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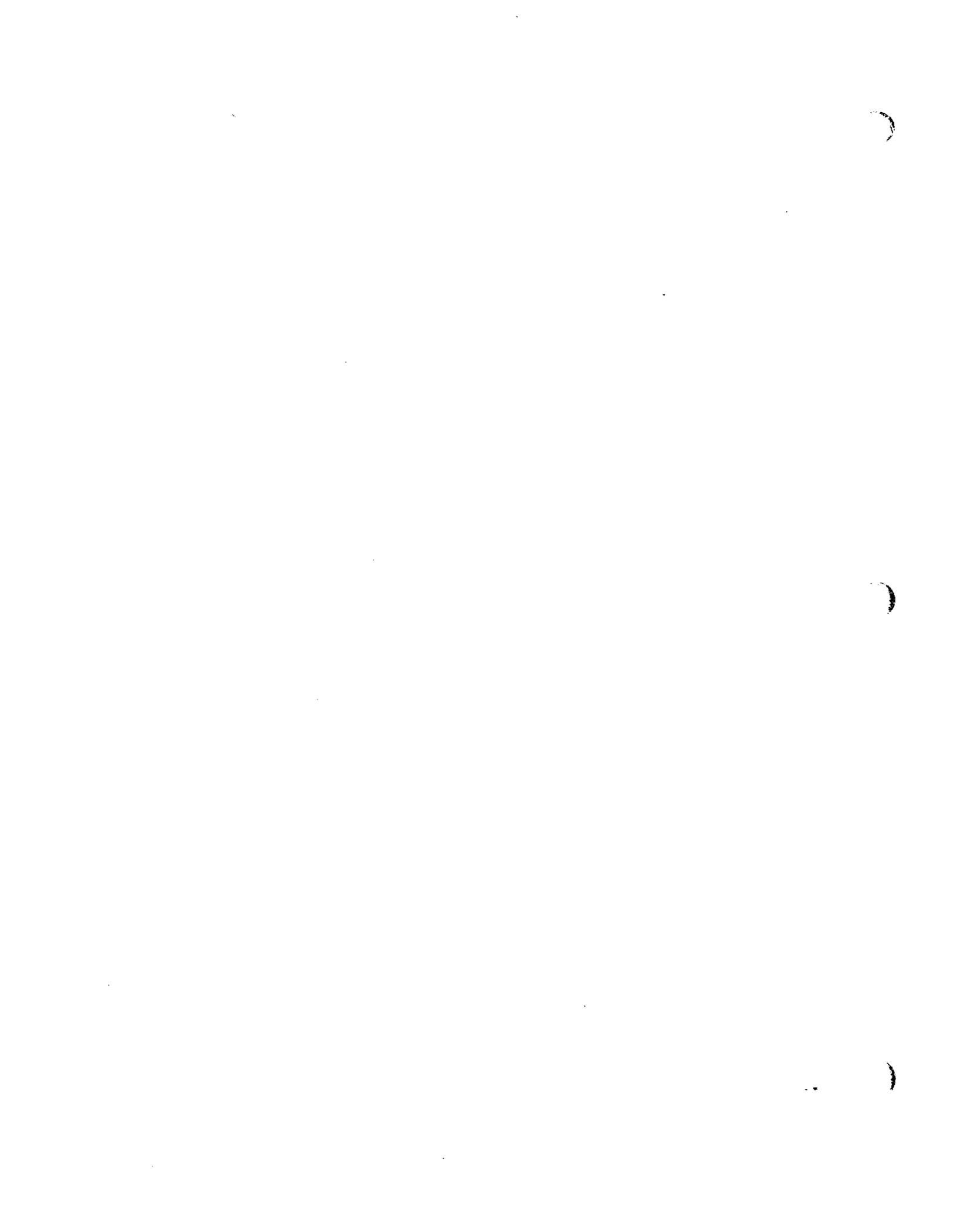
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR PALM VALLEY PHASES II AND III**



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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR PALM VALLEY PHASES II AND III**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter the "Declaration") is dated Oct. 14, 1998 and is made by SUNCOR DEVELOPMENT COMPANY, an Arizona corporation (hereinafter "Declarant").

RECITALS

A. Declarant holds legal title to the Property described in Exhibit A to this Declaration, and this Declaration is being imposed upon said Property.

B. To promote the development of and to enhance the value and desirability of the Property, Declarant has deemed it desirable to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Property. Declarant desires to provide a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property

C. Declarant reserves the right (but shall not be obligated) to annex from time to time, additional real property pursuant to this Declaration and thereby add additional real property (or portions thereof) to the Property, which real property is defined and described as "Annexable Property" in Article IB below.

D. Declarant intends (but shall not be obligated to ensure) that at full development the Property will include several residential neighborhoods, one or more parks, open spaces, walkways, scenic drives and other social, civic and cultural buildings and facilities. Declarant intends that any golf courses which may be developed (without any obligation to develop) shall not be part of or annexed into the Property, shall not be made subject to this Declaration, and shall not be subject to any assessment or be included in any association.

E. As the development of the Property proceeds, Declarant intends (but shall not be obligated) to record various subdivision plats; to dedicate portions of the Property to the public for streets, roadways, drainage, flood control and general public use; to sell parcels to various builders; and to record Tract Declarations covering portions of the Property which Tract Declarations will designate the purposes for which such portions of the Property may be used and may set forth additional covenants, conditions and restrictions applicable to such portions of the Property.

F. Declarant desires to form a non-profit corporation (hereinafter the "Association") which will (1) own, manage and/or maintain Common Areas, if any, and certain other areas in the Property; (2) levy, collect and disburse the Assessments

and other charges imposed hereunder: and (3) as the agent and representative of Owners, enforce the use restrictions and other provisions of this Declaration.

G. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, or other holders of an interest in any portion of the Property, certain mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the Property.

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

I. Declarant therefore wishes to subject all of the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements (hereinafter collectively called "Covenants") hereinafter set forth, which Covenants shall run with the land and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Property.

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

## ARTICLE I

### DEFINITIONS

A. "Ancillary Association" shall mean an association created by the developer of a residential subdivision or neighborhood within the Property for the owners of dwelling units within that subdivision or neighborhood. Any Ancillary Association shall be subject to this Declaration and the Association provided for herein.

B. "Annexable Property" shall mean any and all real property which is within three (3) miles of any point on the exterior of the Property described on Exhibit A attached hereto.

C. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot, Parcel and Owner pursuant to Article VII, Section 3, hereof.

D. "Apartment Development" shall mean a Parcel or portion thereof which is so identified in a Tract Declaration and is comprised of integrated Rental Apartments and surrounding areas.

E. "Articles" shall mean the Articles of Incorporation of the Association as amended from time to time.

F. "Assessable Property" shall mean any Lot or Parcel in the Property covered by a recorded Tract Declaration, except such part or parts thereof as may from time to time constitute Exempt Property.

G. "Assessment" or "Assessments" shall mean an Annual Assessment, Special Assessment, Parcel Assessment, Maintenance Charge, Reserve Contribution, Special Use Fee, or any other fees, fines or charges assessed hereunder.

H. "Assessment Lien" shall mean the lien created and imposed by Article VII.

I. "Assessment Period" shall mean the term set forth in Article VII, Section 8.

J. "Association" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration. and its successors and assigns. Declarant intends to name the Association "PALM VALLEY PHASES II AND III COMMUNITY ASSOCIATION."

K. "Association Land" shall mean such part or parts of the Property, together with the buildings, structures and improvements thereon, and other real property which the Association now or hereafter owns in fee or in which the Association now or hereafter has a leasehold or easement interest, for as long as the Association is the owner of the fee, leasehold or easement interest. From time to time, Declarant may convey easements, leaseholds, or other real property within the Property to the Association and upon such conveyance or dedication to the Association, such property shall be deemed accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

L. "Board" shall mean the Board of Directors of the Association.

M. "Bylaws" shall mean the Bylaws of the Association as amended from time to time.

N. "Common Area" and "Common Areas" if any, shall mean (1) all Association Land; (2) all land within the Property which the Declarant by this Declaration or other recorded instrument, makes available for use exclusively by Members of the Association; (3) all land within the Property which the Declarant indicates on a recorded subdivision plat or Tract Declaration is to be used for landscaping, drainage, and/or flood control for the benefit of the Property and/or the general public and is to be dedicated to the public or the City of Goodyear upon the

expiration of a fixed period of time, but only until such land is so dedicated; (4) all land or right-of-way easements within the Property which are dedicated to the public or to the City of Goodyear, but which the City of Goodyear or other governmental agency requires the Association to maintain; (5) areas on a Lot or Parcel within easements granted to the Association or its Members for the location, construction, maintenance, repair and replacement of a wall, which easement may be granted or created on a recorded subdivision plat or Tract Declaration or by a deed or other conveyance accepted by the Association; and (6) any other areas with respect to which the Association has assumed in writing (or has been given by the Declarant) administrative or maintenance responsibilities, whether or not such areas are located on a Lot or Parcel.

O. "Condominium Development" shall mean a portion of the Property which has been subjected to a declaration of condominium pursuant to Arizona law.

P. "Condominium Unit" shall mean a unit (as that term is defined in A.R.S. Section 33-1202.(22) or any successor statute), together with any appurtenant interest in all common elements, which is created by a declaration of condominium established and recorded under Arizona law. Such term shall not include a Rental Apartment in an Apartment Development.

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

R. "Declarant" shall mean SunCor Development Company, an Arizona corporation and the successors and assigns of the Declarant's rights and powers hereunder. Any assignment of all or any portion of the Declarant's rights and powers shall be made by a recorded instrument executed by the assignor Declarant.

S. "Declaration" shall mean this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PALM VALLEY PHASES II AND III, as amended or supplemented from time to time.

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

U. "Design Guidelines" shall mean the guidelines established by the Design Review Committee which shall include design standards for the appearance and development of the Property as well as the review and approval procedures for each committee.

V. "Design Review Committee" shall mean the Design Review Committee of the Association to be created pursuant to Article XI below.

W. "Exempt Property" shall mean the following parts of the Property:

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

(2) All Association Land, for as long as the Association is the owner thereof.

(3) Any and all residential areas designated in a recorded subdivision plat, deed, Tract Declaration, or condominium or other declaration as an area to be used in common by the Owners and Residents of such subdivision or condominium development.

(4) All land used as a Well-Site and designated by a Tract Declaration for Well-Site Use.

Notwithstanding the foregoing, a Parcel with a Land Use Classification of General Public or Quasi-Public Use shall not be Exempt Property unless such status as Exempt Property is indicated in the applicable Tract Declaration or other recorded instrument approved by the Declarant. All Exempt Property shall be exempt from Assessments and Membership in the Association and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of this Declaration, including but not limited to, the use restrictions and architectural controls. The Board may restrict or prohibit the use of the Common Areas (except any rights-of-way or drainage areas owned by the Association) by the Owners of Exempt Property. This subsection W may not be amended without the approval of any and all Owners of Exempt Property affected by the amendment.

X. "Golf Course" and "Golf Course Land" shall mean any golf course real property (as identified in the Master Development Plan) and all improvements thereon including any clubhouse, pro shop and associated recreational, maintenance and other facilities owned and operated in conjunction with a golf course. Golf course land, if any, shall be exempt from Assessments, Membership in the Association and architectural control and review and shall not be subject to these CC&Rs.

Y. "Land Use Classification" shall mean the classification to be established by the Declarant pursuant to Article IV, Section 1, which designates the type of improvements which may be constructed on a Lot, Parcel or Association Land and the purposes for which such improvements and surrounding Land may be used.

Z. "Lot" shall mean any (a) area of real property within the Property designated as a Lot on any subdivision plat recorded or approved by Declarant and limited by a Tract Declaration to either Single Family Residential Use or Cluster Residential Use and (b) any Condominium Unit within the Property which is limited to residential use by a Tract Declaration.

Aa. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article X, Sections 2 and 3.

Bb. "Master Development Plan" shall mean the Palm Valley Development Plan approved by the City of Goodyear, as the same may from time to time be amended, a copy of which shall be on file at all times in the office of the Association.

Cc. "Member" shall mean any person holding a Membership in the Association pursuant to this Declaration.

Dd. "Membership" shall mean a membership in the Association and the rights granted to the Owners and Declarant pursuant to Article VI to participate in the Association.

Ee. "Owner" (when so capitalized) shall mean the record holder of legal, beneficial or equitable title to the fee simple interest of any Lot or Parcel including, without limitation, one who is buying a Lot or Parcel under a recorded contract, but excluding others who hold such title merely as security. Owner shall not include a lessee or tenant of a Lot or Parcel. In the case of Lots or Parcels, the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the Trustor. In the case of Lots or Parcels, the fee simple title to which is vested in a trustee pursuant to a trust agreement the beneficiary of any such trust entitled to possession shall be deemed to be the Owner. An Owner shall include any person who holds record title to a Lot or Parcel in joint ownership with any other person or holds an undivided fee interest in any Lot or Parcel.

Ff. "Palm Valley" or "Palm Valley Phases II and III" shall mean (for purposes of this Declaration) the Property (including such additional real property as may be annexed thereto pursuant to Article XIV herein, including the planned community developed (or to be developed) thereon, but shall not include other real property which is not a part of the Property, whether or not such other real property is at any time depicted on the Master Development Plan and whether or not such other real property is commonly known by, or legally has or uses, a name which includes the words "Palm Valley" or some variation thereof.

Gg. "Parcel" shall mean an area of real property within the Property limited by a Tract Declaration to one of the following Land Use Classifications: Apartment Development Use, Residential Condominium Development Use (but only until the declaration of condominium therefor is recorded), General Public or Quasi-Public

Use, Church Use, and Utility or Well-Site Use. The term Parcel shall also include an area of land as to which a Tract Declaration has been recorded designating the area for Single Family Residential Use or Cluster Residential use but which has not yet been subdivided into Lots and related amenities and rights-of-way but any such area shall cease to be a Parcel upon the recordation of a subdivision plat or other instrument covering the area and creating Lots and related amenities. Notwithstanding the foregoing provisions, a Parcel shall not include a Lot, the Golf Course Land or any Association Land but, in the case of staged developments, shall include areas not yet included in a subdivision plat, declaration of condominium or other recorded instrument creating Lots and related amenities. A Parcel with a Land Use Classification of Apartment Development shall cease to be a Parcel if the Apartment Development is converted to Residential Condominium Units.

Hh. "Parcel Assessment" shall mean an assessment levied against less than all of the Lots and Parcels in the Property pursuant to Article VII, Section 13 of this Declaration.

Ii. "Parcel Assessment Area" shall mean any part of the Property designated in a Tract Declaration or on a recorded plat approved by the Declarant as an area which is to be maintained, repaired, and replaced by the Association, but which is for the sole or primary benefit of the Owners of less than all of the Lots and Parcels in the Property.

Jj. "Party Walls" shall mean a wall constructed on or immediately adjacent to the common boundary of Lots, Parcels, Common Areas or other areas in the Property.

Kk. "Property" shall mean the real property described on Exhibit A attached hereto, together with any additional property hereafter annexed thereto pursuant to Article XIV, but excluding any property which is deleted from the Property pursuant to Article XIV.

Ll. "Rental Apartments" shall mean Dwelling Units within a permanent improvement consisting of three (3) or more commercially integrated Dwelling Units under integrated management upon one or more contiguous Parcels, each of which is designed and utilized, otherwise than as a hotel or on some other transient basis, for rental or leased residential purposes to non-owners on a non-cooperative basis.

Mm. "Reserve Contribution" shall mean the charge levied and assessed pursuant to Article VII, Section 2.

Nn. "Resident" shall mean:

(1) Each buyer under a contract of sale covering any part of the Assessable Property, regardless of whether the contract is recorded, and each owner, tenant or lessee actually residing or conducting a business on any part of the Assessable Property, and

(2) Members of the immediate family of each Owner, lessee, tenant and of each buyer referred to in sub-paragraph (1) actually living in the same household with such Owner, lessee, tenant or buyer.

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

Oo. "Rules" shall mean the rules and regulations for the Property adopted by the Board pursuant to Article V, Section 3, Article XV, Section 4, or any other provision of this Declaration.

Pp. "Single Family" shall mean an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

Qq. "Special Assessment" shall mean any assessment levied and assessed pursuant to Article VII, Section 6.

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

Ss. "Tract Declaration" shall mean a declaration recorded pursuant to Article IV, Section 1 of this Declaration.

Tt. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall standing at normal grade level on neighboring property.

## ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. General Declaration. Declarant hereby declares that all of the Property (except any property which is hereafter excluded or abandoned pursuant to the provisions of this Declaration) is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration as amended or modified from time to time. In addition, land within the Property may be subject to recorded Tract Declarations as applicable and as amended from time to time. Declarant intends to develop the Property by subdivision into various Lots, Parcels and other areas and to sell and convey such Lots and Parcels. As portions of the Property are developed or sold to other builders or developers for development, Declarant shall record one or more Tract Declarations covering such property. Said Tract Declarations will specify the Land Use Classification(s) and permitted uses of property described therein (in accordance with Article IV hereof) and will incorporate this Declaration and establish such additional covenants, conditions and restrictions as may be appropriate for that property. This Declaration and all subsequent Tract Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement and sale of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration and applicable Tract Declarations shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Master Development Plan or any portions thereof regarding any property owned by the Declarant or regarding any other property as to which a Tract Declaration has not been recorded. This Declaration shall not be construed to prevent the Declarant from dedicating or conveying portions of the Property, including streets or roadways, for uses other than as a Lot, Parcel, Golf Course Land, Common Area or Association Land, subject to the provisions of Article IV, Section 1.

Section 2. Association Bound. Upon approval by the Arizona Corporation Commission of Articles of Incorporation of the Association, the Covenants shall be binding upon and shall benefit the Association.

## ARTICLE III

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

Section 1. Easements of Environment. Every Owner shall have a nonexclusive easement for the use and enjoyment in and to the Common Areas which nonexclusive easement shall be appurtenant to and shall pass with the title to every Lot and Parcel. All Residents, other than Owners, shall have a nonexclusive, nontransferable temporary easement to use and enjoy the Common Areas so long as

they remain Residents. The foregoing grant and rights are subject, among other things, to the following limitations:

(a) The right of the Association to charge reasonable admission and other Special Use Fees for the use of any recreational or other facility situated upon the Common Areas.

(b) The right of the Association to suspend the voting rights and right to use Common Area recreational facilities by any Member (i) for any period during which any Assessment against his Lot or Parcel remains delinquent; (ii) for a period not to exceed 60 days for any infraction of this Declaration, a Tract Declaration, the Rules or the Design Guidelines; and (iii) for successive 60 day periods if any such action is not corrected during any preceding 60 day suspension period.

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or agreements with the City of Goodyear effective prior to the date hereof or unless specified hereafter on a recorded subdivision plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners of two-thirds (2/3) of the Memberships in each class of Members agreeing to such dedication or after has been recorded, except that the Board shall have authority without Membership approval to transfer to such public agencies, authorities or utilities, easements and rights-of-way which are intended to benefit the Property and which do not have any substantial adverse effect on the enjoyment of the Common Areas by the Members.

(d) The right of the Association to regulate the use of the Common Areas through the Rules and to prohibit access to those Common Areas, such as landscaped areas, not intended for use by the Owners or Residents.

(e) The right of the Association to change the use of Common Areas and to change the size, shape or location of the Common Areas as provided in Article XII, Sections 4 and 5.

Section 2. Delegation of Use. Any Owner may, in accordance with this Declaration and the Rules and the limitations therein contained, share and delegate his right of enjoyment in the Common Areas and facilities with and to the members of his family, his tenants or lessees, his guests or invitees or to his tenant's family, guests or invitees.

Section 3. Rights of Ingress and Egress. Every Owner shall have an unrestricted right of ingress and egress to his Lot(s) and/or Parcel(s) (which right shall be perpetual and shall be appurtenant to and shall pass with the title to said Lot(s) or Parcel(s)) over the following areas:

(a) for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Areas; and

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

Any Owner may, in accordance with this Declaration and the Rules, share and delegate his right of ingress and egress with and to the members of his family, his guests, and his tenants (including his tenant's family and guests).

Section 4. Easements for Encroachments. Each Lot and Parcel, the Common Areas, and all other areas within the Property shall be subject to an easement of not more than eighteen inches for encroachments of walls, ledges, roofs and other structures created by construction, settling and overhangs as originally designed and constructed by the Declarant or other developer. If any such improvement on the Common Areas encroaches upon any Lot, Parcel or other area, or if any such improvement on any Lot, Parcel or other area encroaches upon any portion of the Common Areas, or if any such improvement on any Lot, Parcel or other area encroaches upon another Lot, Parcel or other area, a valid easement for said encroachments and for the maintenance thereof shall exist. In the event any structure on any Lot, Parcel, Common Area or other area is repaired, altered or reconstructed in accordance with the original plans and specifications, similar encroachments shall be permitted and a valid easement for said encroachments and for the maintenance thereof shall exist.

#### ARTICLE IV

##### LAND USE CLASSIFICATIONS AND USE RESTRICTIONS

Section 1. Land Use Classifications. As portions of the Property are readied for development or sale to developers, the Land Use Classifications, including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration which shall be recorded for that portion of the Property. Any such Tract Declaration may include additional covenants and restrictions and shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. The Land Use Classifications for Lots, Parcels and Association Land established by a Tract Declaration shall not be changed except as specifically permitted by this Declaration. The contemplated Land Use Classifications are as follows:

(a) Single Family Residential Use.

(b) Apartment Development Use, which may be converted to Residential Condominium Development Use upon approval by the Declarant or the Board.

(c) Residential Condominium Development Use, which may be converted to Apartment Development Use upon approval by the Declarant or the Board.

(d) Association Use, which may include common recreational and other areas owned and/or maintained by the Association.

(e) Utility or Well-Site Use including maintenance and storage related thereto. A parcel with a Land Use Classification of Utility Use may be used as a cable headed facility, which facility may include satellite receiving dishes of sixteen feet or more in diameter and a tower of fifty feet or more in height.

(f) General Public or Quasi-Public Uses approved by the Declarant or the Board, including but not limited to, public or private schools, libraries, any parks or playgrounds which are not Association Land and fire stations.

(g) Cluster Residential Use, which shall consist of Lots with dwelling units intended for Single Family occupancy and may include those types of residential housing arrangements known as townhouses, clustered housing, duplexes, zero-lot line housing and similar arrangements, together with any related amenities.

(h) Church Use.

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such Classifications or any subclassifications or combined classifications, shall be determined in the Tract Declaration and shall be within the complete discretion of the Declarant. All Tract Declarations shall be subject to applicable zoning laws. If a Tract Declaration or recorded plat approved by the Declarant designates any Parcel Assessment Areas, the Tract Declaration or plat shall also designate the Lots and Parcels which solely or primarily benefit from the Parcel Assessment Area and which shall be subject to a Parcel Assessment pursuant to Article VII, Section 13 of this Declaration.

Section 2. Covenants Applicable to Lots, Parcels and Other Areas Within All Land Use Classifications. Except as otherwise expressly provided herein, the following Covenants and rights shall apply to all Lots, Parcels and other areas within the Property, and the Owners, Residents and tenants thereof, whether or not a Tract Declaration has been recorded on said Property and regardless of the Land Use Classification of such Property:

(a) Design Review Control. Except as otherwise expressly provided in this Declaration, the Design Guidelines or any applicable Tract Declaration which has been approved by the Declarant, (i) no improvements (whether temporary or permanent), alterations, repairs, excavation, grading, lighting, landscaping or other work (including, without limitation, exterior painting) which in any way alters the exterior appearance of any property within the Property or improvements thereon

from its natural or improved state existing on the date this Declaration is recorded shall be made or done, and (ii) no building, fence, exterior wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Design Review Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade, lighting or landscaping of any area in the Property shall be subject to the prior written approval of the Design Review Committee. No changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. Once construction of an improvement has been commenced on the Property, Owner shall diligently pursue completion of such improvement in accordance with approved plans. The Declarant shall be exempt from the requirements of this subsection (a) and therefore all improvements, alterations, repairs, excavation, grading, lighting, landscaping or other work performed, constructed or installed by the Declarant shall be deemed approved by the Design Review Committee.

(b) Animals. Except as otherwise expressly permitted in an applicable Tract Declaration, no animals, birds, fowl or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot, Parcel or other area in the Property and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All pets must be kept in a fenced yard or on a leash at all times. No animal, bird, fowl, or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance or an annoyance to other Owners. It shall be the responsibility of each Owner to remove immediately any droppings from pets. No structure for the care, housing or confinement of any animal, bird, fowl or livestock shall be maintained so as to be Visible From Neighboring Property, unless otherwise approved by the Design Review Committee. Upon the written request of any Member or Resident, the Design Review Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this subsection, a particular animal or bird is a generally recognized house or yard pet, whether such a pet is a problem or nuisance or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Design Review Committee shall be enforceable in the same manner as other restrictions contained herein.

(c) Temporary Occupancy and Temporary Buildings. No trailer, incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures may be used on any property for construction, repair or sales purposes, with the prior written approval of the Design Review Committee and for the time period approved by the Design Review Committee.

(d) Maintenance of Landscape and Driveways. Unless otherwise provided in a recorded instrument approved by Declarant or the Association, each

Owner shall be responsible for the proper maintenance of all landscaping in the following locations (i) his Lot or Parcel (including set back areas and Common Areas located thereon); (ii) public right-of-way areas between sidewalks (or bikepaths) and the street curb on the front or side of his Lot or Parcel; (iii) public areas between a sidewalk and the Lot or Parcel boundary; (iv) portions of Common Area adjacent to the Owner's Lot or Parcel and which lie on the Lot's or Parcels side of a wall erected on the Common Area; and (v) other public or easement areas adjacent to his Lot or Parcel. However, in the event the maintenance of the above areas is the responsibility of the Association, an Ancillary Association, a utility or a governmental or similar authority, then the Owners shall be responsible for such maintenance only for so long as such other entities are not performing such maintenance. As used herein, maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly material. Each Owner will be required to comply with landscaping Design Guidelines established by the Design Review Committee, including but not limited to specific plant selections and the timing of landscape installation. Each Owner shall also maintain in good condition and repair all paved and concrete areas, including driveways, roadways, sidewalks and parking areas, located on his Lot or Parcel. All areas maintained by an Ancillary Association shall be improved and maintained in a manner which is consistent with the Rules and Design Guidelines.

(e) Nuisances: Construction Activities. No weeds, dead trees or plants, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, Parcel or other area in the Property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot, Parcel or other area in the Property. The Design Review Committee shall have the exclusive right to determine the existence of any nuisance. Without limiting the generality of any of the foregoing provisions and except as otherwise permitted herein, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Normal construction activities and parking in connection with the building of improvements in the Property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Design Review Committee. An Owner shall be responsible for and shall promptly perform all onsite and construction cleanup occasioned by his contractors or subcontractors. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of improvements may be kept only in areas approved by the Design Review Committee, which may also require screening of the storage areas. It is acknowledged that normal construction activities may be noisy and may require the use of exterior speakers.

(f) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot, Parcel or other area which shall induce, breed or harbor diseases or insects.

(g) Repair of Building. No building or structure on any area in the Property shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Subsection (a) above, such building or structure shall be promptly repaired, rebuilt or demolished. In the event an Owner falls to comply with this provision, the Board may give notice to the offending Owner, and may then proceed to repair the building or improvement and charge the Owner therefor as permitted in Section 3 of Article X.

(h) Antennas. The Design Review Committee may regulate, to the extent permitted under federal, state and local law, any antenna, aerial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation proposed to be erected, used or maintained outdoors on any portion of the Project, whether attached to a Residential Unit or other structure, or otherwise. To the extent permitted by applicable law, the prior approval of the Design Review Committee may be required for the installation, use or maintenance of any such device, which approval the Design Review Committee may condition upon the satisfaction of certain conditions including, but not limited to, the size, placement, height, means of installation and screening of such devices.

(i) Mineral Exploration. No area in the Property (other than a Parcel designated as a Well-Site) shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind without the express approval of the Declarant excepting grading and normal construction activity.

(j) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, Parcel, or other area in the Property except in covered containers of a type, size and style which are approved by the Design Review Committee and by city ordinance. Unless otherwise approved by the Design Review Committee, such containers shall be maintained and stored so as to not be Visible From Neighboring Property except to make the same available for collection. All rubbish, trash and garbage shall be removed from the Lots, Parcels and other areas in the Property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained in the Property.

(k) Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be placed or maintained in the Property unless they are not Visible From Neighboring Property.

(l) Machines and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained in the Property except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of an approved building, appurtenant structures, or other improvements; (ii) that which Declaration or the Association may require for the operation and maintenance of the Property; and (iii) that used or displayed in connection with any business permitted under a Tract Declaration.

(m) Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained in the Property except:

(i) Signs required by legal proceedings.

(ii) Not more than two identification signs for individual detached residences, each with a face area of seventy-two square inches or less and not more than one identification sign with a face area of seventy-two square inches or less for each attached residence.

(iii) Such other signs (including but not limited to "for sale" and "for lease" signs, construction job identification signs, builders signs, directional signs and subdivision and apartment identification signs) which are in conformance with the requirements of the City of Goodyear and which have been approved in writing by the Design Review Committee or the Declarant as to size, colors, design, message content and location.

(n) Restriction on Further Subdivision. Property Restrictions and Rezoning. No Lot or Parcel shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot or Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Declarant or the Design Review Committee. This provision shall not apply to transfers of an undivided ownership interest in the whole of any Lot or Parcel. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots or Parcels any property at any time owned by Declarant. Further, this provision shall not apply or in any way limit Declarant from conveying easements or from conveying or dedicating any property to the City or any other public entities. Unless otherwise approved by the Declarant, no buildings or other permanent structures shall be constructed on any area in the Property until a Tract Declaration has been recorded on such property. No subdivision plat, Tract Declaration or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any property in the Property unless the provisions thereof have first been approved in writing by the Declarant or the Design Review Committee and any plat, Tract Declaration or other covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. Once a Parcel has been subdivided into

Lots by a recorded plat, that Parcel may not be resubdivided into a different number of Lots without the approval of the Declarant. No application for rezoning of any Lot or Parcel, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the property has been approved by the Declarant or the Design Review Committee and the proposed use otherwise complies with this Declaration, any applicable Tract Declaration and the general plan of development for the Property.

(o) Utility Easements. There is hereby created a blanket easement upon, across, over and under the Property, for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and other systems as such utilities are installed in connection with the initial development of the Property. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Property. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any area in the Property except as initially programmed and approved by the Declarant or the Design Review Committee, or, if installed after recordation of the Tract Declaration, as approved by the Owner and the Design Review Committee.

(p) Party Wall. Except as hereinafter provided, the rights and duties of Owners of contiguous properties which have Party Walls shall be as follows:

(i) Each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof

(ii) If a Party Wall is damaged or destroyed through the act or failure to act of an Owner or any of his tenants, agents, guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to promptly rebuild and repair the Party Wall without cost to the Owner of the adjoining property.

(iii) In the event any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act or failure to act of an adjoining Owner, his tenants, agents, guests or family, it shall be the obligation of all Owners whose properties adjoin such Party Wall to rebuild and repair such Wall at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their respective properties on the damaged or destroyed Party Wall.

(iv) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall, or with respect to the sharing of the

cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Notwithstanding any such decision, an Owner may seek indemnity from any party causing the damage.

(v) Notwithstanding the foregoing and unless otherwise indicated in an applicable Tract Declaration or other recorded document, in the case of Party Walls (1) between Common Areas and Lots or Parcels, or (2) constructed by the Declarant or the Association on Common Areas within a Lot or Parcel, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, Sections 2 and 3; except that each Owner of a Lot or Parcel shall remain responsible for painting and maintaining, the surface of the portion of the Party Wall facing his Lot or Parcel and/or the portion of the Party Wall which is not a portion of the Common Area, and except that an adjoining Owner shall reimburse the Association for one-half of the costs incurred by the Association for any structural repair of the Party Wall located on that Owner's property, excepting repairs or maintenance made necessary by the misconduct or negligence of the Association, its agents, employees or contractors.

(vi) The provisions of this Subsection (p) shall not apply to any Party Wall which separates the interiors of two Dwelling Units or to any Party Wall which also constitutes an exterior wall of a Dwelling Unit. The rights of the Owners of such Dwelling Units with respect to such Party Walls shall be governed by the applicable Tract Declaration, by any additional covenants, by any plats recorded by the developer of the Dwelling Units and by applicable law.

(vii) Notwithstanding the foregoing, any Party Wall separating a Lot or Parcel from a Golf Course, or separating Common Areas from a Golf Course, shall be maintained, repaired and replaced as necessary by and at the sole expense of the adjoining Lot or Parcel Owner, or in the event the adjoining property is Common Area by and at the sole expense of the Association. The Board shall have the right, in its sole discretion, to determine whether a Party Wall separating a Lot or Parcel from a Golf Course requires maintenance, repair or replacement, and if a Lot or Parcel Owner fails to provide for prompt maintenance, repair or replacement of the applicable portion of such a Party Wall after written notice by certified or registered mail, addressed to such Owner at the last address therefor in the records of the Association, or at the address of such Owner's Lot or Parcel, from the Board of its determination of the need for same, the Board may, on behalf of the Association, cause such maintenance, repairs or replacement to be performed, and all costs thereof, with interest thereon at the rate of eighteen percent (18%) per annum from the date expended until the date fully repaid (with all interest) by such Owner, shall be the personal obligation of such Owner and shall be secured by the Assessment Lien against any and all Lots and Parcels of such Owner. The Owner of a Golf Course shall have no responsibility or liability for the maintenance of such Party Walls; provided, however, that in the event the Association or Lot or Parcel Owner fails or refuses to maintain, repair or replace as necessary, the Owner of a Golf Course may so act and recover the expense of the maintenance, repair or replacement

from the non-acting Association or Lot or Parcel Owner. The foregoing is not intended to exempt a golf course owner for responsibility for damage to a party wall caused by the acts of employees, agents or invitees of a Golf Course.

(viii) A Party Wall separating a Lot or Parcel from Common Area shall not be altered or modified without the prior written approval of the Design Review Committee.

(q) Perimeter Walls: Fencing. Perimeter walls and other fencing shall be constructed in accordance with Design Guidelines to be promulgated by the Design Review Committee. All fences adjoining Golf Course Land, Common Areas, parks or washes shall be constructed and maintained in accordance with specifications established by the Design Review Committee for the purpose of preserving and protecting the views from adjoining properties. Subject to the provisions of Article X, Sections 2 and 3, the perimeter walls, if any, along both sides of Earll Drive and 144<sup>th</sup> Avenue, and along the south side of Indian School Road, the east side of Bullard Road and the north side of the Roosevelt Irrigation District Canal (as well as any other perimeter walls hereafter designated or identified as subject to this Section (q) in a Tract Declaration or a declaration of annexation or other instrument recorded by Declarant or by the Association) shall be maintained by the Association even if said walls are not within the Property by reason that such maintenance and repair will enhance the value and desirability of the Property, except that each Owner shall remain responsible for painting and maintaining the surface of the portion of the perimeter wall facing his Lot or Parcel and except that the Owner shall reimburse the Association for one-half of the costs of any structural repair of that portion of the perimeter wall located on that Owner's property or on or near that Owner's property boundary, unless said structural repairs are necessitated by damage caused by the Association's agents, employees or contractors in which case the Association shall solely be responsible for such repair costs. The Board shall have sole discretion with respect to the maintenance of the exterior surface facing the arterial and the structural repair of the perimeter walls. No Owner, Resident or other person shall remove (or cause to be removed) block or any other material from, or place (or caused to be placed) a gate or other opening in, any perimeter wall or fencing, or any Party Wall, between a Lot or Parcel and adjacent Common Area or other open space or public right of way for any reason or purpose, whether to provide access for pool or other construction, to provide access for recreational vehicles or boats, or otherwise; the Owner of the Lot or Parcel in question shall, in the event of any violation of the immediately preceding sentence, pay the Association a fine of \$2,500.00 together with the full cost of restoring the wall or fencing to its original condition. Gates for pedestrian access only may be installed, but only after being approved in advance, in writing, by the Design Review Committee (which approval the Design Review Committee may give or withhold in its sole discretion).

(r) Utility Services. Except as may be otherwise required by applicable utility providers and comply with City Code, no lines, wires or other devices for the communication or transmission of electric current or power, including telephone,

television and radio signals, shall be erected, placed or maintained anywhere in the Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, except for:

(i) boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices, and

(ii) such above ground electrical apparatus as maybe convenient or reasonably necessary on any well sites or Parcels designated for Utility Use.

Notwithstanding the foregoing, and except as may be otherwise required by applicable utility no above ground electrical apparatus shall be installed without the approval of the Declarant or the Design Review Committee and all lines for the transmission of water and sewage shall also be installed and maintained underground or concealed in, on or under structures approved by the Design Review Committee. The installation and location of all utility lines and equipment must be approved in advance by the Declarant or the Design Review Committee. Temporary above ground power or telephone structures and water lines incident to construction activities, shall be permitted with the prior written approval of the Design Review Committee.

(s) Overhead Encroachments. No tree, shrub or planting of any kind on any Lot, Parcel or other area shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, bike path, equestrian trail, pedestrian way, light poles, traffic signs, fire hydrants, the Golf Course or other area from ground level to a height of eight (8) feet without the prior written approval of the Design Review Committee.

(t) Trucks. Trailers. Campers and Boats. No motor vehicle (classed by rating as exceeding 3/4 ton), mobile home, motor home, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked or stored on any area in the Property so as to be Visible From Neighboring Property, Common Area or street; provided, however, this provision shall not apply to (i) pick-up trucks 3/4 ton capacity or less with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in subsection (v) below and are used on a regular and recurring basis for basic transportation; (ii) trucks, trailers and campers parked in a recreational vehicle storage area, provided, however, that all such parking areas have been approved by the Design Review Committee and/or the Declarant; or (iii) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Design Review Committee. Additionally, all such uses must comply with City of Goodyear criteria and ordinances.

(u) Motor Vehicles. No inoperable, unlicensed or unregistered vehicle shall be parked except inside a closed garage. No vehicle may occupy more than one driveway space nor may it project onto the sidewalk or street when parked. Double parking is prohibited. Vehicles which drop oil or fluids on the driveway or pavement may not be parked anywhere except inside a closed garage. Owners are responsible for cleaning up any excessive leakage in their driveways and on the streets. Owners may not use, or allow their guests, invitees, lessees, tenants or family members to use, amenity or common area parking except when using that amenity or common area for its approved use. The parking or storing of motorcycles, golf carts or other vehicles on walks or patios is prohibited. No motor vehicle of any kind shall be constructed, reconstructed or repaired upon any Lot, Parcel, street or other area in the Property, and no inoperable vehicle may be stored or parked so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that this provision shall not apply to (i) emergency vehicle repairs; (ii) the parking of motor vehicles in garages or other parking areas in the Property designated or approved by the Declarant or the Design Review Committee so long as such vehicles are in good operating condition and appearance, are not under repair and comply with the parking provisions set forth in Section (v) below; and (iii) the storage of motor vehicles in an area designated for such purposes on a Tract Declaration or on a site plan approved by the Design Review Committee. Additionally, all issues related to motor vehicles must comply with City Code and Ordinances. The Board shall have the right and power to adopt and modify the rules and regulations governing the parking of motor vehicles on Lots, Residential Parcels, and Common Area and implementing the provisions of this Section (u). In the event of any conflict or inconsistency between the provisions of this Section (u) and the rules and regulations adopted by the Board, the provisions of this Section (u) shall control.

(v) Parking. Vehicles of all Owners and Residents, and of their employees, guests and invitees, are to be kept in garages, driveways and other parking areas designated or approved by the Declarant or the Design Review Committee; provided, however, this Section shall not be construed to permit the parking or storing in the above described areas of any vehicle whose parking or storage in the Property is otherwise prohibited herein. No motor vehicle of any type shall be parked in any landscape area: (a) in the front yard of any Lot; or (b) in any portion of a side yard of a Lot which is not fully enclosed by a solid wall. In no event will parking of motor vehicles be allowed on both sides of a Dwelling Unit. A recreational vehicle, travel trailer or tent trailer (or other equipment or vehicle determined by the Board to be similar in nature) may be parked on a driveway for a maximum of forty-eight (48) hours, not to exceed twelve (12) times in any calendar year, for purposes of loading and unloading same. The Rules may permit temporary parking on streets or other Property areas for public or private social events or other permitted activities, but no overnight parking on streets will be permitted except as otherwise provided in the Rules or by specific action of the Board. The Board shall have the right to have any mobile home, travel trailer, tent trailer, trailer, camper

shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, truck, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration, any Tract Declaration or other Recorded document, or the Rules towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of said amounts in the same manner provided for in their Declaration for the collection of Assessments.

(w) Roofs. No solar panel, air conditioning unit, evaporative cooler or other apparatus, structure or object shall be placed on the roof of a Dwelling Unit without the prior written consent of the Design Review Committee. Any solar panel approved by the Design Review Committee for placement on a roof must be flush mounted if Visible From Neighboring Property.

(x) Window Treatments & Screen Doors. Within ninety (90) days of occupancy, each Owner of a Dwelling Unit shall install permanent draperies or suitable window treatments on all windows Visible From Neighboring Property. In no event shall windows be covered with paper, aluminum foil, bed sheets or any other materials or temporary coverings not specifically intended for such purpose. No interior or exterior reflective material, window bars or window covers shall be used until such items have been approved by the Design Review Committee. Screen doors Visible From Neighboring Property must also be approved by the Design Review Committee prior to installation, and must be painted with colors which are both (a) consistent with the exterior colors and appearance of the Dwelling Unit in question, and (b) approved in advance by the Design Review Committee.

(y) Drainage. No Owner or Resident shall interfere with or obstruct the drainage pattern over his Lot or Parcel from or to any other Lot or Parcel as that pattern may be established or altered by the Declarant or other developer. Drainage may not be directed to any adjacent property, other than the streets, and pool water drainage and backwash discharge must be completely contained on the particular Lot or Parcel.

(z) Garages. Each Dwelling Unit must have an attached garage with a capacity of not fewer than two (2) standard size automobiles. No garage or portion of a garage shall be converted to residential or other uses, other than storage of vehicles in accordance with this Declaration, unless: (a) any such conversion is approved in advance by the Design Review Committee in accordance with Article XI below; and (b) after such conversion the Dwelling Unit in question still has an attached garage with a capacity of not fewer than two (2) standard size automobiles. No garage door shall be open except when necessary for access to and from the garage. Except as otherwise provided herein, no parking area or garage shall be used to store junk,

boxes, equipment or other unsightly material. Materials, equipment and other items stored or kept within a garage must be arranged, beginning not later than thirty (30) days after an Owner or Occupant takes occupancy, so as to allow for parking of at least two (2) standard size automobiles in such garage. Garage doors must be able to close completely at all times without interference from vehicles or items parked or stored inside.

(aa) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot or Parcel, any member of the Design Review Committee, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, Parcel or other area, and the improvements constructed or being constructed thereon (except for the interior portions of any completed and occupied Dwelling Unit), to determine compliance with this Declaration, the Design Guidelines, the Rules or any approval stipulations issued by the Design Review Committee or to perform repairs and maintenance as provided in Article X, Section 3, and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the Association shall have an easement and right of entry upon any Lot, Parcel or other area at any time or times without notice in order to perform emergency repairs. Failure to respond to Design Review Committee demands to comply may be deemed an emergency.

(bb) Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or by other developers or their duly authorized agents, of structures, improvements or signs necessary or convenient to the development or sale of property within the Property if those structures, improvements or signs have been approved by the Declarant or the Design Review Committee.

(cc) Health, Safety and Welfare. In the event additional uses, activities and facilities are deemed by the Design Review Committee to be a nuisance or to adversely affect the health, safety or welfare of Owners or Residents, the Design Review Committee may make rules restricting or regulating their presence in the Property as part of the Design Guidelines.

(dd) Model Homes. The provisions of this Declaration and of Tract Declarations which prohibit non-residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes and sales offices and parking areas incidental thereto by persons engaged in the construction or marketing of Dwelling Units in the Property provided that the location and the opening and closing hours of such model homes are approved by the Design Review Committee, and provided that the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration and with the ordinances of the City of Goodyear. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of Dwelling Units in the Property

or the Annexable Property and no home shall be used as a model home for the sale of homes not located in the Property or the Annexable Property.

(ee) Incidental Uses. The Declarant or the Design Review Committee may approve, regulate or restrict incidental uses of property within a Land Use Classification. By way of example and not of limitation, the Declarant or the Design Review Committee may permit: private roadways; tennis and/or swimming clubs intended primarily for the benefit of all or certain Owners and Residents; and tennis courts, swimming pools and other recreational amenities.

(ff) Leases. Any agreement for the lease of all or any portion of a Lot or Parcel must be in writing and must be expressly subject to this Declaration, the Rules, the Design Guidelines, the Articles and the Bylaws. Any violation of these documents shall be a default under the lease. An Owner shall notify the Association regarding the existence of all leases. The Owner shall remain liable for compliance with the Declaration, Articles, Bylaws, the Rules and Design Guidelines and shall be responsible for any violations thereof by his tenant or his tenant's family and guests. All notices shall be sent to the Owner.

Section 3. Covenants Applicable to Lots Within Single Family Residential Land Use Classification. The following Covenants shall apply only to Lots and the Owners and Residents thereof lying within a Single Family Residential Land Use Classification:

(a) General. Property classified as Single Family Residential Use under a Tract Declaration may be used only for the construction and occupancy of Single Family detached Dwelling Units and typical residential activities incidental thereto, such as the construction and use of private swimming pools, together with common recreational facilities or other common areas or amenities, if any. All Lots within such Land Use Classification shall be used, improved and devoted exclusively to residential uses and no occupation, business, profession, trade or other non-residential use shall be conducted thereon, except that an Owner or Resident may conduct business activity in a Lot so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (ii) the business activity does not generate any traffic to and from the Dwelling Unit and does not require any street or on-site parking; (iii) the business activity conforms to all applicable zoning requirements; (iv) the business activity does not involve door-to-door solicitation of other Owners and Residents; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents and Owners, as may be determined in the sole discretion of the Board. This restriction shall not apply to any activity conducted by the Declarant or other developer with respect to its development and sale of property within the Property. The terms "business", "occupation", "profession" and "trade", as used in this Section 3 and in the immediately following Section 4, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any

occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Dwelling Unit shall not be considered a trade or business as defined herein. This restriction shall not apply to any activity conducted by the Declarant or other developer with respect to its development and sale of property, within the Property.

(b) Tenants. The entire Dwelling Unit and Lot may be let to a single family tenant or lessee from time to time by the Owner, subject to the provisions of this Declaration, the Rules, any applicable Design Guidelines and the Tract Declaration.

Section 4. Covenants Applicable to Property Within a Residential Condominium Development Land Use Classification and a Cluster Residential Land Use Classification. The following Covenants shall apply only to Dwelling Units and the Owners and Residents thereof lying within a Residential Condominium Development Land Use Classification and a Cluster Residential Land Use Classification:

(a) General. Property classified as Residential Condominium Development Use or as Cluster Residential Use under a Tract Declaration may be used only for the construction and occupancy of Single Family Dwelling Units, together with common recreational facilities and other common areas, if any. In addition, a management office may be maintained on such property for the purpose of leasing and managing Dwelling Units and related improvements on such property. All Lots within such Land Use Classifications shall be used, improved and devoted exclusively to residential uses and no occupation, business, profession, trade or other non-residential use shall be conducted thereon, except that an Owner or Resident may conduct business activities on a Lot so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (ii) the business activity does not generate any traffic to and from the Dwelling Unit and does not require any street or on-site parking; (iii) the business activity conforms to all applicable zoning requirements; (iv) the business activity does not involve door-to-door solicitation of other Owners and Residents; and (v) the business activity is consistent with the residential character of the property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents and Owners, as may be determined in the sole discretion of the Board. This restriction shall not apply to any activity conducted by the Declarant or other developer with respect to its development and sale of property within the Property.

(b) Tenants. The entire Dwelling Unit may be let to a single family tenant from time to time by the Owner, subject to the provisions of this Declaration, the Rules, any applicable Design Guidelines and the Tract Declaration.

Section 5. Golf Courses.

(a) Disclaimers Regarding Golf Courses. All persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant or any other person with regard to the continuing ownership, operation or configuration of, or right to use, any Golf Course within, near or adjacent to the Property, whether or not depicted on the Master Development Plan or any other land use plan, sales brochure or other marketing display or plat. Unless otherwise provided in an applicable Tract Declaration, Golf Courses and any clubhouse and associated recreational and maintenance facilities shall not be Common Area but shall be privately owned. No Association membership rights (including but not limited to the right to elect the members of the Design Review Committee), responsibilities or assessments shall be attributed or charged to any Golf Course. Neither Membership in the Association nor ownership or occupancy of a Lot or Parcel shall confer any ownership in or right to use a Golf Course. Further, the ownership, operation or configuration of, or rights to use, any Golf Course may change at any time and from time to time for reasons including, but not limited to: (a) the purchase or assumption of operation of any Golf Course by an independent person; (b) the conversion of any Golf Course's membership structure to an equity club or similar arrangement whereby the members of a Golf Course or an entity owned or controlled thereby become the owner(s) and/or operator(s) of a Golf Course; (c) the conveyance, pursuant to contract, option or otherwise, of a Golf Course to one or more affiliates, shareholders, employees or independent contractors of Declarant; or (d) the conveyance of any Golf Course to the Association or to one or more Subsidiary Associations. As to any of the foregoing or any other alternative, no consent of the Association, any Subsidiary Association or any Owner shall be required to effectuate such transfer (except for the consent of the Association in the event of a transfer to the Association or of the applicable Subsidiary Association in the event of a transfer to such Subsidiary Association).

(b) Rights of Access and Parking. Each such Golf Course and its members (regardless of whether such members are Owners), employees, agents, contractors, or designers shall at all times have a right and nonexclusive easement of access and use over all roadways located within the Property as reasonably necessary to travel to and from any entrance within the Property to and from a Golf Course and, further, over those portions of the Property (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of such Golf Course and its facilities. Without limiting the generality of the foregoing, members of a Golf Course and permitted members of the public shall have the right to park their vehicles on the roadways within the Property at reasonable times before, during and after golf tournaments and other functions held at such Golf Course.

(c) Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of any Golf Course, no amendment to this Article and no amendment in derogation of this Article to any other provisions of this Declaration may be made, without the written approval thereof by the owner(s) of any Golf Course. The foregoing shall not apply, however, to amendments made by Declarant.

(d) Golf Cart Path Easement. There may be golf cart path easements designated as such on one or more plats of the Property, or portions thereof, or in one or more Tract Declarations, which shall be used for golf cart paths, pedestrian walkways, maintenance and vehicle access, and unhindered access between said paths and any Golf Course. Nothing shall be placed or maintained in any golf cart path easement which shall interfere with utilization thereof as a playable part of a Golf Course.

(e) Golf Balls, Disturbances and Nuisances. Each Owner understands and agrees that his, her or its Lot or Parcel is adjacent to or near one or more Golf Courses and related facilities and that Golf Course related activities, including, without limitation, regular course play and tournaments, may be held within the Property. Each Owner acknowledges that the location of his, her or its Lot or Parcel within the Property may result in nuisances or hazards to persons and property on such Lot or Parcel as a result of normal Golf Course operations or as a result of such other resort-related activities. Each Owner covenants for itself, its successors and assigns that it shall assume all risks associated with such location, including, but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to such resort-related activities and shall indemnify and hold harmless the Association, Declarant and any other developers from any liability, claims, or expenses, including attorneys' fees, arising from such property damage or personal injury. Each Owner further covenants that the Association, Declarant and the Owner of any Golf Course shall have the right, in the nature of an easement, to subject all or any portion of the Property to nuisances incidental to the maintenance, operation, or use of Golf Course(s), and to the carrying out of Golf Course-related activities. Notwithstanding the above, any Owner engaging in any Golf Course-related activities shall respect neighboring properties in scheduling and holding such events so as not unreasonably to disturb Owners and Occupants of the neighboring property.

(f) Golf Course Operation. Each Owner acknowledges that the operation and maintenance of Golf Courses within, near or adjacent to the Property may require that maintenance personnel and other workers required to operate and maintain Golf Courses will commence work relating to the operation and maintenance of Golf courses as early as 5:30 am. on a daily basis. In connection therewith, each Owner and occupant agrees that Declarant, and the owner or owners of all or any portion of Golf Course, and the employees, agents and contractors of Declarant and such owners, shall not be responsible or accountable for, and shall be held harmless from, any claims, causes of action, loss or liability arising in connection with or associated

with any noise or inconvenience normally associated with operation and maintenance activities.

## ARTICLE V

### ORGANIZATION OF ASSOCIATION

Section 1. Formation of Association. The Association shall be a nonprofit Arizona corporation. Upon incorporation, the Association shall be charged with the duties and invested with the powers described by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager and any employees of the Association. The Board's responsibilities shall include, but shall not be limited to, the following:

(a) administration, including, administrative support as required for the Design Review Committee;

(b) preparing and administering an operational budget;

(c) establishing and administering an adequate reserve fund;

(d) scheduling and conducting the annual meeting and other meetings of the Members;

(e) collecting and enforcing the Assessments (including, without limitation, any and all fines imposed pursuant to this Declaration, the Articles, the Bylaws, the Design Review Guidelines, any applicable Tract Declaration or the Rules);

(f) accounting functions and maintaining records;

(g) promulgation and enforcement of the Rules (but not the Design Guidelines);

(h) maintenance responsibilities as described in Article X; and

(i) all the other duties imposed upon the Board pursuant to this Declaration, the Bylaws, the Articles and the Rules.

The Board shall not, however, be responsible for those duties and areas of operation specifically designated under the Declaration, the Articles, the Bylaws or the Rules as the responsibility of the Design Review Committee.

Section 3. Palm Valley Phases II and III Community Association Rules and Design Guidelines. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations, which may be known as Palm Valley Phases II and III Community Association Rules and Regulations. The Rules may restrict and govern the use of the Common Area by any Member or Resident, by the family of such Member, or by any invitee, licensee or tenant of such Member; provided, however, that the Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or the Bylaws. In addition, from time to time and subject to the provisions of this Declaration, the Design Review Committee shall have the right to adopt, amend and repeal Design Guidelines; provided, however, that such rules and guidelines shall be fair and reasonable and shall be consistent with the provisions of this Declaration, the Articles and Bylaws. The authority granted herein to develop rules and guidelines by the Design Review Committee, and the enforcement powers of that committee, are given for the purpose of insuring that the Property is developed and used according to the general descriptions and intent as evidenced by Palm Valley Master Development Plan, as it may from time to time be amended, and this Declaration. The Design Review Committee is specifically responsible for the administration and enforcement of the provisions of Article IV of this Declaration; the administration and enforcement of the guidelines promulgated by that Committee; and all other duties and obligations designated to that Committee by the Declaration, Articles, Bylaws and the Rules. Administrative support as required by the Design Review Committee shall be provided by the Board. Upon adoption, the Rules and the Design Guidelines shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any inconsistency between the rules and regulations adopted by the Board and the guidelines adopted by the Design Review Committee, the guidelines adopted by the Design Review Committee shall control. Copies of the Rules and all Design Guidelines as adopted or amended shall be available for inspection at the office of the Association during reasonable business hours.

Section 4. Personal Liability. No Board member, committee member (including but not limited to the Design Review Committee), officer or employee of the Association shall be personally liable to any Member or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence; provided, however, the limitations set forth in this Section 4 shall not apply to any person who has failed to act in good faith or has engaged in or intentional misconduct. The Association shall indemnify its committee members, directors and officers when acting on behalf of the Association, to the full extent permitted by law.

Section 5. Ancillary Associations. In the event an Ancillary Association is formed by the developer of a Parcel or subdivision in the Property, the articles of incorporation, bylaws and other governing documents for such association (including any declaration of restrictions) shall not be effective unless such documents have been approved by the Association and the Design Review Committee. The governing documents for an Ancillary Association must specify that such association and the rights of its members are subject to the provisions of this Declaration, the provisions of the Articles and Bylaws of the Association and the provisions of the Rules and Design Guidelines. The Board may delegate to an Ancillary Association the responsibility for billing and collecting for some or all of the Assessments.

Section 6. Delinquency or Violation by Board or Committee Member. Notwithstanding any other provision of this Declaration or of the Articles, the Bylaws or the Rules, but subject to applicable law, a member of the Board or of any committee of the Board or of the Design Review Committee shall not be entitled to cast any vote at a meeting of the Board, committee or Design Review Committee, as applicable, or otherwise participate in any such meeting or other action of the Board, committee or Design Review Committee during any period when: (a) such member is delinquent in payment of any Assessments or other amounts owed by such member to the Association; or (b) such member, such member's Lot or Parcel, or any Resident, tenant or occupant of such member's Lot or Parcel, or any other person for whom such member is legally responsible is in breach or violation of this Declaration, the Articles, the Bylaws, the Rules or the Design Guidelines and such breach or violation has not been cured or corrected after reasonable written notice and an opportunity to be heard. This Section shall not apply to any member of the Board, of any committee or of the Design Review Committee who was appointed or designated for appointment by Declarant. The provisions of this Section are in addition to, and not in lieu of or in substitution for any other rights or remedies the Association may have with respect to such delinquency or such breach or violation.

## ARTICLE VI

### MEMBERSHIPS AND VOTING

Section 1. Owners of Lots and Parcels. Every Owner of a Lot or Parcel which is subject to assessment shall be a Member of the Association. Each such Owner shall have the following number of Memberships:

- (a) One Membership for each Lot owned by the Member;
- (b) One Membership for each acre (43,560 square feet) or fraction thereof in each Parcel owned by the Member, except any Parcels which have a Land Use Classification of Residential Condominium Development Use, Single Family Residential Use or Cluster Residential Use (for purposes of this Declaration, the term

"acre" shall mean a net acre of land which does not include any area dedicated as public right-of-way);

(c) One Membership for each residential Condominium Unit permitted by a recorded declaration of condominium;

(d) In the case of the Owner of a Parcel designated for Residential Condominium Development but as to which a declaration of condominium has not been recorded, one Membership for each Dwelling Unit permitted pursuant to the applicable Tract Declaration or if not specified therein, as permitted upon the Parcel under the Master Development Plan then in effect for the Property, the number of such Dwelling Units to be determined on the assumption that the number of Dwelling Units within a density classification on the Master Development Plan will be spread evenly over all land within the density classification. If a site plan for the Parcel is subsequently approved by the Design Review Committee and the City of Goodyear for a number of Dwelling Units different than the number of Dwelling Units assumed pursuant to the Master Development Plan, the number of Memberships will be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual number of Dwelling Units authorized by the site plan; and

(e) In the case of the Owner of a Parcel with a Land Use Classification of Single Family Residential Use or Cluster Residential Use, one Membership for each Dwelling Unit permitted upon the Parcel under the applicable Tract Declaration or if not specified therein then one Membership for each Dwelling Unit permitted on the Parcel under the Master Development Plan then in effect for the Property. If a subdivision plat or other instrument creating Lots is recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of Memberships held by the Owner, as Owner of the Parcel, shall be reduced by a number equal to the number of Lots in the recorded subdivision plat. All Memberships attributable to the Parcel shall cease when the land area ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public.

Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable. There shall be only one Membership for each Lot and for each acre or fraction thereof in a Parcel as described above, which Memberships shall be shared by any joint owners of, or owners of undivided interests in, a Lot or Parcel. Notwithstanding the foregoing provisions of this Section 1, in the event an Owner of two adjoining Lots, or an Owner of a Lot and a portion of an adjoining Lot, combines said areas for use as one residence, upon approval by the Board of Directors, the combined Lots or the combined Lot and adjoining property, as the case may be, shall be treated as one Lot hereunder and shall be entitled to one Membership and charged only one Annual Assessment.

Section 2. Tenants. Tenants of Rental Apartments shall not be Members of the Association. The Owners of a Parcel developed with Rental Apartments shall have one Membership for each acre or fraction thereof. In the event Rental Apartments are converted to residential Condominiums, then at the time the declaration of condominium is recorded, there shall be one Membership in the Association for each residential Condominium Unit owned.

Section 3. Declarant. The Declarant shall be a Member of the Association for so long as the Declarant owns any real property in the Property or in the Annexable Property.

Section 4. Voting. The Association shall have two classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships except the Class B Memberships. An Owner shall be entitled to one vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the Owner's voting rights for violations of this Declaration as provided herein.

Class B. The Class B Memberships shall be all Memberships held by the Declarant. Except as otherwise provided in this Declaration, the Declarant shall be entitled to three (3) votes for each Class B Membership owned. The Class B Member shall be deemed to be the owner of that number of Memberships which equals the maximum number of Dwelling Units permitted on the then current Master Development Plan less the number of Class A Memberships then held by Class A Members. As of the date hereof, the Class B Memberships held by the Declarant are deemed to be 3000 (and as a result as of the date hereof, Declarant has 9000 votes). In the event all or any portion of the Annexable Property is hereafter annexed under this Declaration pursuant to Article XIV hereunder, then the number of Memberships attributable to the Class B Member pursuant to this Section shall be increased by the number of Memberships attributable to such Annexable Property, determined in the same manner as provided in the third sentence of this paragraph. The Class B Memberships shall cease and be converted to Class A Memberships (on the basis of the number of Lots and Parcels owned by the Declarant) on the happening of the first of the following events:

(a) One Hundred and Twenty days after the date when the total votes outstanding in the Class A Memberships equal the total votes outstanding in the Class B Memberships,

(b) Fifteen (15) years from the date of the recording of this Declaration, or

(c) When the Declarant notifies the Association, at Declarant's sole option, in writing, that it relinquishes its Class B Membership.

Section 5. Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit; fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed that he was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made to the Board, in writing, at or prior to the time the vote is cast. In the event more than one vote is cast for a particular Membership, all said votes shall be deemed void.

Section 6. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles, Bylaws, the Rules and Design Guidelines as the same may be amended from time to time.

Section 7. Transfer of Membership. The rights and obligations of the Owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, delegated, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot or Parcel and then only to the transferee thereof. A transfer of ownership of a Lot or Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record or such other legal process as permitted by Arizona law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot or Parcel shall automatically transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner. Upon the transfer of ownership of any Lot or Parcel (excluding the initial sale by the Declarant) the Board, in its discretion, may assess a reasonable transfer fee to cover administrative costs associated with said transfer of ownership.

Section 8. Adjustment in Votes of Class B Member. In the event this Declaration is hereafter amended to exclude real property from Exhibit A or in the event the general plan of development contemplated by the Master Development Plan (or a modification thereof) is not pursued to completion and an affirmative statement of abandonment of any or all parts of the Master Development Plan is recorded in the office of the County Recorder of Maricopa County, Arizona, then, in such event the number of Memberships deemed owned by the Declarant pursuant to Section 4 above shall be reduced by the number of Memberships attributable on the Master Development Plan to the area so abandoned. In the event the Declarant shall make a "constructive abandonment" of the Master Development Plan, then the number of Memberships deemed owned by Declarant pursuant to Section 4 above shall be reduced by the number of Memberships attributable on the Master Development Plan to the area so abandoned. For the purposes of this Section, a "constructive abandonment shall be deemed to have occurred when Declarant shall fail to record a Tract Declaration on any area in the Property for a period of five years and all onsite

and off-site construction and sales activities at the Property shall have ceased for a period of five years and Declarant shall have made no substantial progress towards planning or preparation for continuation of the Master Development Plan for a period of five years. A constructive abandonment shall not occur if the lack of recordation, construction and planning, or preparation shall be due to strikes, acts of God, war, riot, insurrection, or other acts which are beyond the control of Declarant. Only areas not then covered by a Tract Declaration may be affirmatively or constructively abandoned.

## ARTICLE VII

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 1. Creation of Lien and Personal Obligation for Assessments and Maintenance Charges. The Declarant, for each Lot and Parcel, hereby covenants and agrees, and each Owner by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to accept and be subject to mandatory Membership in the Association, and to pay to the Association the following: (1) the Reserve Contribution, (2) Annual Assessments, (3) Special Assessments, (4) Parcel Assessments, (5) Maintenance Charges, and (6) Special Use Fees incurred by the Owner or any Resident occupying the Owner's Lot or Parcel or any portion thereof. The Reserve Contribution, Annual Assessments, Special Assessments, Parcel Assessments, Maintenance Charges, Special Use Fees and other fees, fines and charges which are the obligation of an Owner hereunder, together with interest, costs, collection agency fees, and reasonable attorneys' fees of the Association incurred in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which each such Annual, Special or Parcel Assessment, Maintenance Charge, Reserve Contribution or other charge is made and against the Lot or Parcel of an Owner liable for a Special Use Fee or other charge and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time when such payment becomes due and payable. The Annual, Special and Parcel Assessments against each Lot or Parcel shall be based on the number of Memberships appurtenant to the Lot or Parcel. The personal obligation for delinquent Assessments and other charges shall not pass to the successors in title of the Owner unless expressly assumed by them, but the Lot or Parcel shall remain subject to the lien of the delinquent assessment except as provided in Article VIII, Section 3 below. No Assessments may be charged against any Lot or Parcel which is not covered by a Tract Declaration, but Maintenance Charges may be assessed against any property initially covered by or annexed under this Declaration. No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including, but not limited to, by non-use of Common Areas or abandonment of his Lot or Parcel. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution, abatement or set-off shall be allowed by reason of any action or failure to act of the Board or Association.

Section 2. Reserve Contribution. In order to initially provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, a Reserve Contribution is established in the amount of \$50.00 per each Membership which shall be paid to the Association out of the sales proceeds upon the closing of the sale of each Lot or Parcel to the original Owner of each said Lot or Parcel.

Section 3. Annual Assessments. In order to provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, in each year, commencing with the first Assessment Period, the Board shall prepare and adopt a budget and shall assess against each Lot and Parcel covered by a Tract Declaration (except any Exempt Property) an Annual Assessment. Subject to the provisions of Section 4 hereof, the amount of the Annual Assessment shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article IX.

Section 4. Uniform Rate of Annual Assessment. No Annual, Parcel or Special Assessments or Reserve Contributions shall be levied on any portion of the Property until any such portion thereof is purchased from Declarant. The amount of any Annual, Parcel or Special Assessment or Reserve Contributions against each Lot or Parcel shall be fixed at a uniform rate per Membership, except that the following Owners shall pay only twenty-five percent (25%) of the Annual Assessment otherwise attributable to his or its Membership during the periods hereafter specified:

(a) The Owner of a Lot shall pay only twenty-five percent (25%) of the Annual Assessment attributable to his Membership until the earlier of (i) the completion of a Dwelling Unit on the Lot or (ii) six (6) months after the commencement of construction of a Dwelling Unit on the Lot.

(b) The Owner of a Parcel which, under a Tract Declaration, is to be used as an Apartment Development (and which has not been converted to Condominiums) or a Condominium Development (and for which the declaration of condominium has not been recorded) shall pay only twenty five percent (25%) of the Annual Assessment otherwise attributable to each of his Memberships until an Apartment Development or Condominium Development has either been completed on the Parcel or six (6) months have elapsed since construction of the building was commenced.

(c) The Owner of a Parcel which, under a Tract Declaration, has been classified as Single Family Residential Use or Cluster Residential Use (and which remains a Parcel because it has not yet been subdivided) shall pay only twenty-five percent (25%) of the Annual Assessment otherwise attributable to each of his Memberships.

Notwithstanding the foregoing, in the event that the Parcel designated by a Tract Declaration for Apartment Development or Condominium Development is developed in distinctly separate phases (as determined by the Board), then with respect to each phase, the Owner shall pay only twenty-five percent (25%) of the Annual Assessments attributable his membership until the earlier of (i) the completion of that phase or (ii) six (6) months after commencement of construction of that phase. For purposes of this Section 4, a Dwelling Unit or other building shall be deemed completed when, in the opinion of the Board, the building is ready for occupancy. If the Owner of a Parcel or Lot ceases to qualify for the reduced twenty-five percent (25%) rate during the period to which an Annual Assessment is attributable or the Parcel ceases to be a Parcel because it has been subdivided for Single Family Residential Use, the Assessment attributable to the Membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate; provided, however, the Owner of a Parcel which ceases to be a Parcel as a result of subdivision shall pay the reduced 25% assessment on each Lot as provided in subsection (a) above. As long as the Declarant is a Class B Member and is paying a reduced Annual Assessment, the Declarant shall pay to the Association any deficiency in funds due to the Declarant having paid a reduced Annual Assessment and necessary for the Association to be able to timely pay its expenses. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials or a combination of these.

Section 5. Maximum Annual Assessment. The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment," which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until the end of the first Assessment Period, the Maximum Annual Assessment against each Owner shall be Three Hundred Sixty Dollars (\$360.00) per each Membership, which is equivalent to Thirty Dollars (\$30.00) per month.

(b) From and after the end of the first Assessment Period, and subject to applicable law, the Maximum Annual Assessment shall be automatically increased effective January 1 of each year without a vote of the Membership by an amount which is equal to the greater of:

(i) ten percent (10%) of the Maximum Annual Assessment for the year just ended; or

(ii) the increase during the preceding year and the Consumer Price Index published in the Monthly Labor Review by the United States Department of Labor, Bureau of Labor Statistics and designated "Consumer Price Index--U.S. City Average for All Urban Consumers, 1982-1984 equals 100, All Items."

In the event the Bureau of Labor Statistics shall cease to publish the Consumer Price Index and such information is not available from any other source, public or private, then a new formula for determining the automatic annual increase of the Maximum Annual Assessment pursuant to subparagraph (b) (ii) shall be adopted by the Board.

(c) From and after the end of the first Assessment Period, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subsection (b) above by a vote 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.

(d) Notwithstanding the foregoing limitations described in (a), (b) and (c) above, in the Board's discretion, the Maximum Annual Assessment may be increased as required by increased utility and water costs charged to the Association.

Section 6. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Reserve Contribution and Annual Assessment authorized above, the Association may levy a Special Assessment for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose. Owners qualifying for paying only twenty-five percent (25%) of the Annual Assessment attributable to their Memberships pursuant to Section 4 above shall also be required to pay only twenty-five percent (25%) of the Special Assessment otherwise attributable to each such Membership, unless such Owner is determined by the Board to be directly benefited by the capital improvement financed in whole or in part by such Special Assessment in which event the Owner shall pay the full amount of the Special Assessment attributable to his Membership. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

Section 7. Notice and Quorum for Any Action Authorized Under Sections 5 and 6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5 or 6 of this Article shall be sent to all Members no 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 sixty percent (60%) of all the votes (exclusive of suspended voting rights) 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. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Establishment of Assessment Period. The period for which the Annual Assessment and Parcel Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence (a) upon the recording of the first Tract Declaration covering property which is not Exempt Property; or (b) upon such later date as the Board shall determine and shall terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

Section 9. Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments provided that said procedures are not inconsistent with the provisions hereof. Annual Assessments and Parcel Assessments may be collected on a monthly, quarterly or annual basis as determined by the Board and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days written notice prior to such foreclosure or enforcement at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. Each Member shall be obligated to inform the Association in writing of any change of address. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots or Parcels shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to Section 4 of this Article during the Assessment Period, he shall notify the Association but his failure to notify the Association shall relieve him of the liability for such amounts. The amount of the Annual and Parcel Assessments against Members who become such during an Assessment Period due to the recordation of a Tract Declaration shall be prorated and such new Members shall not be liable for any previously paid Special Assessments.

Section 10. Collection Costs and Interest on Delinquent Assessment. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from ten (10) days after the due date until paid at a rate equal to the greater of (a) eighteen percent (18%) per annum, or (b) the rate set by the Board, and the Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. In addition, the Board may charge a late fee for all delinquent payments. The Board may also record a Notice of Delinquent Assessment against any Lot or Parcel as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the

delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien. The Association shall not be obligated to release any notice recorded pursuant to this section until all Delinquent Assessments, interest and collection costs have been paid in full whether or not all of such amounts are set forth in the Notice of Delinquency.

Section 11. Evidence of Payment of Assessments. Upon receipt of written request, and within a reasonable period of time thereafter, the Association shall issue to the requesting party a written certificate stating (a) that all Annual, Parcel and Special Assessments, Special Use Fees, Reserve Contributions and Maintenance Charges (including interest, costs and attorneys' fees, if any, as provided in Section 10 above) have been paid with respect to any specified Lot or Parcel as of the date of such certificate, or (b) if such have not been paid, the amounts due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charge must be paid at the time the request for any such certificate is made. Any such certificate shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Parcel in question.

Section 12. Property Exempted from the Annual, Parcel and Special Assessments and Reserve Contributions. Exempt Property shall be exempt from the assessment of the Annual, Parcel and Special Assessments and Reserve Contributions, but such property shall not be exempt from fines, Special Use Fees or the Maintenance Charges provided for in Article X, Sections 2 and 3; from attorneys' fees, costs and expenses as described in Article XII, Section 2; or from the Assessment Lien to secure said Special Use Fees or Maintenance Charges, attorneys' fees, fines, costs and expenses; provided, however, that in the event any change of ownership or use of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual, Parcel and Special Assessments (prorated as of the date it became Assessable Property), and the Reserve Contributions, and the Assessment Lien therefor. The Owner of Exempt Property shall not be entitled to any Memberships for such Exempt Property.

Section 13. Parcel Assessments. All estimated costs and expenses, including any allocations to reserves, of the Association pertaining to the maintenance, repair and replacement of Parcel Assessment Areas (the "Parcel Expenses") shall be shown separately in the budget adopted by the Board. The Parcel Expenses pertaining to the maintenance, repair and replacement of a Parcel Assessment Area shall be assessed solely against the Lots and Parcels which are benefited by the Parcel Assessment Area as established by the applicable Tract Declaration or a recorded plat approved by Declarant designating the Parcel Assessment Area. Parcel Assessments shall be used exclusively to pay Parcel Expenses and no Parcel Expense shall be used in computing the Annual Assessments to be levied pursuant to Section 3 of this Article. Parcel Assessments shall be levied against the Lots and Parcels benefited by the Parcel Assessment Area at a uniform

rate per Membership determined in the sole discretion of the Board, with the objective of fulfilling the Association's obligations to maintain the Parcel Assessment Area. Parcel Assessments shall commence upon the date established by the Board for the particular Parcel Assessment. If the Board determines during any Assessment Period that Parcel Assessments with respect to any Parcel Assessment Area are, or will become, inadequate to meet all Parcel Expenses pertaining to that Parcel Assessment Area for any reason, including, without limitation, non-payment of Parcel Assessments by Members, it may increase the Parcel Assessment for that Assessment Period and the revised Parcel Assessment shall commence on the date designated by the Board. Notwithstanding the foregoing, the applicable Tract Declaration may set forth the amount of the Parcel Assessment for specified Lots and Parcels and may restrict increases in that Parcel Assessment. Such restrictions on increases may (but need not) be similar to the restrictions regarding the amount of and increases in the Maximum Annual Assessment as set forth in Section 5 of this Article.

## ARTICLE VIII

### ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND ASSESSMENT LIEN

Section 1. Association as Enforcing Body. As provided in Article XII, Section 2, the Association, the Design Review Committee and the Members shall have the right to enforce the provisions of this Declaration.

Section 2. Association's Remedies to Enforce Payment of Assessments. If any Member fails to pay the Annual, Parcel or Special Assessments, Special Use Fees, Reserve Contributions or Maintenance Charges when due, the Association may enforce the payment thereof by taking either or both of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual, Parcel or Special Assessments, Special Use Fees, Reserve Contributions or Maintenance Charges;

(b) Foreclose the Assessment Lien against the Lot or Parcel in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including any right to recover a deficiency), and the Lot or Parcel may be redeemed after foreclosure sale as provided by law. The Association may bid on the subject property at such a foreclosure sale.

Notwithstanding subordination of an Assessment Lien as described in Section 3 of this Article VIII, the delinquent Member shall remain personally liable for the

Assessments and related costs after his Membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

Section 3. Subordination of Assessment Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has lent funds, with the Lot or Parcel as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot or Parcel. Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or a deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot or Parcel free of the Assessment Lien for all Annual, Parcel and Special Assessments, Special Use Fees, Reserve Contributions and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; provided, however, that such mortgage or deed of trust foreclosure sale purchaser or grantee shall take title subject to all Annual, Parcel and Special Assessments, Special Use Fees, Reserve Contributions, Maintenance Charges and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

## ARTICLE IX

### USE OF FUNDS: BORROWING POWER

Section 1. Purposes for Which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, Reserve Contributions, fees, loan proceeds, surplus funds and all funds and property received by it from any other source, except for the Parcel Assessments) for the common good and benefit of the Property and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any kind and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Property, which may be necessary, desirable or beneficial to the general common interests of the Property, the Members and the Residents. The following are some, but not all, of the areas which the Association may seek to aid, promote and provide for such common benefit social interaction among, Members and Residents, maintenance of landscaping on Common Areas and maintenance of liability insurance, communications, ownership and operation of recreational and other facilities, vehicle storage areas, transportation, health, utilities, public services, safety

and indemnification of officers and directors of the Association. Subject to this Declaration and the Articles and Bylaws, the Association may expend its funds in any manner permitted under the laws of the State of Arizona.

Section 2. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate; provided, however, no loan in an amount in excess of Ten Thousand Dollars (\$10,000.00) shall be contracted until approved by Members holding two-thirds (2/3) of the votes represented, personally or by valid proxy, at a duly convened meeting of Members.

Section 3. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual, Parcel or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of an Annual or Parcel Assessment or Reserve Contribution in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 4. Eminent Domain. The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Association Land, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a total or partial taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute prorata all or a portion thereof to the Owners and all holders of liens and encumbrances, as their interests may appear of record, at a uniform rate per Membership.

Section 5. Insurance.

(a) Authority to Purchase. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas or upon other areas maintained by the Association, or as a result of association activities, in a total amount of not less than One Million Dollars (\$1,000,000). If reasonably available, the Association shall obtain officers and directors liability insurance in an amount deemed prudent by the Board. In addition, the Association may carry any other insurance coverage which the Board in its discretion deems necessary or desirable. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance.

(b) Individual Responsibility. Unless otherwise provided in a recorded Tract Declaration or other declaration, it shall be the responsibility of each Owner and Resident or other person to provide for himself insurance on his property interests within the Property, including, but not limited to, his additions and improvements thereon, furnishings and personal property therein, his personal liability to the extent not covered by the property and public liability insurance obtained by the Association, if any, and such other insurance as such person desires. No person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas. Neither the Association nor any Board member nor the Declarant shall be liable to any person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of insurance is not adequate.

(c) Insurance Claims. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association shall be payable to the Association. Any proceeds resulting from damage to the Common Areas shall be used to repair the damage, unless otherwise approved by a majority of the votes of each class of Members at a meeting called for such purpose. Any excess proceeds may be retained by the Association as reserves or to reduce future assessments or, if distributed to Members, such proceeds shall be distributed to Members and their mortgagees as their interests may appear at a uniform rate per Membership.

Section 6. Reserve Fund. From the Annual Assessments and Reserve Contributions received by the Association, the Board shall establish a reserve fund for the maintenance, repair and replacement of the Common Areas.

## ARTICLE X

### MAINTENANCE

#### Section 1. Common Areas and Public Rights-of-Way.

(a) Areas of Association Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, Parcel Assessment Areas and the improvements thereon; provided, however, the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas which are part of Lots or Parcels unless (i) such

landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of the Property and (ii) the Association assumes in writing the responsibility as set forth in a recorded instrument as hereinafter provided. The Association shall maintain any landscaping and other improvements which are not located on Lots or Parcels but are within the boundaries of the Property or which are within the Annexable Property and which landscaping or other improvements are identified on a recorded instrument as Common Areas intended for the general benefit of the Owners and Residents of the Property, except the Association shall not be required to maintain (but may elect to maintain) areas which (i) the City of Goodyear, an improvement district, or other governmental entity is or could be maintaining, (ii) an Ancillary Association is required under a Tract Declaration to maintain, (iii) are to be maintained by the Owners of a Lot or Parcel pursuant to Article IV, Section 2(d) of this Declaration, or (iv) are areas the maintenance of which would, in the sole and absolute discretion of the Board, benefit the Association. Specific areas to be maintained by the Association may be identified on recorded subdivision plats approved by the Declarant in recorded Tract Declarations approved by the Declarant, and/or in deeds from the Declarant to the Association, or to a transferee of a Lot or Parcel, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to Common Areas or the Association's rights with respect to other areas intended for the general benefit of the Property. Notwithstanding anything to the contrary herein, the Board shall have discretion to enter into an agreement or agreements with the City of Goodyear to permit the Association to upgrade and/or maintain landscaping on property owned by the City, whether or not such property is within the Property or the Annexable Property, if the Board determines such an agreement or agreements benefit(s) the Association.

(b) Standard of Care. The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas and other properties maintained by the Association, but the Board shall be the sole judge as to the appropriate maintenance of all such areas. The Common Areas and the Parcel Assessment Areas, including, but not limited to, playground or other play areas or equipment finished or maintained by the Association shall be used at the risk of the user; and the Declarant and the Association shall not be liable to any person or entity for any claim, damage, or injury occurring thereon or related to the use thereof.

(c) Delegation of Responsibilities. In the event any subdivision plat, Tract Declaration, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots or Parcels will be responsible for maintenance of certain Common Areas, Parcel Assessment Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of the Property for the Association or for an individual Owner or an Ancillary Association to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association

under this Article X and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots and Parcels in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 2. Assessment of Certain Maintenance Costs. In the event that the need for maintenance or repair of Common Areas, structures and other property maintained by the Association is caused through the or negligent act of any Owner, or that Owner's family, guests or tenants the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot or Parcel pursuant to Section 1(c) of this Article X in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 3. Improper Maintenance and Use of Lots and Parcels. In the event any portion of any Lot or Parcel is so maintained as to present a nuisance, or substantially detract from the appearance or quality of the surrounding Lots and Parcels or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner which violates this Declaration or any applicable Tract Declaration, or in the event the Owner of any Lot or Parcel is failing to perform any of its obligations under this Declaration, any Tract Declaration, the Rules or Design Guidelines, the Board may, by resolution, make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien.

Section 4. Easement for Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Lots, Parcels and all other areas in the Property for the purpose of repairing, maintaining and replacing the Common Areas, Common Area improvements, and other areas maintained by the Association and for the purpose of, performing all of the Association's other rights, duties and obligations hereunder.

## ARTICLE XI

### DESIGN REVIEW COMMITTEE

Section 1. Establishment. A Design Review Committee shall be established and shall perform the functions set forth in this Declaration. The Design

Review Committee shall adopt rules, regulations and guidelines for the performance of its duties including, procedures for the preparation, submission and determination of the application for any approvals required by this Declaration or any Tract Declaration. The Design Review Committee shall consist of three regular members and not less than one alternate member. All members and alternates of the Design Review Committee shall be appointed by Declarant until the earlier to occur if (i) a date which is fifteen (15) years following recordation of this Declaration or (ii) such time as the Declarant has relinquished, in writing, its rights to make such appointments, as described below. Thereafter the members of the Design Review Committee shall be elected by a majority vote of all Memberships in the Association. Committee members shall be elected for three (3) year terms (or until replaced); provided, however, that the regular member term shall be staggered with one regular member being elected each year. Design Review Committee elections shall occur at the same time as the annual elections of the Board. In the event of a temporary or permanent vacancy on the Design Review Committee, an alternate member selected by the Design Review Committee shall serve as a replacement until the next election or until the regular member is again available. Members of the Design Review Committee need not be architects, Owners or Residents and need not possess any special qualification of any type. The Declarant in its sole discretion may voluntarily relinquish (either temporarily or permanently) its right to appoint all or some of the members of the Design Review Committee by recording a written instrument executed by the Declarant alone.

Section 2. Design Review Approval: Meetings: Guidelines. Any application for an approval by the Design Review Committee shall be deemed given if at least two members of the Design Review Committee sign either the application form or the applicable design plans or other document submitted for approval. Upon receiving an application for approval, the Design Review Committee shall note on the application the date it was received by that Committee, and shall thereafter note thereon the date the application is approved, denied or returned to the applicant for further action. The Design Review Committee may, but is not required to, meet to review and consider any such application, as well as to conduct any other business of such Committee. The Design Review Committee shall keep a record of the minutes of its meetings. A quorum at any such meeting shall be a majority of the regular members of the Committee, and the concurrence of a majority of the regular members of the Committee shall constitute the decision of that Committee. As provided in Section 3 of Article V, the Design Review Committee shall promulgate Design Guidelines to be used in rendering decisions, including procedures for the preparation, submission and determination of applications for approval. Alternate member(s) may participate at any meeting in lieu of any absent regular member(s), may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration. Members of the Design Review Committee shall not be entitled to compensation for their services, unless otherwise approved by the Board. Notwithstanding any of the foregoing, any action required or permitted to be taken at any Design Review

Committee meeting may be taken without a meeting, without prior notice, and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by a majority of the regular members of that Committee's members.

Section 3. Discretion of Committee. The Design Review Committee shall be under no duty or obligation to pass upon, approve or disapprove any structural stability matter or matters pertaining to the stability of footings or foundations or matters pertaining to geological conditions involved in any foundation or footings and may indicate on any plans or specifications or drawings or other materials or in any certificate that the Design Review Committee has not passed upon, approved or disapproved any such referred to matters. All actions of said Committee authorized under this Declaration, including without limitation the approval or disapproval of plans, specifications, drawings, plot plans, grading plans and height, as well as other matters in which the Design Review Committee is authorized hereunder to act, shall be in the sole and complete discretion of said Committee. Neither the Design Review Committee nor any member thereof shall be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of:

- (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective;
- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- (c) the development of any property within the Property;
- (d) the execution of any estoppel certificate, whether or not the facts therein are correct; or
- (e) the enforcement of this Declaration and the Design Guidelines;

provided, however, that with respect to the liability of a Design Review Committee member, such member has acted in good faith on the basis of such information as may be possessed by him. The approval by the Design Review Committee of any plans, specifications or other matter shall not be deemed to constitute a waiver of any right to withhold approval of any similar plans, specifications or other matter subsequently submitted for approval.

Section 4. Response Within Forty-five (45) Days. Any approval required under this Declaration by the Design Review Committee shall not be withheld unreasonably. Failure by such Committee to approve or disapprove a request within forty-five (45) days after such request is filed with the Committee (or within any shorter period of time set forth in the Design Guidelines) shall waive the approval requirement. Notice of disapproval shall be written and it shall set forth the reason or reasons for the disapproval. Notwithstanding Section 10 of Article XV, no request

shall be deemed filed with the Design Review Committee until it is actually received by that Committee, and all submissions to that Committee shall be made by certified mail or personal delivery.

Section 5. Committee's Certificate. Any approval of any plans and specifications or other matter by the Design Review Committee given or made pursuant to the provisions of this Declaration which is evidenced by a certificate signed by at least a majority of the members of that Committee shall be irrevocable and not subject to change by that Committee. Any such certificate may be conclusively relied upon by all parties including but not limited to any Owner, tenant or purchaser of any Lot or Residence, or of any interest therein; by any lender taking any Lot as security; and by any title insurance company. Any such certificate may be recorded by the Design Review Committee in the office of the Maricopa County Recorder.

Section 6. Fee. The Board may establish a reasonable processing fee to defer the costs of the Association and the Design Review Committee in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

## ARTICLE XII

### RIGHTS AND POWERS OF ASSOCIATION

Section 1. Association's Rights and Powers As Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws, which shall include all rights and powers as may be reasonably necessary in order to effect the purposes of the Association as set forth herein. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection by Members, prospective purchasers, mortgagees and other persons or entities with an interest in the Property at the office of the Association during reasonable business hours.

Section 2. Enforcement of Provisions of This and Other Instruments. The Association, in the first instance, and the Design Review Committee, each as the agent and representative of the Owners, shall have the right (without obligation) to enforce, by any proceeding at law or in equity, the Covenants set forth in this Declaration, the Articles, Bylaws, the Rules and Design Guidelines and any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. The Association is authorized to impose sanctions for violations without court approval. Such sanctions may include reasonable monetary fines and suspension of the right to vote or use any

recreational facilities on the Common Area as provided in Article III, Section 1(b). In the event suit is brought or arbitration is instituted or an attorney is retained to enforce the terms of this Declaration or other document as described in this Section 2, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith and if the Association is the prevailing party, the above-described fines and also the Association's administrative costs and fees. Attorneys' fees, costs and expenses adjudged against an Owner shall be the personal liability of the breaching Owner and shall also be secured by the Assessment Lien against said Owner's Lot or Parcel. If the Association and the Design Review Committee shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request by a Member to do so, then any Member may enforce the provisions of the Declaration at his own expense by any appropriate action, whether in law or in equity.

Section 3. Contracts with Others for Performance of Association's Duties.

Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including the Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested. Notwithstanding anything to the contrary herein, during the period when the Declarant has a Class B vote, any professional management contract entered into by the Association must be terminable with or without cause, upon no more than ninety (90) days written notice and without payment of any penalty.

Section 4. Procedure for Change of Use of Association Land.

Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of each class of Members at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the land.

Alternatively, the Board upon satisfaction of subsection (a) above may, in lieu of calling a meeting, notify in writing all Owners of the proposed change of use and or their right to object thereto and, if no more than ten percent (10%) of the Class A Memberships eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

Section 5. Procedure for Alteration of Common Area: Contracts Concerning the Common Area. The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public authority or utility as provided in Article III, Section 1(c). In addition, the Association shall have the right to change the size, shape or location of the Common Areas, to exchange the Common Areas for other property or interests which become Common Areas, and to abandon or otherwise transfer Common Areas (to a non-public authority) upon (i) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Area is no longer in the best interests of the Owners and Residents and that the change desired shall be for their benefit and shall not substantially adversely affect them and (ii) the approval of such resolution by a majority of the votes of each class of Members, voting in person or by proxy, at a meeting called for such purpose. Alternatively, the Board upon satisfaction of subsection (i) above may, in lieu of calling a meeting pursuant to subsection (ii) above, notify in writing all Owners of the proposed transaction and of their right to object thereto and, if no more than ten percent (10%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

Section 6. Purchase of Effluent. The Association may be required to purchase and use on Common Areas sewage effluent generated from the Property which is adequately treated for use on lawns and landscaping.

### ARTICLE XIII

#### TERM: AMENDMENTS: TERMINATION

Section 1. Term: Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each. Subject to FHA and/or VA approval as provided in Section 11 of Article XV below, this Declaration may be terminated at any time if seventy-five percent (75%) of the authorized votes of each class of Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their

signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. Any Association funds remaining following such termination and dissolution shall be distributed to the Members and their mortgagees as their interests may appear at a uniform rate per Membership.

Section 2. Amendment of Declaration and Tract Declaration. This Declaration may be amended by recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section 1 of this Article. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided hereafter, shall certify that at an election duly called and held for this purpose pursuant to the provisions of the Articles and Bylaws, the Members casting seventy-five percent (75%) of the votes cast at the election voted affirmatively for the adoption of the amendment; provided, however, that for purposes of an election to amend this Declaration, the Declarant shall have only one vote per Class B Membership. The Declaration may be amended with respect to all or any portion of the Lots and Parcels covered hereby. A Tract Declaration may be amended in the same manner as this Declaration, with the approval of sixty-seven percent (67%) of the votes attributable to the Owners of all Lots and Parcels subject to the Tract Declaration. So long as there is a Class B Membership, any amendment or termination of this Declaration or any Tract Declaration shall require the approval of the FHA or VA, as applicable, if such agency has guaranteed or insured any loan on a Lot or Parcel subject to the Tract Declaration. Within fifteen (15) years from the date of recording this Declaration and so long as the Declarant is the owner of any Lot or Parcel in the Property, this Declaration and any Tract Declaration may be amended or terminated only with the written approval of the Declarant. Thereafter, except as otherwise provided herein, any amendment to a Tract Declaration must be approved by the Board. This Declaration may not be amended to reduce or alter the rights of the Declarant without the approval of the Declarant. The Declarant alone may amend this Declaration at any time (a) to annex additional property hereunder as provided in Article XIV, (b) to exclude from Exhibit A any property not then covered by a recorded Tract Declaration, (c) to relinquish its right to appoint the members of the Design Review Committee as provided in Section 1 of Article XI, or (d) to amend as permitted in Section 3 hereafter. In addition, at any time, the Declarant alone shall have the right to amend the Declaration or any Tract Declaration to comply with applicable law or to correct any error or inconsistency in the Declaration or the Tract Declaration if the amendment does not adversely affect the rights of any Owner.

Section 3. Amendment of Articles and Bylaws. The Articles and Bylaws may only be amended by following the procedure set forth in this Section. The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of Members, which may be either an annual or a special meeting, and if approved by Members holding (either personally or by valid proxy) the Applicable Percentage (defined below) of the votes eligible to be cast on the amendment (including votes otherwise eligible to be cast but not represented

personally or by valid proxy at such meeting), such amendment shall have been adopted: provided, however, that a copy of any such proposed amendment or a summary of the changes to be effected shall have been given to each Member in good standing at least ten (10) days prior to said meeting of the Members. For purposes, hereof, the "Applicable Percentage" shall mean, in the case of an amendment to the Articles, sixty-seven percent (67%), and in the case of an amendment to the Bylaws, fifty-one percent (51%). Any number of amendments may be submitted and voted upon at any one meeting. Notwithstanding the foregoing, so long as the Class B membership is in existence, the following actions shall require the prior approval of the Federal Housing Administration and the Veterans Administration; (a) amendment of the Articles of the Bylaws; (b) dissolution of the Association; and (c) merger or consolidation of the Association with any other entity.

Section 4. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration, the Articles and/or the Bylaws, to such extent and with such language as may be requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or the Federal National Mortgage Corporation ("FNMA") and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of the Amendment duly signed by or on behalf of the authorized agents of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment and such Amendment, when recorded, shall be binding upon all of the Property and all persons having an interest therein.

#### ARTICLE XIV

##### ANNEXATION AND DEANNEXATION

Section 1. Reservation of Certain Annexation Rights. As of the date this Declaration is Recorded, Declarant contemplates that one or more portions (and perhaps all) of the Annexable Property may from time to time be annexed to the Property (and thereby subjected to the provisions of this Declaration), and, therefore, while Declarant shall have no obligation or duty to so annex all or any portion of the Annexable Property, Declarant hereby reserves the right privilege and option from time to time hereafter to add and annex to the Property (and thereby to subject to the provisions of this Declaration) any part(s) or all of the Annexable Property, without the vote of the Members and without notice to or approval of any holder, insurer or

guarantor of any Mortgage or of any other Person, provided, however, that the right privilege and option reserved in this sentence shall expire and terminate at 11:59 p.m. local time on December 31 of the calendar year in which falls the fifteenth (15th) anniversary of the date this Declaration is Recorded. Notwithstanding the foregoing sentence, no portion of the Annexable Property may be annexed to the Property unless, at the time of each and any such annexation either: (a) the portion of the Annexable Property to be annexed is owned by Declarant; or (b) the owner of the portion to be annexed (if other than Declarant) consents in a written, Recorded instrument to such annexation.

Section 2. Limitations on Other Annexations. Additional property not included within the Annexable Property may be annexed to the Property only: (a) by the affirmative vote of two-thirds (2/3) of the votes of each class of Members represented in person or by valid proxy at a meeting of Members duly called for that purpose; and (b) with the express written consent of each owner of all or any part of the property proposed to be annexed. Further, so long as the Class B membership is in existence no additional property may be annexed to the Property without the prior approval of the Federal Housing Administration or the Veterans Administration.

Section 3. Recordation of Annexation Instrument. Upon approval pursuant to this Article XIV of any annexation of property to the Property, Declarant, in the case of annexation of all or any part of the Annexable Property, or the President and Secretary of the Association, in the case of any other annexation, shall execute, acknowledge and Record an instrument evidencing such annexation (which instrument shall also be duly executed and acknowledged by each owner of all or any part of the property being annexed), and such annexation shall be deemed effective only upon such Recordation. Such instrument (or a separate instrument Recorded by the Association against any property annexed to the Property pursuant to this Article XIV and executed by the owner of such annexed property) may subject the annexed property to such additional covenants, conditions, restrictions and easements as the owner thereof and Declarant or the Association, as applicable, may deem appropriate or desirable, provided, however, that any and all such additional covenants, conditions, restrictions and easements shall be subordinate and subject to the provisions of this Declaration.

Section 4. No Obligation to Annex. Nothing herein shall constitute a representation, warranty or covenant that Declarant, any successor or assign of Declarant, or any other Person will subject any additional property (whether or not a part of the Annexable Property) to the provisions of this Declaration, nor shall Declarant, any successor or assign of Declarant, or any other Person be obligated so to do, and Declarant may, by Recorded instrument executed by Declarant, waive its rights so to do, in whole or in part, at any time or from time to time.

Section 5. De-Annexation. Notwithstanding any other provision of this Declaration, Declarant shall have the right from time to time, at its sole option and without the consent of any other Person (except as provided in this Section XIV), to

delete from the Property and remove from the effect of this Declaration one or more portions of the Property, provided, however, that: (a) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal such portion is owned by Declarant or Declarant executes and Records an instrument approving such deletion and removal; (b) a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal no Common Area recreational facilities have been constructed thereon; and (c) a portion of the Property may not be so deleted and removed if such deletion and removal would deprive an Owner or Occupant of another part of the Property of access or other easements or right-of-way necessary to the continued use of each such Owner's or Occupant's respective part of the Property (unless Declarant at the same time provides for reasonably adequate replacement easements or right-of-way). Declarant may exercise its rights under this Section 5 by executing and Recording an instrument which identifies the portion of the Property to be so deleted and removed and which is executed by each owner of such portion (if other than Declarant), and the deletion and removal of such portion of the Property shall be effective upon the later of: (i) the date such instrument is Recorded; or (ii) the effective date specified in such instrument, if any, whereupon the portion of the Property so deleted and removed shall thereafter for all purposes be deemed not a part of the Property and not subject to this Declaration, and the owner(s) thereof (or of interests therein) shall not be Owners or Members or have any other rights or obligations hereunder except as members of the general public. No such deletion and removal of a portion of the Property shall act to release such portion from the lien for Assessments or other charges hereunder which have accrued prior to the effective date of such deletion and removal, but all such Assessments or other charges shall be appropriately prorated to the effective date of such deletion and removal and no Assessments or other charges shall thereafter accrue hereunder, with respect to the portion of the Property so deleted and removed. Each portion of the Property deleted and removed pursuant to this Section 5 shall thereafter be deemed to be a part of the Annexable Property unless otherwise expressly provided to the contrary in the instrument Recorded by Declarant to effect such deletion and removal.

## ARTICLE XV

### MISCELLANEOUS

Section 1. Interpretation of the Covenants. Except for judicial construction, the Association, by its Board and the Design Review Committee, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants hereof.

Section 2. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 3. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this declaration.

Section 4. Rules and Regulations. In addition to the right to adopt, amend, revoke and replace rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association (through its Board and the Design Review Committee) shall have the right to adopt, amend, revoke and replace rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration or any applicable Design Guidelines.

Section 5. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Maricopa County, Arizona, Declarant makes no warranties or representations whatsoever that the plans presently envisioned or the complete development of the Property can or will be carried out, or that any land now owned or hereafter acquired by the Declarant is or will be subjected to this Declaration or any other declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect. Not as a limitation of the generality of the foregoing, the Declarant expressly reserves the right at any time and from time to time to amend the Master Development Plan.

Section 6. No Warranty of Enforceability. While Declarant has no reason to believe that any of the Covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such Covenants. Any Owner acquiring a Lot or Parcel in the Property in reliance on one or more of the Covenants shall assume all risks of the validity and enforceability thereof and by acquiring any Lot or Parcel agrees that Declarant shall have no liability therefor.

Section 7. References to the Covenants in Deeds. Deeds or any instruments affecting any part of the Property may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

Section 8. Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 9. Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereon.

Section 10. Notices. If notice of any action or proposed action by the Board or of any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City of Goodyear or the Property. This Section shall not be construed to require that any notice be given if not otherwise required, and shall not prohibit satisfaction of any notice requirement in any other manner. If notice is made by mail, it shall be deemed to have been received twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Association for the purpose of service of such notice, or to the address of the Lot or Parcel owned by such person if no address has been given. Notice to the Board or to the Design Review Committee shall be delivered or sent certified mail to the office of the Association.

Section 11. FHA/VA Approval. If this Declaration has been initially approved by FHA or VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B Membership, the dedication of Common Areas (except where such dedication is required as of the date hereof to the City of Goodyear), the annexation of Annexable Property, and the termination or amendment of this Declaration will require the prior approval of FHA or VA, as applicable, unless the need for such approval has been waived by FHA or VA.

Section 12. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Members holding seventy-five (75%) percent of the outstanding votes. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided in Article VII hereof, (c) proceedings involving challenges to taxation, or (d) counter-claims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes necessary to institute proceedings as provided above.

Section 13. Use of the Words "Palm Valley" or "Palm Valley Community Association". No person shall use the words "Palm Valley" or "Palm Valley Community Association" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the terms "Palm Valley" or "Palm Valley Phases II and III Community Association" in printed or promotional material where such term is used solely to specify that the particular property is located within the Property.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first above written.

SUNCOR DEVELOPMENT COMPANY,  
an Arizona corporation

By: [Signature]  
Its: President & CEO

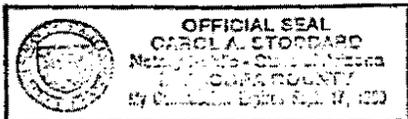
STATE OF ARIZONA )  
 )ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 14 day of October, 19 98, by John C. Ogden, the President & CEO of SUNCOR DEVELOPMENT COMPANY, an Arizona corporation.

[Signature]  
Notary Public

My commission expires:

9-17-99



**EXHIBIT A****PALM VALLEY PHASES II AND III PROPERTY**

- I. PALM VALLEY PHASE IIIA, UNIT 1, PER FINAL PLAT THEREOF RECORDED ON APRIL 30, 1998 IN THE OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA AT BOOK 468 OF MAPS, PAGE 19, RECORDING NUMBER 98-0351494.
  
- II. PALM VALLEY PHASE IIIA, UNIT 2, PER FINAL PLAT THEREOF RECORDED ON APRIL 30, 1998 IN THE OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA AT BOOK 468 OF MAPS, PAGE 21, RECORDING NUMBER 98-0351640.

## PALM VALLEY PHASES II AND III COMMUNITY ASSOCIATION

Review by Sue Graham on 4/6/99

CC&RS recorded 10/20-98 as 98-0936248; includes Phase IIIA, Unit 1, Book 468, page 19 and Phase IIIA, Unit 2, Book 468, page 19

Always check Definitions - lots of Information.

### Article I - Definitions

B. "Annexable Property" - any property within 3 miles of any point on exterior of Property in Exhibit A.

N. "Common Area" includes almost anything.

W. "Exempt Property" means exempt from assessments but can still be subject to use restrictions and design review control. Also see Article VII.12

### Article IV - Use Restrictions

Section 1(e) Utility or Well-Site may include satellite receiving dishes of 16' or more in diameter or tower of 50' or more in height.

#### Section 2 (a) Design Review

(b) **Animals** - "Any decision rendered by the Design Review Committee shall be enforceable in the same manner as other restrictions contained herein."

(v) **Common Walls** adjacent to common areas will be maintained by Association; Owner pays half of any structural repairs. Means: Association paints the exterior of party walls.

(vii) **Golf Course Walls** - Owner is responsible to repair and maintain; Board determines when and notifies Owner; association can have the work done and bill the cost plus 18% to the Owner.

(q) **Perimeter Walls** - Association maintains; Owner pays half of structural repairs; Owner can't remove walls or add gate or there is a fine of \$2,500 plus restore. Gate ok if approved by DRC.

(u) Oil Leaks

(v) **RV** in driveway for 48 hours up to 12 times a year. No overnight street parking except as allowed in Rules or specific action of the Board.

Association has right to tow vehicles.

- (x) 90 days to get window treatment. Screen doors must be approved.
- (y) Pool backwash water must be contained on lot.
- (z) No open garage doors. Owner must be able to park 2 vehicles in garage at all times.
- (ff) Leases - Owner shall notify Association regarding existence of lease. All notices must go to Owner.

Section 3 - Business Definition

Article V - Organization of Association

**Section 3 - Important: Says DRC RESPONSIBLE FOR GUIDELINES AND FOR ENFORCEMENT OF USE RESTRICTIONS IN ARTICLE IV.**

Says **Board of Directors** (Section 2) responsible for writing and administering Rules, preparing budget, collecting assessments.

Section 2 (last paragraph) "The Board shall not be responsible for those duties and areas of operation specifically designated under the Declaration, the Articles, Bylaws or Rules as the responsibility of the Design Review Committee.

Article VI - Memberships

One membership per lot

One membership per acre for each Parcel except Single Family, Residential Condominium, Cluster Residential

One membership for each Condominium Unit

(e) If 2 lots combined and approved by Board, One Membership and One Assessment

Section 2 - Rental Apartments shall have one Membership per acre or fraction thereof.

Section 3. Declarant is a Member of the Association so long as owns any real property.

Section 4 - Class A, Class B - As of recording date, Declarant has 3000 memberships (9000) votes.

B to A Membership as usual - 75%, 15 years or written notice.

Section 7. Assn may charge transfer fee.

Article VII - Assessments

Section 1. No assessment may be charged on an area not covered by Tract Declaration but can do Maintenance Charge.

Section 2 - Reserve Contribution is \$50 paid at time of closing

Section 4 - No assessment shall be levied on any portion until such portion is purchased from Declarant. Uniform rate of annual assessment (does not apply to Special Assessment) except 25%:

- Owner of a Lot until earlier of completion of dwelling unit or six months after the commencement of construction. (There is no time requirement on building on a lot.)
- Owner of an Apartment Development until an apartment has been completed or six months has elapsed since construction was commenced.
- Owner of a residential parcel which has not been subdivided.
- Owner of a parcel which ceases to be a Parcel shall pay 25% until the earlier of completion of a dwelling unit or six months after the commencement of construction.
- As long as Declarant is Class B Member and is paying a reduced Annual Assessment, the Declarant shall pay any deficiency in funds.

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What it Means:

All Owners pay once land is purchased from Declarant but subject to Section 8 which says Board may determine assessment period.

Lot Owner or Builder pays 25% assessment until earlier of completion of a dwelling unit or six months after the commencement of construction.

An Apartment Owner pays 25% of assessment (one per net acre) until apartment complete.

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Palm Valley II/III - 4

Section 5. Maximum Annual Assessment - until end of First Assessment Period is \$360 (\$30)

After end of First Assessment Period, may be increased greater of 10% or CPI plus utility and water charges.

Section 8. First Assessment Period starts upon recording of first Tract Declaration or as Board may determine.

Section 9. Assessment may be billed monthly, quarterly or annually as determined by the Board.

Word not missing -fourth line from bottom of Section 9.

Section 10. Late Fee may be charged.

Section 12. Exempt Property is exempt from assessments and reserve contributions but shall not be exempt from fines, Special Use Fees or Maintenance Charges or from attorneys' fees, cost, expenses, assessment lien.

Section 13. Parcel Assessment may be subject to limit restrictions in the Tract Declaration.

#### Article IX - Use of Funds

Section 1 says purpose may be, in addition to usual, "social interaction and health".

Section 5 - Insurance. Says "the deductible paid by party who would be liable for loss or repair in the absence of insurance."

Section 6. Board shall establish a **Reserve Fund**.

#### Article X - Maintenance

Section 3. Says **Board** decides on improper maintenance. 14 days notice to owner and then Assn. Correct.

Article XI - Design Review Committee

3 members plus one alternate. Appointed by Declarant for 15 years or until relinquish, then elected by membership for 3 year term.

Approval requires signature of two members.

Section 2 - DRC shall keep minutes. Decision of DRC shall be **FINAL** - (no appeal to Bd)

Section 4 - DRC has 45 days to respond. If a disapproval, reason shall be stated. All submission or to be by certified mail or personal delivery.

Article XII - Rights and Powers

Section 3. Declarant may provide services to assn. Management contract shall have no more than 90 days notice to terminate.

Article XIII - Amendment

CC&RS - 75% of Members

Section 3.

Articles - 67% of Members to Amend

Bylaws - 51%

Article XV - Miscellaneous

Section 1 - Courts can enforce

Section 4 - Rules and Regs

Section 10 - Notice to Board or DRC shall be sent certified mail or delivered to office.

Section 12 - No Litigation without vote of 75% of outstanding votes and this section can't be amended without approval of Declarant.

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**BYLAWS**

3.3 Annual - March 2000 or as late as June 15 as determined by the Board

3.5 Notice: 10-50 days

3.6 Quorum - 10%

3.7 No cumulative voting

4 Three directors appointed by Declarant