

# Unofficial Document



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2 OF 2

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When recorded mail to:

Scott Homes L.L.C.  
2151 E. Broadway Road, Suite 210  
Tempe, AZ 85282

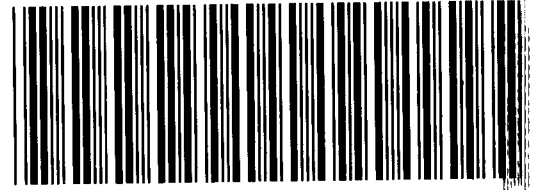
**CAPTION HEADING:**

**DO NOT REMOVE**

**This is part of the official document.**

This document is being re-recorded for the purpose of correcting the legal description in Exhibit A on page 44.

When recorded, return to:  
Gallagher & Kennedy, P.A.  
2575 E. Camelback Road, 11<sup>th</sup> Floor  
Phoenix, Arizona 85016-9225  
Attention: David Durfee



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

2000-0865959 11/13/2000 10:26

BECKY 1 OF 1

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FINCHER FARMS**

Unofficial Document

THIS DECLARATION HAS BEEN RE-RECORDED FOR THE PURPOSE OF SUBSTITUTING THE  
CORRECT LEGAL DESCRIPTION FOR THE UNINTENDED (SEE, E.G., RECITAL B)  
AND INCORRECT LEGAL DESCRIPTION ORIGINALLY ATTACHED.

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FINCHER FARMS**

This Declaration of Covenants, Conditions and Restrictions for Fincher Farms (the "Declaration") is made this 2<sup>nd</sup> day of November, 2000, by Scott Homes, L.L.C., an Arizona limited liability company ("Declarant").

**RECITALS**

A. Declarant is the fee owner of certain real property located in Maricopa County, Arizona, described on Exhibit A attached hereto (as further defined in Article 1, the "Real Property" or the "Property").

B. Declarant intends to develop the Real Property into a planned residential neighborhood of single family detached residences to be known as FINCHER FARMS ("Fincher Farms" or, as further defined in Article 1, the "Project").

C. Declarant deems it desirable <sup>Unofficial Document</sup> to establish covenants, conditions, restrictions and easements upon the Real Property and each and every portion thereof, which will constitute a general scheme for the development, government and management of the Real Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Property and enhancing the quality of life in the Project.

D. Declarant deems it desirable for the efficient development, government and management of the Real Property to create an owners association to which shall be delegated and assigned the powers of (i) administering and enforcing these covenants, conditions and restrictions, (ii) collecting and disbursing funds pursuant to the assessments and charges hereinafter created, and (iii) performing such other acts as are herein provided to which generally benefit its members, the Real Property, and the owners of any interest therein.

E. The Fincher Farms Owners' Association, Inc., a nonprofit corporation (as further defined in Article 1, the "Association"), has been, or will be, incorporated under the laws of the State of Arizona for the purpose of exercising such powers and functions referenced in Recital D above.

F. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Real Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the

covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote the Real Property.

NOW, THEREFORE, for the purposes above set forth, declares that the Real Property, including each Lot, hereafter shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Real Property and all parties having or acquiring any right, title or interest in or to the Real Property, or any part thereof, and shall inure to the benefit of each owner thereof, Declarant, the Association, and each member of the Association.

## **PART 1**

### **DEFINITIONS**

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms should appear throughout this Declaration with the initial letter of such term capitalized.

1.1 “Additional Property” shall mean real property and any improvements thereon, which is added to the Project, and made subject to this Declaration, in one or more additional phases, by a recorded Declaration of Annex Unofficial Document

1.2 “Architectural Committee” means the architectural committee or committees established by the Board.

1.3 “Architectural Rules” means the rules, guidelines, standards and procedures adopted by the Architectural Committee (which may be amended from time to time), governing architectural control of the Project, and which have been approved by the Board.

1.4 “Articles” means the Articles of Incorporation of the Association, which have been, or will be, filed in the Office of the Corporation Commission of the State of Arizona, as such Articles may be amended from time to time, or of any successor thereto.

1.5 “Assessments” means the charges levied and assessed pursuant to this Declaration.

1.6 “Association” means the Fincher Farms Owners' Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

1.7 “Association Rules” means the rules and regulations adopted by the Board of Directors of the Association pursuant to this Declaration, as may be amended from time to time.

1.8 “Board” means the Board of Directors of the Association.

1.9 "Bylaws" means the Bylaws of the Association (or of any successor thereto) adopted in accordance with the Articles, as such Bylaws may be amended from time to time.

1.10 "Common Area" means all real property, and the improvements thereon, owned by the Association, including easements granted to the Association, or leased from time to time by the Association, for the common use and enjoyment of the Members.

1.11 "Common Expenses" means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Project, including, but not limited to, the maintenance, management, operation, repair and replacement of the Common Area (including, by way of example and not of limitation, the community pool); collection of unpaid Assessments; management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; the costs of fire, casualty, liability, workmen's compensation and/or other insurance covering the Common Area or obtained by the Association; reasonable reserves, if deemed appropriate by the Board; the costs of bonding of the members of the Board, the Association officers, and professional managing agent or any other person handling the funds of the Association; taxes paid or payable by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Area; costs incurred by the Architectural Committee or other committees established by the Board; and other expenses incurred by the Association for any reason whatsoever in connection with the Common Area, or the costs of any other items or items designated by this Declaration, the Articles, <sup>Unofficial Document</sup> Bylaws, Association Rules or Architectural Rules, or in furtherance of the purpose of the Association or in the discharge of any duties or powers of the Association.

1.12 "Declarant" means Scott Homes, L.L.C.

1.13 "Declaration" means this instrument, as it from time to time may be amended.

1.14 "Default Rate of Interest" means an annual rate of interest equal to the prime rate as announced by Bank One, Arizona (as the rate charged to its largest and most credit worthy customers) from time to time while interest is accruing plus three (3) percentage points (with interest hereunder adjusted as and when said prime rate is adjusted). Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said periods shall be the highest lawful rate. If Bank One should cease doing business or no longer announce its prime rate as described above, the Association may compute interest hereunder upon the announced prime rate of any other bank doing business in Arizona. If such banks should cease announcing prime rates, the Association may specify the rate under which the Association would reasonably have to pay to borrow money at the time.

1.15 "Dwelling Unit" means any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

1.16 "Improvement(s)" shall mean each and every physical improvement of any kind whatsoever to any portion of the Real Property, including, but not limited to, any excavation, grading, fill work, building, Dwelling Unit, walkway, driveway, road, parking area, wall, fence, swimming pool, utility installation, drainage facility, stairway, patio, courtyard, pole, sign, or any trees, grass, plants, shrubs or other landscaping and any and all components of any of the foregoing (including, but not limited to, exterior paint, texture, color and finish scheme) and any and all modifications, alterations of, or additions to, any of the foregoing.

1.17 "Lot" means any parcel of real property designated as a numbered lot on the Plat and any Improvements located thereon. The platted lots are referred to collectively herein as "Lots," and all such Lots in the Project are subject to the Declaration. The Lots shall be further categorized and referred to as "Category 1 Lots," i.e., those Lots depicted as such on Exhibit A-1 attached hereto (also referred to from time to time as the "60 foot lots"), and "Category 2 Lots," i.e., those Lots depicted as such on Exhibit A-1 attached hereto (also referred to from time to time as the "2-pack lots").

1.18 "Member" means every Person who qualifies for membership in the Association pursuant to this Declaration, including Declarant so long as Declarant owns any Lot within the Project.

1.19 "Mortgage" means any duly recorded mortgage or deed of trust encumbering a Lot. A "First Mortgage" shall refer to a <sup>Unofficial Document</sup> Mortgage, which has priority over any other Mortgage encumbering a specific Lot.

1.20 "Mortgagee" means the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" shall mean the holder of a Mortgage that has priority over any other Mortgage encumbering a Lot.

1.21 "Owner" means one or more Persons who are alone or collectively the record owner of fee simple title to a Lot, including Declarant, or the vendee under an installment land sales contract, but excluding those having any such interest merely as security for the performance of an obligation. If fee title to a Lot is owned other than by Declarant, the Owner of the fee title and not the lessee of such Lot shall be deemed the Owner regardless of the term of the lease.

1.22 "Person" means an individual, corporation, partnership, trustee or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.23 "Plat" means collectively the plat of Fincher Farms as recorded in the Official Records of Maricopa County, Arizona, which subdivides the Real Property, and as thereafter from time to time amended or supplemented, together with all subsequent plats of subdivision for Additional Property annexed to the Real Property.

1.24 "Project" means the Real Property located in Maricopa County, Arizona, which is described in Exhibit A attached hereto, together with all Improvements located thereon or to be

located thereon and all easements, rights, and appurtenances belonging thereto, together with all other real property and Improvements subsequently annexed to the Real Property.

1.25 "Purchaser" means any Person other than Declarant who by means of a voluntary transfer becomes the Owner of a Lot other than a person who, in addition to purchasing a Lot, is assigned any or all of Declarant's rights under this Declaration.

1.26 "Real Property" or "Property" means all the real property located in Maricopa County, Arizona, which is described on Exhibit A attached hereto, together with all Improvements located thereon or to be located thereon and all easements, rights and appurtenances belonging thereto, together with all other real property and Improvements subsequently annexed to the Real Property.

1.27 "Residence" means any subdivided Lot shown on the Plat, together with the residential Dwelling Unit, garage, patio and other Improvements thereon and all rights and easements appurtenant thereto granted pursuant to this Declaration and to the deed of conveyance.

1.28 "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household.

1.29 "Town" means the Town of Gilbert, Arizona.

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1.30 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property (which may include a Lot or any portion of the Common Area) at an elevation no greater than the elevation of the base of the object being viewed.

## PART 2

### **DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION**

2.1 Description of Project. The Project shall be composed of the Real Property described in Exhibit A attached hereto, together with all Improvements located thereon or to be located thereon and all easements, rights and appurtenances belonging thereto, together with all other real property and Improvements subsequently annexed to the Real Property.

2.2 Name of Project. The Project shall be referred to as "Fincher Farms."

2.3 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

**PART 3****THE ASSOCIATION**

3.1. General Duties and Powers. In addition to the duties and powers provided by law and enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Part.

3.2 General Duties of the Association. The Association, through its Board, shall have the duty and obligation to:

A. Maintain and otherwise manage the Association and all of its properties to the full extent permitted by law, including:

(i) the Common Area and all Improvements thereon in which the Association holds an interest, subject to terms of any instrument transferring such interest to the Association;

(ii) the turf/grass in the front yards of Category 2 Lots, in accordance with the provisions of Section 9.2;

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(iii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and

(iv) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration.

B. Pay all real and personal property taxes and other charges assessed to or payable by the Association.

C. Obtain for the benefit of the Common Area, water, electric, refuse collections and other services.

D. Establish an Architectural Committee to govern issues set forth in this Declaration as being within the purview of the Architectural Committee as well as other issues the Board deems suitable for the Architectural Committee. All members of such committees shall hold office for the balance of the calendar year appointed, or until their successors have been approved.

E. Perform the maintenance obligations, obtain and maintain in force and effect policies of liability insurance and perform such other obligations of the Association as set



forth in any easement by Declarant in favor of the Association which shall be recorded in the Official Records of Maricopa County, Arizona following the recording of this Declaration.

3.3 General Powers of the Association. The Association, through its Board, shall have the power but not the obligation to:

A. Enforce the provisions of this Declaration, the Articles, Bylaws, Association Rules and Architectural Rules by appropriate means and carry out the obligations of the Association hereunder.

B. Employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of residential developments to perform all or any part of the duties and responsibilities of the Association.

C. Acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Project, the administration of the affairs of the Association or for the benefit of the Members.

D. Borrow money as may be needed in connection with the discharge by the Association of its powers and duties.

E. Provide maintenance <sup>Unofficial Document</sup> of certain maintenance items to the extent determined desirable by the Board.

F. Negotiate and enter into contracts with mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Project.

3.4 Legal Proceedings. Except for any legal proceedings initiated to (i) enforce any use restrictions, easement rights or nonmonetary obligations of Owners (other than Declarant) expressly set out in this Declaration; (ii) enforce any Association Rules; (iii) enforce any Architectural Rules; (iv) collect any unpaid Assessments levied pursuant to this Declaration; or (v) pursue or resolve any "small claims" (i.e., matters in which the amount in controversy could not reasonably be expected to exceed \$25,000.00), the Association (or Board) shall not initiate legal proceedings or join as a plaintiff in legal proceedings (A) without the prior approval of two-thirds (2/3) of the Members of the Association entitled to vote, excluding the vote of any Owner who would be a defendant in such proceedings; and (B) with respect to matters involving property or improvements to property, unless (1) such property or improvements is owned either by the Association or jointly by all members of the Association; (2) the Association has the maintenance responsibility for such property or improvements pursuant to this Declaration; or (3) the Owner who owns such property or improvements consents in writing to the Association initiating or joining such legal proceeding. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be funded by the Association with monies that are specifically collected for

that purpose and the Association shall not borrow money, use reserve funds, or use monies collected for other specific Association obligations for such purpose. Nothing in this section shall preclude the Board from incurring expenses for legal advice in complying with statutes or regulations related to the operation of the Association or otherwise in the normal course of operating the Association when legal proceedings are not involved. Notwithstanding anything herein to the contrary, this section may not be modified or amended without the prior approval of two-thirds (2/3) of the Members of the Association entitled to vote.

3.5 Association Rules. The Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), binding upon all Persons subject to this Declaration and governing the use and/or occupancy of the Common Area or any other part of the Project. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments, subject to any limitations provided by law (see, e.g., A.R.S. §33-1803(B)). The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the Common Area, provided, however, that the Association Rules may not discriminate among Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles or Bylaws. The Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and all other Persons having any interest in, or making any use of, the Real Property, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available to each Owner upon request. In the event of any conflict between any provision of the Association Rules and any <sup>Unofficial Document</sup> provisions of this Declaration or the Articles or Bylaws, the provisions of this Declaration, the Articles or Bylaws shall prevail. In the event of any conflict or inconsistency between or among the Declaration, the Articles and/or the Bylaws, the Declaration shall govern and control over the Articles and Bylaws. The Articles shall govern and control over the Bylaws.

3.6 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and Declarant (to the extent a claim may be brought against Declarant by reason of its appointment, removal or control of members of the Board) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or, in the case of Declarant, by reason of having appointed, removed or controlled or failed to control members of the Board), or any settlement thereof, whether or not he is a director, officer or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, or other person, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

3.7 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the Board, or any other committees of the Association nor any member thereof, or any directors or officers of the Association, shall be liable to any Owner, tenant, the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board, or such committees or persons reasonably believed to be within the scope of their respective duties.

3.8 Easements. In addition to the blanket easements granted either in the Declaration, or any plats recorded by Declarant, the Association is authorized and empowered to grant upon, over, across, through or under Common Area owned or controlled by the Association 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 utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Area or for the preservation of the health, safety, convenience and welfare of the Owners provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

3.9 Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account, and shall have available for the inspection of all Owners at reasonable times during regular business hours, such books which shall specify in reasonable detail all expenses incurred and funds <sup>Unofficial Document</sup> accumulated from assessments or otherwise. Audited reports will not be required.

3.10 Records. The Association shall, upon reasonable written requests and during reasonable business hours, make available for inspection by each Owner the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws and Association Rules. Declarant shall be under no obligation to make its own books and records available for inspection by any Owner, Member, or other person.

3.11 Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles, Bylaws and Association Rules; provided, however, no such delegation to a professional management company or otherwise shall relieve the Association of its obligation to perform or have performed any such delegated duty.

## PART 4

### MEMBERSHIP IN THE ASSOCIATION

4.1 Membership. Every Owner shall be a Member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive,

as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws, Association Rules and Architectural Rules to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Not more than one membership shall exist based upon ownership of a single Lot. Lot Owners shall have automatic membership and voting rights in the Association. Membership and voting rights in the Association shall be subject to the terms and conditions set forth in the Declaration.

4.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon transfer or conveyance of ownership of a Lot. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. Any transfer or conveyance of ownership of a Lot shall operate to transfer the membership appurtenant to the Lot to the new Owner thereof. The Association shall levy a transfer fee for each ownership transfer.

4.3 Voting Rights. An Owner's right to vote shall vest immediately upon taking title to such Owner's Lot. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

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4.4 Classes of Voting Membership. The Association shall have three (3) classes of voting membership: "Class A-1," "Class A-2" (Class A-1 and Class A-2 being referred to collectively as "Class A") and "Class B."

Class A-1 and Class A-2: Class A-1 Members shall be all Owners of Category 1 Lots with the exception of Declarant (except as provided for hereinafter). Class A-2 Members shall be all Owners of Category 2 Lots with the exception of Declarant (except as provided for hereinafter). Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one Person owns a portion of the interest in a Lot required for membership, each such Person shall be a Member and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The vote for each Lot shall be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes should be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event that more than one vote is cast for a particular Lot, none of such votes shall be counted and such votes shall be deemed void.

Class B: The Class B Member shall be Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot in which it holds the interest required for membership; provided that the Class B membership shall cease and be converted to Class A membership (i.e., Class A-1 and/or Class A-2, as applicable, depending upon whether a particular Lot in question is a Category 1 Lot or a Category 2 Lot) on the happening of either of the following events, whichever occurs earlier;

- (a) When the number of votes entitled to be cast by Class A Members exceeds the number of votes entitled to be cast by the Class B Members; or
- (b) When Declarant notifies the Association in writing that it relinquishes its Class B membership.

4.5 Voting for Board of Directors. Prior to the first vote for members of the Board after the Class B membership has been converted to Class A membership, the Board shall be constituted of two (2) directors, appointed by Declarant. Commencing with the first vote for members of the Board after the Class B membership has been converted to Class A membership, the following provisions of this Section 4.5 shall apply: The Board shall be constituted of an odd number of directors, totaling five (5) or more. One director shall be elected "at large" by all of the Members. Half of the remaining directors shall be elected by the Class A-1 Members. The other half of the remaining directors shall be elected by the Class A-2 Members.

4.6 Corporate or Trust Membership.<sup>Unofficial Document</sup> In the event any Lot is owned by a corporation, partnership, trust, limited liability company or other entity, the corporation, partnership, trust, limited liability company or other entity shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the chief executive officer, if any, of such corporation, partnership, trust, limited liability company or other entity, shall have the power to vote the membership, and if there is no chief executive officer, then the board of directors, general partner, manager or similar officer of such corporation, partnership, trust, limited liability company or other entity shall designate who shall have the power to vote the membership.

4.7 Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Declaration, the Articles, Bylaws, Association Rules or Architectural Rules for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including accrued interest and attorney's fees, are brought current. In the event any Owner is in default of any non-monetary obligation of this Declaration, the Articles, Bylaws, Association Rules or Architectural Rules, and remains in default for more than fifteen (15) days after notice from the Association to cure same, said Member's right to vote shall be suspended until said default is cured.

## PART 5

## COVENANT FOR ASSESSMENT

5.1 Creation of the Lien and Personal Obligation. Each Owner (other than Declarant) of any Lot by acceptance of a deed or other conveyance by which such Owner becomes the Owner of a Lot, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association Annual Assessments, Supplemental Assessments and Special Assessments, such Assessments and/or other fees to be fixed, established and collected from time to time as provided in this Declaration. Such Assessments and/or other fees, together with interest thereon, late charges, attorney's fees, court costs, and other costs of collection thereof, shall be a continuing lien upon the Lot against which each such Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time when such Assessment and/or other fees become due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. Mortgagees are not required to collect Assessments.

5.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for (i) the operation and management of the Association, (ii) the enforcement of the Architectural Rules and related guidelines, and to otherwise enforce the terms, covenants and conditions set forth in this Declaration, the Articles, the Bylaws or Association Rules, (iii) payment of Common Expenses in connection with the upkeep, maintenance and improvement of the Common Area and such portion of the Lots and such Improvements located thereon as the Association is obligated to maintain under the provisions of the Declaration, and/or (iv) promotion of the recreation, health, safety and welfare of the Owners and residents of Lots within the Real Property, or any other matter deemed necessary for the efficient operation of the Association.

5.3 Annual Assessments.

A. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under this Declaration, the Board, for each fiscal year of the Association, shall assess against each Lot an annual Assessment (the "Annual Assessment"). Inasmuch as the Association shall incur costs in maintaining the turf/grass in the front yards of Category 2 Lots, as described in Section 9.2, that shall not be incurred in connection with the Category 1 Lots, the Annual Assessment established for each of the Category 2 Lots shall include a component reflecting those additional costs, which shall not be assessed to the Category 1 Lots. Thus it is expected and permitted that the Annual Assessment established for each of the Category 2 Lots shall be greater than that established for each of the Category 1 Lots as a result of this special allocation of costs. No other distinction shall be made between Category 1 Lots and Category 2 Lots in the establishment of the Annual Assessment.

B. The Annual Assessment, together with any Supplemental Assessment, levied during any fiscal year shall not exceed the maximum Annual Assessment for such fiscal year which shall be determined as follows:

(i) Until December 31, 2001, the maximum Annual Assessment for each Category 1 Lot shall not exceed \$576.00, and the maximum Annual Assessment for each Category 2 Lot shall not exceed \$864.00.

(ii) Starting January 1 of the year immediately following the conveyance of the first Lot by Declarant, the Board may, without a vote of the membership of the Association, increase the applicable maximum Annual Assessment during each fiscal year of the Association by the greater of (i) an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers, U.S. City Average (1982 - 84 = 100), published by the United States Department of Labor, Bureau of Labor Statistics, or in the event said index ceases to be published, by any successor index recommended as a substitute therefore by the United States government, or if none, the most reasonably comparable index available as determined by the Board, or (ii) five percent (5%). The Board may fix the applicable Annual Assessment at any amount not in excess of the maximum Annual Assessment.

(iii) Starting January 1 of the year immediately following the conveyance of the first Lot by Declarant, the applicable maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to Section 5.3(B)(ii) above only with the approval of Members representing at least two-third (2/3) of the votes (of each class) entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purposes.

(iv) Increases shall comply with applicable law (see, e.g., A.R.S. §33-1803(A)).

5.4 Supplemental Assessments. In the event the Board shall determine that its funds budgeted or available in any fiscal year are or will become inadequate to meet all expenses of the Association, for any reason, including, without limitation, nonpayment of Assessments by the Members, it shall determine the approximate amount of such inadequacies for such fiscal year and prepare a supplemental budget and may levy a supplemental Assessment (a "Supplemental Assessment") against each Lot in such amount as the Board deems necessary in order to obtain the amount of such inadequacies. Notice of any such Supplemental Assessment shall be given to each Owner. The Supplemental Assessment shall be paid on such dates and in such installments as may be determined by the Board.

5.5 Special Assessments. In addition to the Annual Assessment and Supplemental Assessment, the Association may levy, in any year, a special Assessment (a "Special Assessment") applicable only to that fiscal year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement of the Common Area, including fixtures and personal property related thereto, the operation and management of the Association, the enforcement of the Architectural Rules and related guidelines and property maintenance obligations as provided in this Declaration and, to the extent permitted in this Declaration, to otherwise enforce the terms, covenants and conditions set forth in this Declaration, the Articles, the Bylaws or Association Rules, and/or for any other lawful Association purpose, provided that, unless otherwise provided herein, any such Special

Assessments shall have the assent of Members having at least two-thirds (2/3) of the votes (of each class) entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. A Special Assessment may also be a charge against a particular Owner and his Lot directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and his Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, Association Rules and/or Architectural Rules, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws, Association Rules and/or Architectural Rules, together with attorney's fees and other charges payable by such Owner, pursuant to the provisions of the Declaration, plus interest thereon as provided for in this Declaration.

5.6 Notice and Quorum for Any Action of Assessment. Written notice of any meeting called for the purpose of taking any action authorized under the foregoing paragraphs shall be sent to all Members not less than thirty (30) 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 more than half of all the votes of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the quorum required at the first meeting (i.e., twenty five percent (25%) of all the votes of Members). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.7 Uniform Rate of Assessment. <sup>Unofficial Document</sup> Annual and Supplemental Assessments must be fixed as a uniform rate for all Lots, except as provided herein.

5.8 Date of Commencement of Assessments; Due Dates. The Annual Assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the first Lot to a Purchaser. The first Annual Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of the fiscal year, and the Annual Assessment for the current fiscal year shall remain in effect until the thirtieth (30th) day after the Board fixes the Annual Assessment for the upcoming fiscal year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto prior to the commencement of the fiscal year; provided, however, that failure to give such notice shall not affect the validity or enforceability of the Assessment as fixed by the Board. The Board may require or allow the Annual, Supplemental or Special Assessments to be paid in installments, including but not limited to monthly or quarterly installments, as the Board may determine to be appropriate. Unless otherwise specified by the Board, Special and Supplemental Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Assessment is sent to each Owner, provided, however, that failure to give such notice shall not affect the validity or enforceability of the Assessment as fixed by the Board.

5.9 Alternate Assessment for Declarant. Notwithstanding the provisions in this Declaration, until such time as all of the Lots have been conveyed by Declarant to the Purchasers thereof (or, at the election of Declarant, the date upon which Declarant ceases to have Class B