Documents.

Section 1.21 "Project Constituent Documents" shall mean the Declaration, the Articles, the Bylaws, and

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the Rules and Regulations of the Association, and all other documents or instruments pertaining to and affecting the Project, as same may from time to time be amended.

Section 1.22 "Rules and Regulations" shall mean such rules and regulations as shall be adopted and/or amended from time to time by the Association and/or the Architectural Committee for the Project.

Section 1.23 "Servicer" shall mean the person or entity servicing a Mortgage, including a Mortgagee, if applicable, its successors and assigns.

Section 1.24 "Single Family" shall mean a group of one (1) or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than four (4) persons not so related, who maintain a common household as a residence.

Section 1.25 "Single Family Residential Use" shall mean the occupation or use of a Lot by a Single Family in conformity with the Project Constituent Documents and the requirements imposed by applicable zoning and other governmental laws.

ARTICLE II

Additional Property and Common Elements

Section 2.1 Declarant covenants that it will convey fee simple title of the Common Area, including but not limited to the Common Real Property, to the Association unencumbered, except for easements granted for public utilities or for other public purposes incident to and consistent with the intended use of the Common Area by and for the benefit of the Project. The conveyance of the Common Area to the Association shall be made prior to or concurrently with the first conveyance of a Lot by Declarant to an Owner other than Declarant.

Section 2.2 Initially the Property shall consist of the Common Area and twenty-eight (28) Lots as designated on the Plat. Declarant may, in its sole discretion and without obligation, from time to time subject all or a portion of the Additional Property to this Declaration by the recordation in Maricopa County, Arizona of a Supplemental Declaration describing the portion of the Additional Property being subjected to this Declaration, designating the Lots within such Additional Property and the portion of the Additional Property designated as Common Area to become subject to and submitted to this Declaration, and setting forth such additional provisions respecting the subjection of such portion of the Additional Property to this Declaration as Declarant shall deem necessary or appropriate. At such time as all or any portion of the Additional Property is submitted to this Declaration, all provisions of this Declaration shall be deemed to apply to such Additional Property, including but not limited to the definitions set forth in Article I, and shall be construed and applied consistent with the inclusion of such Additional Property or portion thereof, within the Property. The maximum number of Lots which may be submitted to this Declaration shall be one hundred four (104). For the purposes of this Declaration, "Number of Available Lots" shall mean that amount obtained by subtracting, from time to time, the number of Lots then subject to this Declaration from one hundred four (104); provided, however, that in the event more than three (3) years elapse: (1) between the recordation of this Declaration in Maricopa County, Arizona and the recordation of the first Supplemental Declaration, or (2) between the recordation of a Supplemental Declaration and the next Supplemental

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Declaration, the "Number of Available Lots" shall thereafter be deemed to be zero (0).

Sections 2.3 Although Declarant reserves the right to alter size and design of improvements within the Additional Property, in the event of a submission of all or a portion of the Additional Property to this Declaration, such improvements within the Additional Property shall be consistent as to type, and quality as those Buildings originally constructed on the Real Property. Liens arising in connection with Declarant's submission of Additional Property to this Declaration shall not adversely affect the rights of Owners or the priority of any Mortgage. In the event the Project is qualified for or otherwise subject to Veterans Administration ("VA") or Federal Housing Administration ("FHA") approvals and requirements, no portion of such Additional Property shall be submitted to this Declaration without the prior written consent of the VA or FHA, as the case may be.

ARTICLE III

Homeowners' Association

Section 3.1 The operation of the Project shall be by the Association, a non-profit corporation organized under the laws of the State of Arizona, which shall fulfill its obligations pursuant to the provisions of the Project Constituent Documents. The Association shall not be deemed to be conducting a business for profit of any kind, and all funds received by the Association shall be held and applied by it for the benefit of the Owners in accordance with the provisions of the Project Constituent Documents.

Section 3.2 ^{Unofficial Document} of Incorporation for the Association shall be prepared and executed and the Association incorporated prior to the initial sale of a Lot by Declarant. Upon being incorporated, the Association shall promptly take all necessary steps to conclude its formation and to commence the discharge of its duties under this Declaration and the Articles, including but not limited to the adoption of Bylaws and Rules and Regulations that it may deem necessary.

Section 3.3 Each and every Owner, in accepting a deed, entering into an agreement for sale, or displaying some other evidence of ownership interest in a Lot, agrees to become a Member of the Association and to be bound by the provisions of the Project Constituent Documents.

Section 3.4 The Association shall, from time to time, establish such Rules and Regulations as it deems necessary for the conduct and operation of the Project and Common Area, including, by way of illustration and not by way of limitation, rules and regulations for the purpose of establishing and maintaining general beautification features within the Project, providing for the health, safety and welfare of occupants of and visitors to the Project, and establishing such common community services as the Association shall deem desirable for the general use and benefit of occupants of the Project.

Section 3.5 The Association shall serve as a governing body for all Owners and occupants of Lots and shall provide necessary and appropriate action for the maintenance, repair, replacement and management of the Common Area, assessment of expenses, payment of losses, disposition of insurance proceeds, and other matters as provided in the Project Constituent Documents; provided, however, that the foregoing shall not operate to relieve the Owners of their responsibilities under the Project Constituent Documents.

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Section 3.6 The affairs of the Association shall be conducted by a Board of Directors who shall be selected in the manner stated in this Declaration, the Articles and Bylaws. Each director shall be an Owner or the spouse of an Owner, or, if an Owner is a corporation, partnership, trust or other legal entity, a director may be an officer, director, partner, beneficiary or authorized agent of such Owner. If a director shall cease to meet such directorship qualifications during his term, he shall automatically cease to be a director and his place on the Board shall be deemed vacant.

Section 3.7 The Association shall have two (2) classes of voting membership:

A. Class "A" Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned; and

B. Class "B" Members shall be the Declarant, and shall be entitled to three (3) votes for each Lot owned.

Section 3.8 The Class "B" Membership shall cease and be automatically converted to Class "A" Membership (with one (1) vote for each Lot owned) on the first to occur of the following:

A. When the total votes outstanding in the Class "A" Membership equal the total votes outstanding in the Class "B" Membership;

B. On December 31, 1987; or

C. Thirty (30) days following notice by Declarant to the Association of the election to convert its Class "B" Membership to Class "A" Membership.

Section 3.9 The Project Constituent Documents shall be interpreted and applied in the following order of precedence, with any conflicts being resolved in favor of the document having precedence:

A. Declaration;

B. Articles;

C. Bylaws; and

D. Rules and Regulations.

Section 3.10 In the event of any dispute or disagreement between any Owners relating to the Project or any question of interpretation or application of this Declaration, the Articles, Bylaws or Rules and Regulations, the determination thereof by the Board shall be final and binding on each and all of the Owners. If a decision cannot be reached by the Board in connection with any matter submitted to or considered by the Board, such matter shall be determined by the Members, voting as provided by Article V. If the Members are unable to resolve such matter, it shall be submitted and settled in accordance with the current rules and regulations of the American Arbitration Association in Maricopa County, Arizona, and any decision made or rendered thereof shall be final and binding upon all of the Owners and the Association.

Section 3.11 All funds received by and the titles of all properties acquired by the Association shall be held in trust for the Members of the Association in accordance with this Declaration, the Articles and Bylaws.

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Section 3.12 If all or a portion of the Additional Property is submitted to this Declaration, the Association shall, from the date of such submission, have authority for all matters pertaining to all Lots so submitted.

ARTICLE IV

Membership

Section 4.1 Membership in the Association, shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner of a Lot, become a Member and shall remain a Member until such time as his ownership ceases for any reason, at which time his Membership shall automatically cease.

Section 4.2 A Membership shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such purchaser, or by interstate succession, testamentary disposition, foreclosure of Mortgage of record or deed in lieu of foreclosure of a Mortgage, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void and will not be reflected upon the books and records of the Association. At the time of transfer of any Lot, the Association shall record such transfer upon the books of the Association and issue a new Membership to the transferee and thereupon the old Membership outstanding in the name of the transferring Owner shall be null and void as though the same had been surrendered. The new Membership shall become effective as of the date of transfer of record of the ownership of the Lot.

Section 4.3 The ^{Unofficial Document} of each Lot shall be entitled to one (1) Membership in the Association, which Membership shall be subject to all of the provisions of the Project Constituent Documents. If a Lot shall have more than one (1) Owner, all Owners of that Lot shall be Members of the Association; provided, however, that such Members' voting rights shall be limited as provided in Section 5.1.

ARTICLE V

Voting Rights

Section 5.1 The aggregate number of votes for all Members shall be equal to the sum of the following:

- A. The number of Lots owned by Class "A" Members; and
- B. Three (3) times the number of Lots owned by Class "B" Members.
- C. Three (3) times the Number of Available Lots.

Each Class "A" Member shall be entitled to cast one (1) vote for each Lot owned and each Class "B" Member shall be entitled to cast three (3) votes for each Lot owned and three (3) votes multiplied by the Number of Available Lots; provided, however, that if a Lot is owned by more than one individual Class "A" Member, the Members owning such Lot shall collectively be entitled to cast one (1) vote for that Lot, and if a Lot is owned by more than one individual class "B" Member, the Members owning such Lot shall collectively be entitled to cast three (3) votes for that Lot. The method by which that vote shall be cast, and the person authorized and designated to cast that vote on behalf of the Members owning such Lot, shall be as provided in the Articles and/or Bylaws of the Association.

Section 5.2 In the event any Owner is in arrears in the payment of any Assessment or other amount due under or otherwise in default in the performance of any of the provisions of this Declaration, the Articles or Bylaws for a period of fifteen (15) days after written notice thereof from the Association, such Owner's right to vote as a Member shall be suspended until all such payments are brought current and/or all such defaults are remedied. The foregoing shall be in addition to, and not in lieu of, all other remedies provided in this Declaration, the Articles, the Bylaws or by applicable law for such non-payment or default.

Section 5.3 In the event any action to be taken pursuant to the Project Constituent Documents requires the consent of the Members (by whatever stated percentage), such consent requirement shall, unless this Declaration expressly provides otherwise, require the stated percentage requirement of such consent to be satisfied by a vote of the Class "A" Members, in the stated percentage, and the Class "B" Members, in the stated percentage.

ARTICLE VI

Property Rights

Section 6.1 Every Member shall have a right and easement of use and enjoyment in and to the Common Area, and such easement shall be appurtenant to, indivisible from, and shall pass with title to each Lot, subject to the following provisions:

A. The right of the Association to limit the number of guests or invitees of Members;

B. The right ^{Unofficial Document} of the Association to charge reasonable admission or other fees for the use of any recreational facility constituting a part of the Common Area;

C. The right of the Association, in accordance with the Project Constituent Documents, to borrow money for the purpose of improving the Common Area and to encumber the Common Area therefor; provided, however, that such right shall not be exercised or authorized, nor shall any such encumbrance be created, in violation of applicable law;

D. The right of the Association to reasonably suspend the voting rights and the right to use of all or any portion of the recreation facilities by an Owner for any period during which an Assessment against such Owner's Lot remains unpaid following fifteen (15) days' written notice thereof to such delinquent Owner, and for a period not to exceed sixty (60) days for any infraction of the Rules and Regulations;

E. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners representing seventy-five percent (75%) of the Class "A" Membership and at least seventy-five percent (75%) of the Class "B" Membership, or such higher percentages and by such parties, including but not limited to Owners and First Mortgagees, as shall be required by this Declaration or applicable law, has been recorded in the books of the Association, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than thirty (30) days nor more than sixty (60) days in advance of such proposed action.

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F. Such Rules and Regulations, consistent with the provisions of this Declaration, as shall be adopted by the Board.

Section 6.2 The Members' rights of use and enjoyment to the Common Area may be exercised by any person legally in possession of a Lot and not in violation of this Declaration, the Articles and/or Bylaws and any Rules and Regulations adopted by the Association; provided, however, that nothing herein shall be deemed to alter or amend the definition of "Owner", as set forth in Section 1.17, or to affect the provisions of Articles IV or V.

ARTICLE VII

Assessments

Section 7.1 The making and collection of Assessments against Owners shall be pursuant to this Article VII, and each Owner, for himself, his heirs, successors and assigns, covenants and agrees by accepting a deed, entering into an agreement for sale, or other conveyance of an interest in a Lot, that he shall pay and his Lot shall be subject to Assessments as follows:

A. (1) Each Lot's proportionate share of all Common Expenses;

(2) Each Lot's proportionate share of such additional sums as the Board shall determine to be necessary to meet the primary purposes of the Association; and

(3) Each Lot's respective obligations, if any, pursuant to Section ^{Unofficial Document} 7.1.C.

B. Subject to the limitations set forth in Section 7.1.C. below, each Lot's proportionate share of the total amount determined under Section 7.1.A(1) and 7.1.A.(2) shall be equal to a fraction of such total amount, the numerator of which is one (1) and the denominator of which is the number of Lots then present within the Project, together with any additional amount owed by the Owners of such Lot pursuant to Section 7.1.D.

C. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant (the "Reference Date"), the maximum Regular Assessment shall be 1,000.00 per year for each Improved Lot and twenty-five percent (25%) thereof for each Unimproved Lot. From and after the Reference Date, the maximum Regular Assessment per year may be increased each year above the maximum Regular Assessment for the previous year in an amount not greater than the proportionate increase in the CPI Index (as defined below) during such time period without a vote of the Members. From and after the Reference Date, the maximum Regular Assessment may be increased above the maximum Regular Assessment for the previous year in an amount greater than the proportionate increase in the CPI Index during such time period only upon the approval of two-thirds (2/3) of each class of Members who are voting, in person or by proxy, at a meeting duly called for such purpose. "CPI Index" shall mean the Consumer Price Index as established by the Bureau of Labor Statistics for the Phoenix Metropolitan Area or, if an Index for such area shall not be established or maintained, for the United States. For purposes of this Section 7.1.C., "Increase in the CPI Index" shall be determined by taking the CPI Index for the month immediately prior to the initial period (the "Base Index"), and the CPI Index for the month immediately prior to the subsequent period (the "Subsequent Index"), for

which the increase is to be applicable and calculating such increase as follows:

$$\frac{\text{Subsequent Index} - \text{Base Index}}{\text{Base Index}} = \text{Increase in CPI Index}$$

D. Notwithstanding each Lot Owner's obligation for its proportionate share of the Assessments as stated herein, in addition thereto each Owner shall pay and reimburse the Association for any and all costs and expenses in connection with the following:

(1) Obligations of such Owner pursuant to any other provision of this Declaration, including but not limited to the charges and obligations required pursuant to Articles VII, IX, X, XI, XII, XIII, XIV, XV and/or XVI.

(2) All costs incurred in the enforcement of the provisions of this Declaration against any Owner, including but not limited to attorneys' fees and court costs.

E. The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the residents in the Project and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area.

F. As long as Declarant owns any Unimproved Lots, Declarant shall be responsible for funding any deficits in the budget for the Association (maximum Regular Assessments are not sufficient to meet the expenses payable from the Regular Assessments pursuant to this Declaration); provided, however, that the liability and responsibility of Declarant for such deficit shall be limited to that sum obtained by multiplying the difference between the Regular Assessment for Improved Lots less the Regular Assessment for Unimproved Lots times the number of Unimproved Lots then owned by Declarant. The Lots owned by Declarant shall, if Declarant does not satisfy its obligations with respect to such budget deficits, be subject to lien by the Association in the same manner as authorized by this Declaration for the collection of Assessments. All Lots owned by Declarant, whether Improved Lots or Unimproved Lots, shall be subject to the provisions of this Declaration for the collection of Assessments, including but not limited to assessing and enforcing of a lien for such Assessments.

Section 7.2 The Board is hereby authorized to obtain and secure the following items and services which shall be deemed Common Expenses:

A. Expenses of administration of the Project, Common Area and/or the Association, including but not limited to legal, accounting and management fees contracted for, at the discretion of the Board, if it deems such necessary for such administration;

B. Utility and related services for the Common Area;

C. Insurance for the Common Area as required by Article XII;

D. Maintenance, operation, repair, replacement and betterment of the Common Area, including but not limited to painting, landscaping, repairs, replacements, alterations, additions, reconstruction, services, supplies, labor, materials, equipment and other related items;

E. Any valid charge against the Project as a whole as determined by the Board, including but not limited to all costs of enforcing compliance with this Declaration, together with such costs as are deemed necessary to meet the primary purpose of the Association;

F. An adequate reserve fund for maintenance, repairs, and replacement of that Common Area that must be replaced on a periodic basis, such reserve to be funded by Regular and not Special Assessments, and a working capital fund for the initial months of operation of the Project equal to at least two (2) months' Assessments for all Lots. Each Lot's share of the working capital fund will be collected and transferred to the Association at the time of closing of each Lot and will be maintained in a segregated account for the use and benefit of the Association. The contribution for the working capital fund for each unsold Lot shall be paid to the Association within sixty (60) days of the date of the conveyance of the first Lot; and

G. Taxes, assessments and similar charges assessed against or payable in connection with the Common Area.

Section 7.3

A. The amount to be prorated among the Owners pursuant to Section 7.1.A. shall, subject to the provisions of Section 7.1.C., be established annually by the Board, and the proportionate share to be paid pursuant to Section 7.1.B. shall be paid monthly or in such other installments as may be determined by the Board; provided, however, that the amount to be paid by Owners pursuant to Section 7.1.A. (3) shall be established and assessed at such time as the Board shall deem appropriate. Said amounts shall be based upon an estimated annual ^{Unofficial Document} budget and report which the Board shall cause to be prepared for each fiscal year of the Association. The budget shall take into account the estimated Common Expenses, including amounts for reserves, and any other sums which the Board may deem to be prudent for the protection of the Project. The amounts for reserves shall include an adequate fund for maintenance, repairs and replacement of that Common Area that must be replaced on a periodic basis. The budget and report shall also provide a summary of the Common Expense allocation, Assessments, and other fiscal activity of the Association for the previous fiscal year of the Association. Copies of the proposed budget and report shall be transmitted to each Owner on or before the first day of the fiscal year of the Association for which the budget is made, or as soon thereafter as the Board is able to adopt such budget.

B. In the event the Board is required to make any expenditure which was not anticipated as of the first of any fiscal year of the Association, or for which there are not sufficient funds available, the Board is authorized, upon the prior approval of a least two-thirds (2/3) of each class of Membership, to levy Special Assessments. Any such Special Assessment shall be charged to the Lots in the same proportion as Regular Assessments, as provided by Section 7.1.B; provided, however, that Unimproved Lots shall be assessed, for the purpose of Special Assessments, at the same rate as Improved Lots. The Owners shall pay all Special Assessments to the Board, or such depository as may be designated by the Board, within fifteen (15) days after the levy thereof or in such other manner and within such greater time as the Board may direct.

C. The Board shall at all times keep true and correct records of account for the Project and Association in accordance with generally accepted accounting principles applied on a consistent basis and shall furnish for the

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inspection of all voting Owners at reasonable times such records which shall specify in detail all expenses incurred and funds accumulated from Assessments or otherwise. If a management agent contracts with the Association to perform all or a part of the Association's duties, the Management Agreement therefor shall require such management agent to maintain records in accordance with the foregoing requirements, and to provide the Board with a report of its activities under such Management Agreement prior to the close of each fiscal year of the Association, and at such additional times as may be requested by the Board. The information set forth in such report shall be included in the annual budget and report from the Board to the Owners required by section 7.3.A.

D. Written notice of any meeting of the Members called for the purpose of taking any action authorized by this Article VII and requiring a vote of the Members shall be sent to all Members not less than thirty (30) nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence 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 present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. The Regular Assessments shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association, and shall be adjusted according to the Unofficial Document number of months then remaining in that calendar year.

F. 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. A properly executed certificate of the Association as to the status of Assessments on a specified Lot shall be binding upon the Association as of the date of the issuance thereof.

Section 7.4

A. From and after the time of the first conveyance of a Lot, and from time to time thereafter, at least annually and prior to the first day of each fiscal year of the Association, the Board or its designated representative shall notify the Owners of Lots of the total amount of the Assessments for such fiscal year for all Lots, the amount to be prorated and assessed to each Lot for such fiscal year, and the monthly amount which each Owner shall pay, which amount shall be due and payable monthly on the first (1st) day of each calendar month, and shall be paid prior to the fifteenth (15) day of each month, until the monthly amount due is changed by appropriate action of the Board, at which time the amount as changed shall be due and payable as aforesaid. Such monthly amount shall be paid to the Board or to any agent appointed by the Board to collect such payments, which agent may be a Mortgagee of a Lot. The Board, with the consent of Owners owning a majority of the Lots, may alter and change the above-designated dates and time periods. Each Owner, for himself, his heirs, successors, grantees and assigns, covenants that, with respect to Assessments so determined during the period that he is an Owner, he will remit these Assessments directly to the party or parties as directed by the Board.

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B. Assessments and installments of such Assessments paid on or before fifteen (15) days after the date when due and payable shall not bear interest, but all sums not paid on or before fifteen (15) days after the date when due and payable shall bear interest from the due date until paid equal to six percent (6%) per annum. All payments on account shall first be applied to costs and attorneys' fees incurred in the collection thereof (to the extent permitted by this Declaration and/or applicable law), if any, accrued and unpaid interest, and then to the Assessment payment, in that order.

C. No Owner may exempt himself from paying Assessments by being a non-user of the Common Area or by abandoning the Lot of which he is the record Owner, or by otherwise avoiding such obligations.

D. Each Assessment or any other charge made on a Lot pursuant to this Declaration shall constitute a lien on such Lot to secure the payment of such amounts, which lien and the right to foreclose the same shall be in addition to and not in substitution of all the rights and remedies which the Association or the Board may have in accordance with the provision of this Declaration or otherwise.

E. Each Owner, by his acceptance of a deed to a Lot, or by becoming an Owner in any other fashion, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of all such Assessments or charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the like Unofficial Document a Mortgage of real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. In addition, the Association may make payments on any prior liens, including any Mortgage, tax or other assessment on the Lot, and such payments shall be added to the lien in favor of the Association. The lien provided for in in this Section 7.4 shall be in favor of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid in such a foreclosure sale and to acquire and hold, lease, mortgage and convey the property so purchased. Either the Association, or the Board on behalf of the Association, may institute a suit to recover a money judgment for unpaid obligations of the Owner without being required to foreclose on the Lot involved and without waiving the lien which secures such obligations.

ARTICLE VIII

Party Walls and Roofs

The rights and duties of the Owners of Lots in the Project with respect to party walls and roofs shall be governed by the following:

A. Each wall (whether part of a dwelling or a fence) which is constructed as a part of the original construction of the Building, any part of which is placed on the dividing line between separate Lots, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume any burdens and be entitled to the benefits of this Declaration and, to the extent not inconsistent herewith, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. In the event a party wall is damaged or destroyed, excluding ordinary wear and tear and deterioration from lapse of time, through the legally responsible and culpable negligent or intentional act or omission to act of any Owner, or any of his guests, pets, tenants, licensees, agents or members of his family, so as to deprive any other adjoining Owner of the full use and enjoyment of such party wall, then such Owner shall forthwith proceed to rebuild and repair the same to as good condition as formerly, and to bear the cost thereof, without cost to the adjoining Owner.

C. In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, or any of his guests, pets, tenants, licensees, agents or members of his respective family, including ordinary wear and tear and deterioration from lapse of time, then in such event all such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

D. Notwithstanding any other provision of this Article VIII, any Owner who, by his neglect or willful act, causes any party wall (or components thereof) to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

E. The right of any Owner to contribution from any other Owner under this Article VIII shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

F. In addition to meeting the other requirements of this Declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or Unofficial Document his Building in any manner which requires the extension or other alteration of any party wall or in any way affects the structural integrity of such party wall shall first obtain the consent of all Owners of any interest therein, whether by way of easement or in fee and, to the extent required by the Project Constituent Documents, the prior consent of the Board or Architectural Committee.

G. in the event any Owner shall be responsible for the repair or rebuilding of a party wall, such repair and rebuilding shall be in accordance with, and the Owner shall be subject to, the provisions of Section IX.

H. in the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of an Owner addressed to the Association, the matter shall be submitted to arbitration in accordance with the provisions of Section 3.10. The cost of such arbitration shall be borne by the non-prevailing party.

ARTICLE IX

Section 9.1

A. No structural and/or other substantial alterations, additions or improvements shall be made to the Common Area or any Building without the prior approval of the Owners of a majority of the Lots given at a regular or special meeting (called for that purpose) of Members of the Association. Unless otherwise determined at any such meeting by the Members of the Association, the cost of such alterations, additions or improvements to the Common Area and the Buildings shall be paid by means of a Special Assessment against the Owners in the manner provided by Section 7.3.B. or, if applicable, from the reserve fund provided by Section 7.2.G.

B. Non-structural and/or non-substantial alterations, additions or improvements to the Common Area and the Buildings may be authorized by the Board subject to approval of the Architectural Committee; provided, however, that any such alteration, addition or improvement requiring a Special Assessment to fund shall be subject to the requirements of Section 9.1.A.

Section 9.2 Except as provided in Article VIII, any Owner may make additions, alterations and improvements which are not visible from neighboring property on his Lot without the prior approval of the Board or Architectural Committee. No Owner shall make any additions, alterations or improvements on a Lot which are visible from neighboring property or in any way alter the exterior appearance of his Lot (from the state thereof existing on the date such Lot was first conveyed or transferred by Declarant to an Owner other than Declarant), including but not limited to changes in the landscaping on the Lot, without prior approval of the Board or Architectural Committee. Notwithstanding the foregoing, no Owner shall paint or otherwise modify, change or renew the color of any Building on his Lot. Owners making alterations, additions, or improvements of any kind to their Lots shall be responsible for any damage to other Lots, the Common Area or the Property and all costs connected therewith which result from any such addition, alteration or improvement.

Section 9.3 Each Owner, at his own expense, shall furnish and be responsible for all of the decorating in the interior of the Building on his Lot, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, tile, curtains, lamps and other furniture and interior decorating; provided, however, no reflective materials, other than sun-screening, shall be placed in the windows or other surfaces which is visible from neighboring property without the prior approval of the Board or Architectural Committee.

Section 9.4

A. All rights and powers granted to the Board in this Declaration regarding architectural control may, in the discretion of the Board, be delegated to an Architectural Committee. All decisions of the Board or the Architectural Committee, if one is established, shall be final, and no Owner or other party shall have recourse against the Board or the Architectural Committee for its refusal to approve any proposed improvement or alteration.

B. The Architectural Committee, if established by the Board, shall consist of such regular Members and alternate Members as may be determined by the Board. No member of the Architectural Committee shall be required to be an architect or to meet any other particular qualifications for membership on the Architectural Committee. A member of the Architectural Committee need not be, but may be, a member of the Board or an officer of the Association. The Board shall have the right to establish such rules and regulations governing the procedures of the Architectural Committee as the Board deems appropriate, including but not limited to determining the requirement for a quorum and the required vote for approval or disapproval of any matter. The Board shall have the right to appoint and remove all regular and alternate members of the Architectural Committee at any time for any reason, and to fill any vacancies on the Architectural Committee, however caused. Members of the Architectural Committee shall not be entitled to compensation for their services.