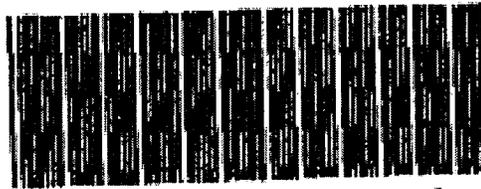


SECURITY TITLE AGENCY

When Recorded, Return to:
SunCor Development Company
Attention: Jeff Romaine
3838 North Central Ave., Suite 1600
Phoenix, AZ 85012
E-9774



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

99-0503740 05/26/99 03:53

L.S. 1998 115 OF 127

TRACT DECLARATION

PALM VALLEY PHASE IIIA PARCEL 5

THIS TRACT DECLARATION is made this 13th day of MAY, 1999 by SUNCOR DEVELOPMENT COMPANY, an Arizona corporation (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant has executed and caused to be recorded that certain DECLARATION OF COVENANTS; CONDITIONS AND RESTRICTIONS FOR PALM VALLEY PHASES II AND III dated October 16, 1998, which Declaration was recorded on October 20, 1998, as Instrument 98-0936248 in the records of the Maricopa County, Arizona Recorder (the "Declaration"), which covers property known as Palm Valley Phases II and III; and

WHEREAS, the following real property (collectively, the "Property" or "Lots" and individually, "Lot") is a part of Palm Valley Phases II and III and is subject to the Declaration:

SEE ATTACHED EXHIBIT A

WHEREAS, Article IV of the Declaration contemplates that Tract Declarations for parcels of land within Palm Valley Phases II and III would be executed and recorded periodically as the development of Palm Valley Phases II and III proceeded and Land Use Classifications for such parcels were determined; and

WHEREAS, Declarant, as the fee title holder of all of the Property, now wishes to record a Tract Declaration for the Property.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **Definitions.** Unless otherwise provided herein, all capitalized terms used in this Tract Declaration shall have the same meaning as set forth for such terms in the Declaration.

2. **Land Use Classification.** The Land Use Classification of the Property shall be Single Family Residential Use.

3. **Additional Covenants, Conditions and Restrictions.** In addition to the covenants set forth in the Declaration (including the agreement, by acceptance of a deed for all or any part of the Property, to be bound by the Articles, Bylaws, Architectural Review Committee and Design Guidelines for Palm Valley Phases II and III), during the initial platting and development of residential Lots and the construction of Dwelling Units thereon by a builder ("Builder") who may or may not be an Owner, the Property shall be subject to the following additional covenants, conditions and restrictions:

(a) All improvements constructed or caused to be constructed on the Property must be integrated with Declarant's existing or proposed improvements and existing or proposed improvements on adjacent developments. If any existing improvements are disturbed in the course of construction or installation of such improvements, Builder shall immediately complete any reconstruction necessary to return the existing improvements to their prior condition, or (if approved as required herein) such adjoining improvements may be refinished or modified at Builder's expense so as to blend with Builder's improvements and existing improvements. Any modification of existing improvements to accommodate new improvements must be approved in advance by the owner of such improvements as well as the Residential Architectural Committee.

(b) Builder shall construct or cause to be constructed, at its sole expense, all walls in conformance with the timing and specifications set forth in the Design Guidelines (including stucco and paint), with each portion thereof to be completed prior to occupancy of the respective Dwelling Unit on the subject Lot.

(c) Builder shall distribute or cause to be distributed to each assignee purchasing a Lot from Builder, upon request from Declarant, materials supplied by Declarant, including, but not limited to, information describing the Palm Valley Phases II and III master development plans, the Declaration, Association documentation describing Assessments and the Guidelines for Community Living, and any information regarding water efficiency or water conservation measures to be employed at Palm Valley Phases II and III in connection with any water conservation measures required by the City. On or before consummation of any sale or transfer to an assignee, Builder shall obtain written confirmation from each assignee (in a form which Declarant will hereafter provide to Builder) acknowledging receipt of such materials.

4. Landscaping. The Lots upon which structures have been constructed shall be fully landscaped by the Builder at its expense in the front yard (defined as that area between the front of the house and the sidewalk from lot line to lot line) upon the earlier of (i) thirty days thirty (30) days following occupancy of the Dwelling Unit on the Lot; or (ii) for any "spec" housing, 90 days after a certificate of occupancy is issued for the residence on the Lot. Said Landscaping is to be in harmony with surrounding landscaped areas, using drought-resistant plant materials in conformity with the Design Guidelines. All landscape plans must be approved in advance by the Architectural Review Committee as required by the Declaration.

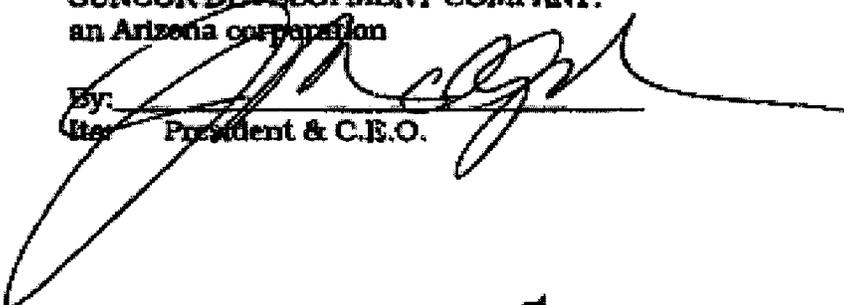
5. Density. No more than one Single Family Dwelling Unit may be constructed on a Lot.

6. Amendments. This Tract Declaration may only be amended as provided in Article XIII, Section 2 of the Declaration. Any such amendment shall be recorded and shall be subject to applicable zoning restrictions. The provisions of the Declaration may be amended only in accordance with its terms.

7. Interpretation. This Tract Declaration shall be considered an integral part of the Declaration and construed with the Declaration as if the provisions hereof were set forth therein as a section thereof. This Tract Declaration shall run with all of the Property and shall be enforceable in accordance with and as a part of the Declaration.

WITNESS OUR HAND:

SUNCOR DEVELOPMENT COMPANY,
an Arizona corporation

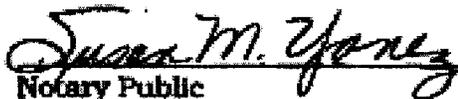
By: 
Its President & C.E.O.

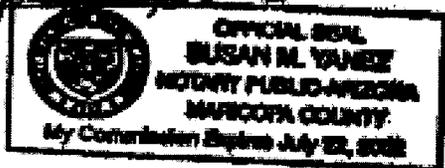
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 13th day of May, 1999, by John C. Ogden, the President & C.E.O. of SUNCOR DEVELOPMENT COMPANY, an Arizona corporation, for and on behalf of the corporation.

My commission expires:

July 22, 2002


Notary Public



Escrow No.: 88-88-09714-NB

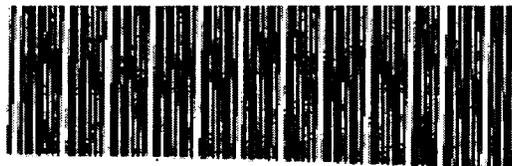
EXHIBIT 'A'

Lots 1 through 84, and Tracts A through H, PARCEL 5 OF PALM VALLEY, according to Book 502 of Maps, Page 10, records of Maricopa County, Arizona.

**FIDELITY NATIONAL TITLE
HOLD FOR PICK-UP**

When Recorded Mail to:

Ms. Cindy Montana
THE FRANK DEVELOPMENT GROUP, INC.
1819 E. Morten Avenue, Suite 180
Phoenix, AZ 85020



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OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

2000-0505055 08/01/2000 10:01

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**FIRST AMENDMENT TO
TRACT DECLARATION
FOR
PALM VALLEY PHASE IIIA PARCEL 5**

**FIRST AMENDMENT TO
TRACT DECLARATION**

FOR

PALM VALLEY PHASE IIIA PARCEL 5

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**FIRST AMENDMENT TO
TRACT DECLARATION
FOR
PALM VALLEY PHASE IIIA PARCEL 5**

THIS TRACT DECLARATION is made this 21 day of July 2000, by TARO PROPERTIES ARIZONA I, L.L.C., an Arizona limited liability company ("Taro"), THE FRANK DEVELOPMENT GROUP, INC., an Arizona corporation ("FDG"), and SUNCOR DEVELOPMENT COMPANY, an Arizona corporation ("Declarant").

RECITALS:

A. The Declarant has executed and caused to be recorded that certain Declaration of Covenants, Conditions and Restrictions for Palm Valley Phases II and III dated October 16, 1998, which document was recorded on October 20, 1998, as Recording Number 98-0936248, records of Maricopa County, Arizona (the "Master Declaration") which covers real property that comprises a masterplanned development located in Goodyear, Arizona known as "Palm Valley Phases II and III."

B. The Declarant has executed that certain Tract Declaration dated May 13, 1999, as Recording Number 99-0503740, records of Maricopa County, Arizona, which covers real property located in Goodyear, Arizona known as "Palm Valley Phase IIIA Parcel 5."

C. Taro and FDG hold legal title to the following described real property located within Palm Valley Phase IIIA (collectively the "Project" or "Lots," and individually a "Lot") which is subject to the Master Declaration:

Lots 1 through 84 of Parcel 5 of Palm Valley Phase IIIA
according to the Plat recorded in Book 502 of Maps,
Page 10, as Recording Number 99-0466940, official
records of Maricopa County, Arizona (the "Plat")

D. The parties described hereinabove desire to amend the Tract Declaration on the Project for the purpose of establishing certain additional rights, easements, covenants, restrictions, obligations and procedures, in addition to those set forth within the Master Declaration, governing the proper use, conduct and maintenance of the Project for the benefit of all future and present owners, lienholders, occupants or any other holders of an interest in the Project, or any part thereof.

**FIRST AMENDMENT TO
TRACT DECLARATION
FOR
PALM VALLEY PHASE IIIA PARCEL 5**

THIS TRACT DECLARATION is made this 21 day of July 2000, by TARO PROPERTIES ARIZONA I, L.L.C., an Arizona limited liability company ("Taro"), THE FRANK DEVELOPMENT GROUP, INC., an Arizona corporation ("FDG"), and SUNCOR DEVELOPMENT COMPANY, an Arizona corporation ("Declarant").

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B. The Declarant has executed that certain Tract Declaration dated May 13, 1999, as Recording Number 99-0503740, records of Maricopa County, Arizona, which covers real property located in Goodyear, Arizona known as "Palm Valley Phase IIIA Parcel 5."

C. Taro and FDG hold legal title to the following described real property located within Palm Valley Phase IIIA (collectively the "Project" or "Lots," and individually a "Lot") which is subject to the Master Declaration:

Lots 1 through 84 of Parcel 5 of Palm Valley Phase IIIA
according to the Plat recorded in Book 502 of Maps,
Page 10, as Recording Number 99-0466940, official
records of Maricopa County, Arizona (the "Plat")

D. The parties described hereinabove desire to amend the Tract Declaration on the Project for the purpose of establishing certain additional rights, easements, covenants, restrictions, obligations and procedures, in addition to those set forth within the Master Declaration, governing the proper use, conduct and maintenance of the Project for the benefit of all future and present owners, lienholders, occupants or any other holders of an interest in the Project, or any part thereof.

NOW, THEREFORE, the undersigned parties hereby amend the Tract Declaration and declare that the Project shall be held, sold and conveyed subject to the following easements, reservations, limitations, restrictions, covenants, conditions, charges and liens which are for the purpose of protecting the value and desirability of the Project, and which shall run with the Project and be binding upon and inure to the benefit of all parties having any right, title or interest therein or any part thereof, along with their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

Unless otherwise provided specifically herein, all capitalized terms used in this Tract Declaration shall have the same meaning as set forth for such terms in the Master Declaration:

Section 1.1. "Adjacent Lot" means a Lot which shares any part of a common property line with another Lot.

Section 1.2. "Architectural Committee Rules" means the rules, if any, adopted by the Palm Valley Phase IIIA Parcel 5 Architectural Committee.

Section 1.3. "Areas of Association Responsibility" means (i) the Common Area; (ii) all land, and the Improvements thereon, situated within the boundaries of a Lot which the Association specifically acknowledges herein or in another recorded document is land which is to be improved, maintained, repaired and replaced by the Association; and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas; and (iv) each of the Private Joint Ingress/Egress Easements.

Section 1.4. "Association" shall mean the Palm Valley Phases II and III Community Association.

Section 1.5. "Builder" or "Developer" means FDG and its successors and assigns, or such Person designated by FDG from time-to-time as the Builder or the Developer.

Section 1.6. "Parcel 5 Common Area" means: (i) the real property designated as Tracts A, B, C, D, E and F on the Plat; (ii) all land, and the Improvements situated thereon, within the Project which Developer indicates on a recorded subdivision plat, Tract Declaration or other recorded instrument is to be conveyed to the Association for the benefit and use of the Members; and (iii) all land, and the Improvements situated thereon, which is adjacent to the Project which Developer indicates on a recorded subdivision plat, Tract Declaration or other recorded instrument is to be used for landscaping, drainage or water retention or flood control for the benefit of the Project or the general public and which is to be maintained, repaired and replaced by the Association.

Section 1.7. "Parcel 5 Design Guidelines" shall mean the guidelines established by the Palm Valley Phase IIIA Parcel 5 Architectural Committee, as the same may be amended from time-to-time, which shall include design standards for the appearance and development of the Project.

Section 1.8. "Design Review Committee" shall mean the committee created pursuant to the Master Declaration, Article XI.

Section 1.9. "Improvement" means any residential unit, building, fence, wall or other structure or any swimming pool, road, driveway, sidewalk, planter, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

Section 1.10. "Lot" means each parcel of real property designated as a lot on the Plat, and where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvement situated on the Lot.

Section 1.11. "Master Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for Palm Valley Phases II and III, recorded in the official records of Maricopa County, Arizona on October 20, 1996 as instrument number 98-0936248, as amended or supplemented from time to time.

Section 1.12. "Palm Valley Phase IIIA Parcel 5 Architectural Committee" means the committee created pursuant to Article 7 hereof.

Section 1.13. "Parcel 5" means Parcel 5 of Palm Valley Phase IIIA.

Section 1.14. "Plat" means the plat of record, Parcel 5 of Palm Valley Phase IIIA, recorded in Book 502, page 10, records of Maricopa County, Arizona and all amendments, supplements and corrections thereto, and any subdivision

plat recorded against all or any part of the Additional Property, and all amendments, supplements and corrections thereto.

Section 1.15. "Private Joint Ingress/Egress Easement" means a Private Joint Ingress/Egress Easement providing vehicular access to two or more lots as depicted on the Plat.

Section 1.16. "Private Accessway" means any of the private accessways depicted on the Plat as Tract A.

Section 1.17. "Residential Unit" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

Section 1.18. "Tract" means Parcel 5 of Palm Valley.

Section 1.19. "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of the Project (including a Lot or Common Area) adjoining the Lot or portion of the Property upon which the object is located. The Palm Valley Phase IIIA Parcel 5 Architectural Committee will be the sole judge as to what constitutes Visible From Neighboring Property under any of the provisions of this Tract Declaration.

ARTICLE II

ASSIGNMENT OF DEVELOPMENT RIGHTS

Section 2.1. Exclusive Option. Taro, as fee title owner of the Lots, has granted to FDG an exclusive option to purchase the Lots which the Project comprises and other rights related to the development of the Project pursuant to that certain Lease and Purchase Agreement dated April 19, 1999 (the "Option Agreement"); and the parties have recorded in the Official Records of Maricopa County, Arizona, a Memorandum of Lease Purchase (the "Memorandum") in connection therewith.

Section 2.2. Assignment of Rights. Taro hereby assigns to FDG its rights and powers as the Owner of any Lots pursuant to the Master Declaration and this Tract Declaration, including all voting rights thereunder, for the purpose of developing the Project and marketing and selling the Lots, and receiving all of the necessary approvals associated therewith, including, without limitation, the

execution and recording of this Tract Declaration, and any related documents or amendments and the execution and filing of any documents or applications required in connection with the improvement or construction of the Project or the issuance of a Public Report or other approvals from the Arizona Department of Real Estate, the Federal Housing Agency, the Veterans' Association or other similar governmental agencies.

Section 2.3. Termination of Assignment. This Assignment shall remain effective until such time as FDG is in default of the Option Agreement and a document has been recorded duly and properly terminating the said Agreement and the Memorandum by Taro, at which time all rights and obligations as Owner of any Lots then owned by Taro shall revert back to Taro.

ARTICLE III

PLAN OF DEVELOPMENT

Section 3.1. Master Declaration. The Project is part of a masterplanned community known as Palm Valley Phase IIIA. This Tract Declaration is created pursuant to Article IV, Section 1 of the Master Declaration, and shall be subject to the terms and conditions of the Master Declaration, the Articles of Incorporation and the Bylaws, rules and design regulations of the Master Association as such documents may be amended from time-to-time (the "Master Association Documents"). It is understood that the configuration of the Lots within the Project is different from that of a standard lot single-family residential subdivision, in that the majority of lots are situated around shared, Private Joint Ingress/Egress Easements, and the Project is planned to be developed at a higher overall density. Consequently, certain additional covenants, conditions, restrictions, rules, regulations and/or easements, as set forth in this Tract Declaration, will be necessary in order to maintain the orderly use and development of the Project and the value of the homes to be constructed thereon. With regard to the use and regulation of the Project and the Lots, in the event of any conflict between the provisions of the Master Declaration and the covenants, conditions, restrictions, regulations or other provisions contained in this Tract Declaration, the more restrictive provision shall control.

Section 3.2. Land Use Classification. The land use classification of the Project shall be Cluster Residential Use.

Section 3.3. Disclaimer of Representations. Neither Developer nor Taro make any representations or warranties whatsoever that (i) the development of the Project will be completed in accordance with the plans therefor as they exist

on the date this Tract Declaration is recorded; (ii) any property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any property subject to this Tract Declaration will not be changed in the future. While Neither Developer nor Taro believe that any of the restrictive covenants contained in this Tract Declaration or the Master Declaration are or may be invalid or unenforceable for any reason or to any extent, neither the Developer or Builder make any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Parcel agrees to hold Taro and Developer harmless therefrom.

Section 3.4. Restriction on Liability. The Developer may construct a guardhouse or gated entry on one or more of the streets providing access to the Property in order to limit access to the Project and to provide more privacy for Owners and other occupants of Lots. Each Owner and occupant, their families, guests and invitees acknowledge that any such guardhouse or gated entry may restrict or delay entry into the Project by the police, the fire department, ambulances and other emergency vehicles or personnel. Neither Taro nor Developer, nor any director, officer, agent or employee of the Developer or Taro shall be liable to any Owner or other occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of any such guardhouse or gated entry.

ARTICLE IV

PARCEL 5 ASSESSMENTS

Section 4.1. Parcel Assessment Area. The Project shall hereby be designated as a Parcel Assessment Area pursuant to Article I (hh) of the Master Declaration and shall be subject to Parcel Assessments under Article VII Section 13 thereof which shall be in addition to the Annual Assessments and any other assessments assessed against the Project by the Association pursuant to the Master Declaration. The Parcel 5 assessments levied by the Association shall be used exclusively for the upkeep, maintenance and security of the Parcel 5 Assessment Area.

Section 4.2. Rate of Assessment. The Annual Parcel 5 Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Parcel 5 Assessment," which Maximum Annual

Parcel 5 Assessment shall be determined and shall vary in accordance with the following provisions:

- (a) Until the end of the first Assessment Period as defined in the Master Declaration, the Maximum Annual Parcel 5 Assessment against each Owner shall be Four Hundred and Eighty Dollars ((\$480.00) per each membership, (\$40 per month).**
- (b) From and after the end of the first Assessment Period and subject to applicable law, the Maximum Annual Parcel 5 Assessment shall be automatically increased effective January 1, 2001 without a vote of the Membership by an amount which is equal to the greater of
 - (i) ten percent (10%) of the Maximum Annual Parcel 5 Assessment for the year just ended; or**
 - (ii) the increase during the preceding year in 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 - to 1984 equals 100. All Items."****

Provided, however, that in the event the first Assessment Period comprises less than six (6) calendar months, the automatic increase in the Maximum Annual Parcel 5 Assessment for the second Assessment Period shall be in an amount equal to the greater of (x) five percent (5%) of the Maximum Annual Parcel 5 Assessment for the year just ended; or (y) the increase during the first Assessment Period in the Consumer Price Index as defined above.

- (c) From and after the end of the first Assessment Period, the Maximum Annual Parcel 5 Assessment may be increased above the Maximum Annual Parcel 5 Assessment otherwise determined under Subsection (b) above where it is demonstrated that such increase is a financial necessity, by a vote of two-thirds (2/3) of each class of Members, and a vote of the Owners of two-thirds (2/3) of the Memberships of Lots within Parcel 5 of Palm Valley Phase III, 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 Parcel 5**

Assessment may be increased as required by increases in utility or water costs charged to the Association. In such event, the Board must demonstrate that the increases in utility and water costs are such that the increase would be financially necessary in order to properly maintain the Project in its current condition.

- (e) The Frank Development Group, Inc., its successors and assigns, shall pay only twenty-five percent (25%) of the Annual Parcel 5 Assessment otherwise attributable to each of its Memberships 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.

Section 4.3. Special Parcel Assessments. In addition to the Annual Parcel 5 Assessment authorized above, the Association may, if necessary, in any fiscal year levy one or more Special Parcel Assessments applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Parcel 5 Assessment Area; provided that any such Special Parcel Assessment shall have the written approval of Owners of at least two-thirds (2/3) of the Lots within the Project.

ARTICLE V

ADDITIONAL COVENANTS, CONDITIONS AND RESTRICTIONS

In addition to the covenants, conditions and restrictions contained in the Master Declaration, the Project shall be subject to the following:

Section 5.1. Parking.

- (a) Vehicles. No motor vehicle classified by manufacturer rating as exceeding three-quarter (3/4) ton, mobile home, trailer, camper shell, detached camper, boat, boat trailer, hand glider, aircraft or other similar equipment or vehicle or attachments or accessories thereto may be parked, stored, maintained, constructed, reconstructed, or repaired on any Lot, street, Private Accessway, Private Joint Ingress/Egress easement or Common Area, within the Project so as to be Visible From Neighboring Property. No automobile, motorcycle, motor bike, motorized hang glider, aircraft or other vehicle of any kind or

attachment or accessories thereto shall be constructed, reconstructed or repaired on any Lot, Private Accessway, Private Joint Ingress/Egress easement or Common Area within the Property, and no commercial vehicles, inoperable vehicle, or any vehicle not used on a regular and recurring basis for basic transportation, may be stored or parked anywhere on the Project so as to be Visible From Neighboring Property, except in the event of an emergency. For purposes of this paragraph, commercial vehicles shall include all vehicles used for commercial purposes, displaying advertising or any other commercial signage or lettering, or any vehicles containing exposed ladders, tools, or other equipment (whether or not actually used for commercial purposes). Garages are intended to be used for overnight parking of motor vehicles within the Project; provided, however, that it shall be permissible for one (1) motor vehicle belonging to a current overnight guest of the Owner of a Lot to be parked in the driveway of the Owner's Lot for a period not to exceed five (5) consecutive days and no more than ten (10) days per month. All motor vehicles of Owners and their lessees shall be kept in garages whenever such facilities are sufficient to accommodate the number of motor vehicles on a Lot. Motor vehicles shall be permitted to park within the Project only on paved driveways on the Lots, except that parking on the one side of the Private Accessways not designated as a No Parking Area shall be permitted within the Project for deliveries, short-term guests and invitees (as determined by the Board).

- (b) **Private Accessway.** No vehicle shall be parked on a Private Accessway, except for vehicles of Owners or guests of Owners which may be parked on the one side of the Private Accessway not designated as a No Parking Area, on a short-term basis (as determined by the Board), provided that the requirements of Subsection (a) above have been satisfied.
- (c) **Private Joint Ingress/Egress Easement Parking Restrictions.** No vehicle shall be parked at any time on any Private Joint Ingress/Egress Easement.
- (d) **Driveway Parking.** Vehicles shall be parked in driveways so as to avoid interfering with the safe and orderly ingress and egress by other Owners and their guests to, and from, the

driveways and walkways on the other Lots. No part of any vehicle parked in any driveway shall overhang, to any extent, the edge of any driveway, not including the curb. Garage doors shall be kept entirely closed, except to the extent necessary for access to and from the garage for vehicles and equipment.

(e) Towing of Vehicles. The Board, through its managing agent, shall have the right to have any vehicle which is parked, kept, maintained, constructed, reconstructed or repaired on a Lot, the Common Area, a Private Accessway or a Private Joint Ingress/Egress Easement in violation of this Tract Declaration, or the Master Declaration, including any rules and regulations as promulgated in connection therewith, immediately towed away without notice at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle. If the vehicle 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 such amounts in the same manner provided for in the Declaration for the collection of Assessments. Each Owner hereby grants an easement to the Association and its directors, officers, employees, agents and contractors to enter upon the Owner's Lot for the purpose of towing any vehicle pursuant to the provisions of this Section.

(f) Garages and Driveways. Garages are to be used for the purpose of parking motor vehicles. The interior of all garages or carports shall be maintained in a neat, clean and sightly condition. Garages and carports shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities or storage (if such storage restricts the parking of cars in the garages) without the prior written approval of the Board.

Section 5.2. Decorations/Sculptures/Artwork. Except for holiday decorations as described below, no decorations, sculptures, artwork, flagpoles, fountains or displays may be used, erected or maintained so as to be Visible From Neighboring Property, unless first approved by the Palm Valley Phase IIIA Parcel 5 Architectural Committee. Appropriate temporary holiday decorations, as determined by the said Palm Valley Phase IIIA Parcel 5 Architectural Committee, shall be removed within two (2) weeks following the holiday.

Section 5.3. **Lighting.** No exterior lighting of any kind, other than the optional coach lights or rear flood lights offered by Builder, shall be installed and/or maintained so as to be Visible From Neighboring Property, unless first approved by the Palm Valley Phase IIIA Parcel 5 Architectural Committee. Any exterior lighting shall be installed so as to avoid causing a nuisance to any neighboring property.

Section 5.4. **Screens and Screen Doors.** No screen doors, security doors, window screens or tinting shall be applied, installed or maintained so as to be Visible From Neighboring Property, unless first approved by the Palm Valley Phase IIIA Parcel 5 Architectural Committee from an approved list of such products. Interior window coverings shall show a white surface on the side facing outside unless otherwise approved by the Palm Valley Phase IIIA Parcel 5 Architectural Committee.

Section 5.5. **Rear Yard Landscaping.** Rear yards shall be landscaped and maintained by each Owner within ninety (90) days after the purchase of the residence. Rear yards that have a view wall shall be landscaped within sixty (60) days after closing of the purchase of the residence.

Section 5.6. **Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed and maintained exclusively within a fenced yard and are not Visible From Neighboring Property.

Section 5.7. **Party Walls and Fences.** The rights and duties of Owners of contiguous properties which have Party Walls and Party Fences shall be in accordance with the provisions of Article IV, Section 4(p) of the Master Declaration and any applicable provisions of the Design Guidelines; provided, that the Owners of Lots with a wall adjacent to a Private Accessway, shall be solely responsible for repair and maintenance of such walls; and if repair is necessary, the repaired wall must match the size, color, and texture of the existing adjacent walls within the Project.

Section 5.8. **Developer's Signage and Model Homes.** Nothing contained in this Tract Declaration shall be construed to prevent or interfere with the construction or maintenance by Developer, or its duly authorized contractors, agents or assignees, of Improvements or signs necessary or convenient to the development or sale of homes to be constructed upon Lots or any future phases of Villagio (including, without limitation, construction access and parking). Developer shall have the right to maintain its model homes in the Project for the purpose of the marketing and sale of homes to be constructed on the Lots and

any future phases of the Villagio subdivision on other property within the general vicinity of the Palm Valley Masterplanned Community.

Section 5.9. Maintenance of Areas of Association Responsibility. The Association hereby accepts responsibility for maintenance and repair of the Areas of Association Responsibility as set forth herein and in the Plat. The permitted uses and restrictions for the Common Areas within the Project are as follows:

- (a) **Permitted Uses.** The Common Area within the Project shall be used for the exclusive benefit of the Owners of Lots within the Project, lessees and any guests or invitees thereof, for the furnishing of services and facilities for which the same are reasonably intended and for the enjoyment to be derived from such reasonable and proper use, without hindering the exercise of or encroaching upon the right of any other Owner within the Project to utilize the Common Area, provided that no unlawful use shall be permitted. Use of the Common Areas, including any tot lots, ramadas or other recreational amenities, shall be in accordance with such rules and regulations as the Board may, from time-to-time, promulgate.
- (b) **Restricted Uses.**
 - (i) Owners shall not use the Common Area for storage of supplies, material or personal property of any kind.
 - (ii) Except as otherwise provided herein, no activity shall be carried on, nor condition maintained, by any Owner upon the Common Area which spoils the appearance of the Project or hinders or encroaches upon the right of any other Owner to utilize the Common Area as reasonably intended.

Section 5.10. Variances. The Board, at its option and in extenuating circumstances, may grant variances from the restrictions set forth in this Article V if the Board determines, in its discretion, that: (i) a restriction would create an unreasonable hardship or burden on an Owner or Lessee or a change of circumstances since the recordation of this Tract Declaration has rendered such restriction obsolete; and (ii) the activity permitted under the Variance will not have any substantial adverse effect on the Owners and Lessees of the Project and is consistent with the high quality of life intended for residents of the Project. For so long as the Developer owns any of the Lots, in order for any Variance to

be granted pursuant to this provision, such Variance must have the written approval of Developer.

ARTICLE VI

EASEMENTS

Section 6.1. Utility Easement. There hereby is created an easement upon, across, over and under the Common Area, the Lots, the Private Accessways and each of the Private Joint Ingress/Egress Easements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this utility easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Parcel 5 Common Area, the Lots, the Private Accessways, and each of the Private Joint Ingress/Egress Easements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Parcel 5 Common Area, the Lots, the Private Accessways, or any of the Private Joint Ingress/Egress Easements except as initially designed, approved and constructed by Developers or as otherwise approved by the Board. Each Lot Owner understands that there may be pedestals, meters, boxes and/or other equipment which house utility-related facilities located on their Lot and each Owner accepts the location of the said equipment at its location as determined by the Developer and the relevant utility providers.

Section 6.2. Drainage Easement. There is hereby created a blanket easement for drainage of groundwater on, over and across the Parcel 5 Common Area and to the extent necessary to facilitate the grading and drainage plan for the Project on, over and across the Lots. No Owner shall obstruct, divert, alter or interfere with any portion of the Project as it relates to the proper drainage on the Project. Each Owner should at its own expense maintain the drainageways and channels on its Lot in proper condition free from obstruction.

Section 6.3. Easements of Developer and Builder.

- (a) Developer and Builder shall have the right and an easement to maintain sales or leasing offices (including parking facilities), management offices and models throughout the Project and to maintain signage on the Parcel 5 Common Area, the Private Accessways or any of the Private Joint Ingress/Egress Easements while Developer or Builder is leasing or selling any

of the Lots within the Project or any future phases of the Project within the Palm Valley Masterplanned Community. Developer and Builder reserve the right to place models, management offices and sales offices on any Lots owned by, licensed, optioned or leased to them and on any portion of the Parcel 5 Common Area in such number, of such size and in such locations as Developer or Builder deems appropriate.

- (b) Developer and Builder shall have the right and an easement on and over the Areas of Association Responsibility within Parcel 5 to construct all Improvements Developer or Builder may deem necessary and to use the Areas of Association Responsibility within Parcel 5 and any Lots and other property owned by, leased or optioned to Developer for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work relating to the Project.

Section 6.4. Easement for Encroachments.

- (a) In the event any Residential Unit, or any patio adjacent to a Residential Unit, or any driveway, sidewalk or walkway providing access to a Residential Unit, or any Lot perimeter wall or fence, as initially constructed by the Builder or Developer, encroaches upon any Parcel 5 Common Area, then an easement for the encroachment in favor of the Lot Owner shall exist, and the Lot Owner also shall have an easement over the Parcel 5 Common Area for the purpose of repairing, maintaining and replacing the portion of the Owner's Residential Unit, patio, driveway, sidewalk, walkway, wall or fence which encroaches upon the Parcel 5 Common Area. That portion of the Parcel 5 Common Area subject to an easement for encroachment pursuant to this Section shall be for the exclusive use of the Owner of the Lot benefited by the easement and the guests and invitees of such Owner.
- (b) In the event any Parcel 5 Common Area improvement including, but not limited to, any wall, building, road or sidewalk, as initially constructed by the Builder or Developer encroaches upon any Lot, then an easement for the encroachment in favor of the Association shall exist, and the

Association shall also have an easement over that portion of the Lot on which the encroachment exists for the purpose of repairing, maintaining and replacing the portion of the improvement that encroaches upon the Lot. That portion of the Lot subject to an easement for the encroachment pursuant to this Section shall be for the exclusive use of the Association.

Section 6.5. Adjacent Lot Easement. In the event any wall, driveway, sidewalk or walkway providing access to a Residential Unit or any Lot, as initially constructed by the Builder or Developer, encroaches upon any Adjacent Lot, then an easement for the encroachment in favor of the Lot Owner shall exist and is hereby created, and the Lot Owner shall also have an easement over the Adjacent Lot for the purpose of repairing, maintaining and replacing the portion of the Owner's wall or driveway, sidewalk or walkway which encroaches upon the Adjacent Lot. That portion of the Adjacent Lot subject to an easement for encroachment pursuant to this Section shall be for the exclusive use of the Owner of the Lot benefited by the easement and the guests and the invitees of such Owner, and shall be maintained by the Owner of the benefited lot.

Section 6.6. Entry Landscape Easement. The Developer intends to construct a project entrance, consisting of one or more of the following features: landscaping, entry signage, walls, automated gates, driveways, decorative paving and/or other improvements (the "Entry Improvements"). A portion of these Entry Improvements may be located within the Lots which are adjacent to the entry. To the extent any Entry Improvements encroach upon any of the Lots, the Lot Owners agree that Developer shall have an easement for the purpose of installing and maintaining the Entry Improvements. The said easement area shall be considered an Area of Association Responsibility pursuant to this Tract Declaration. The affected Lot Owner(s) agree to execute any legal documents requested by Developer in connection with the easement described herein.

ARTICLE VII

ARCHITECTURAL REVIEW

Section 7.1. Palm Valley Phase IIIA Parcel 5 Architectural Committee. Because of the unique nature of the Project and its design features (including its density, high level of architectural design and configuration of Lots around Private Joint Ingress/Egress Easements), the Developer believes that a separate level of architectural and design review over and above that of the Design Review Committee of the Association is necessary to preserve and protect the

value of the Project and the quality of life for its residents. Consequently, a separate Architectural Committee (the "Palm Valley Phase IIIA Parcel 5 Architectural Committee") shall be created by the Developer for the purpose of reviewing for approval or denial all matters submitted to the Design Review Committee and all matters requiring Architectural Committee approval pursuant to the terms of this Tract Declaration. For so long as the Palm Valley Phase IIIA Parcel 5 Architectural Committee is in existence, approval of both the Design Review Committee and the Palm Valley Phase IIIA Parcel 5 Architectural Committee shall be required for any requests or applications required to be submitted to the Design Review Committee for approval. Until the Palm Valley Phase IIIA Parcel 5 Architectural Committee has been terminated as provided in Section 7.2 below, failure to receive both approvals shall constitute a denial of any application or request submitted to the Design Review Committee. Any requests or applications which require only the approval of the Palm Valley Phase IIIA Parcel 5 Architectural Committee pursuant to this Tract Declaration will be considered approved upon the written approval of the Palm Valley Phase IIIA Parcel 5 Architectural Committee alone.

Section 7.2 Architectural Committee Membership/Termination. The Palm Valley Phase IIIA Parcel 5 Architectural Committee shall consist of at least three, but not more than five, natural persons. The members of the Palm Valley Phase IIIA Parcel 5 Architectural Committee need not be Lot Owners or representatives of Owners, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time-to-time by the Board. Until one hundred percent (100%) of the Lots have been developed and conveyed to Owners, FDG, or its successors or assigns, retains the right to appoint all members of the Palm Valley Phase IIIA Parcel 5 Architectural Committee, who shall serve at FDG's discretion. There shall be no surrender of this right prior to the time set forth above except by a written instrument in recordable form executed by FDG. Upon the sale of all of the Lots by FDG to homebuyers, or upon surrender of its right to appoint all the members of the Palm Valley Phase IIIA Parcel 5 Architectural Committee, the rights and duties of the Palm Valley Phase IIIA Parcel 5 Architectural Committee shall be assigned to the Design Review Committee; whereupon, the Palm Valley Phase IIIA Parcel 5 Architectural Committee shall disband and all applications relating to architectural review shall be submitted to the Design Review Committee alone. The Palm Valley Phase IIIA Parcel 5 Architectural Committee may establish and charge reasonable fees for review of applications for approval and may require such fees to be paid in full to the Association prior to review of any such application. Such fees may include the reasonable costs incurred by the Palm Valley Phase IIIA

Parcel 5 Architectural Committee in having any application reviewed by architects, engineers or other professionals.

Section 7.3. Architectural Standards.

- (a) **General.** No structure shall be placed, erected, or installed upon any Lot, and no Improvements, including staking, clearing, excavation, grading and other site work, exterior alteration of existing Improvements, and Landscaping (any such activities being referred to herein as "Work"), shall take place without the prior approval of the Palm Valley Phase IIIA Parcel 5 Architectural Committee, unless specifically exempted from the application and approval requirements pursuant to terms and provisions of this Section. For purposes of this paragraph, Work requiring prior approval of the Palm Valley Phase IIIA Parcel 5 Architectural Committee shall include, without limitation, the installation of any window screens or tinting, screen or security doors, sculptures or art pieces, exterior lights, security cameras, walls, fences or other equipment or materials Visible From Neighboring Property, or any other actions which according to this Tract Declaration, the Design Guidelines or any Rules or Regulations require Palm Valley Phase IIIA Parcel 5 Architectural Committee approval.
- (b) **Activities Not Included as Work.** Except as otherwise specifically provided for herein, any Owner may remodel, paint or redecorate the interior of the Improvements on his Lot without the approval of the Palm Valley Phase IIIA Parcel 5 Architectural Committee; provided, however, any modifications to the interior of porches, patios, and similar portions of a Lot which are Visible From Neighboring Property shall be subject to the approval of the Palm Valley Phase IIIA Parcel 5 Architectural Committee. No approval shall be required to repaint the exterior of or to rebuild any Improvements in strict accordance with the color scheme, plans and specifications, as applicable, as originally approved by the Palm Valley Phase IIIA Parcel 5 Architectural Committee or as originally installed by the Developer.
- (c) **Exclusion of Certain Persons and Common Area Work.** The requirement to obtain the approval of the Palm Valley Phase IIIA Parcel 5 Architectural Committee regarding any Work shall

not apply to the activities of FDG, or the successors and assigns of same, nor to improvements to the Parcel 5 Common Area made by FDG, the Association, or on behalf of the Association. The foregoing shall not apply to or affect the requirement of obtaining approval of the Association or Design Review Committee pursuant to the Master Declaration and/or Design Guidelines.

- (d) **Changes to Landscaping.** No aspect of the landscaping plans approved by the Palm Valley Phase IIIA Parcel 5 Architectural Committee or installed by Developer may be changed or altered without the prior approval of the Palm Valley Phase IIIA Parcel 5 Architectural Committee.

Section 7.4. Palm Valley Phase IIIA Parcel 5 Architectural Committee Rules.

- (a) **Parcel 5 Design Guidelines.** FDG shall prepare the initial Design Guidelines for the Property. The Parcel 5 Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Palm Valley Phase IIIA Parcel 5 Architectural Committee in considering applications for approval of Work. The Parcel 5 Design Guidelines are not the exclusive basis for decisions of the Palm Valley Phase IIIA Parcel 5 Architectural Committee and compliance with the Parcel 5 Design Guidelines alone does not guarantee approval of any application. The Palm Valley Phase IIIA Parcel 5 Architectural Committee shall adopt Parcel 5 Design Guidelines at its initial organization meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Parcel 5 Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of Work previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Parcel 5 Design Guidelines. The Palm Valley Phase IIIA Parcel 5 Architectural Committee is expressly authorized to amend the Parcel 5 Design Guidelines to remove requirements previously imposed or otherwise to make the Parcel 5 Design Guidelines less restrictive.

- (b) Distribution and/or Recording of the Design Guidelines.** The Palm Valley Phase IIIA Parcel 5 Architectural Committee shall make copies of the Parcel 5 Design Guidelines available to Owners who seek to engage in any Work, and may charge a reasonable fee to cover its printing costs. In the Palm Valley Phase IIIA Parcel 5 Architectural Committee's discretion, such Design Guidelines may be recorded in the public records of Maricopa County, Arizona, in which event the recorded version, as it may unilaterally be amended from time-to-time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

Section 7.5. Procedures.

- (a)** Prior to commencing any Work, an application for approval of the Palm Valley Phase IIIA Parcel 5 Architectural Committee (and the Design Review Committee, if required) shall be submitted in such form as may be required. The application shall include plans and specifications (the "Plans") with measurements showing the site layout and placement of all proposed structures and improvements, the structural design, exterior elevations, and exterior materials and colors for all structures and improvements, landscaping, drainage, exterior lighting, screens, doors, sculptures and other features of the proposed construction. In reviewing each submission, the Palm Valley Phase IIIA Parcel 5 Architectural Committee may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. The Palm Valley Phase IIIA Parcel 5 Architectural Committee may require the submission of such additional information as it deems necessary to consider any application.
- (b)** The Palm Valley Phase IIIA Parcel 5 Architectural Committee may consider (but shall not be restricted to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, compliance with the Design Guidelines, and architectural merit. Decisions may be based on purely aesthetic considerations.

Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

- (c) The Palm Valley Phase IIIA Parcel 5 Architectural Committee shall, within forty-five (45) days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of the submission of the Plans, of (i) the approval of the Plans, (ii) conditional approval, or (iii) the disapproval of the Plans, specifying the portions or features of the Plans which are objectionable. The Palm Valley Phase IIIA Parcel 5 Architectural Committee may make suggestions for curing such objections. In the event the Palm Valley Phase IIIA Parcel 5 Architectural Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the Palm Valley Phase IIIA Parcel 5 Architectural Committee written notice of such failure to respond and stating that unless the Palm Valley Phase IIIA Parcel 5 Architectural Committee responds within ten (10) days of receipt of such notice, approval shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Master Declaration or its Design Guidelines or this Tract Declaration or the Design Guidelines unless a variance has been granted in writing pursuant to Section 7 hereof. Such notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U. S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.
- (d) If construction does not commence on any Work for which approval has been granted within three (3) months after the date of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans for reconsideration prior to commencing the Work. All Work shall be completed within six (6) months of commencement or such other period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the Owner, as determined in

the sole discretion of the Palm Valley Phase IIIA Parcel 5 Architectural Committee. All Work shall be performed in a workmanlike fashion and in accordance with approved plans.

Section 7.6. No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications for approval of Work will change from time-to-time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, but the Palm Valley Phase IIIA Parcel 5 Architectural Committee may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications, or drawings for any Work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.

Section 7.7. Variance. The Parcel 5 Architectural Committee may, but shall not be required to, authorize variances from compliance with any of the provisions of the Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances exist and no Owner shall have any right to demand or obtain a variance, regardless of the circumstances. No variance shall: (i) be effective unless in writing; (ii) be contrary to the Master Declaration or the Tract Declaration; or (iii) estop the Palm Valley Phase IIIA Parcel 5 Architectural Committee from denying a variance in other circumstances.

Section 7.8. Limitation of Liability. The standards and procedures established by this Section regarding the approval of Work are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Project but shall not create any duty to any Person. NEITHER TARO, FDG, NOR THE PALM VALLEY PHASE IIIA PARCEL 5 ARCHITECTURAL COMMITTEE SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR FOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS, NOR FOR ENSURING THAT ALL STRUCTURES AND IMPROVEMENTS CONSTRUCTED WITHIN THE PROJECT ARE OF COMPARABLE QUALITY, VALUE, OR SIZE OR OF SIMILAR DESIGN. NEITHER TARO, FDG, THE ASSOCIATION, THE BOARD, THE PALM VALLEY PHASE IIIA PARCEL 5

ARCHITECTURAL COMMITTEE, NOR ANY SHAREHOLDER, OFFICER, DIRECTOR OR MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR SOIL CONDITIONS, DRAINAGE PROBLEMS OR OTHER GENERAL SITE WORK, NOR FOR DEFECTS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED HEREUNDER, NOR FOR ANY STRUCTURAL OR OTHER DEFECTS IN WORK DONE ACCORDING TO APPROVED PLANS, NOR FOR ANY INJURY, DAMAGES, OR LOSS ARISING OUT OF THE MANNER, DESIGN OR QUALITY OF APPROVED CONSTRUCTION OR MODIFICATIONS TO ANY LOT OR COMMON AREA OR AS A RESULT OF THE APPROVAL OR DISAPPROVAL OF ANY APPLICATIONS MADE PURSUANT TO THIS TRACT DECLARATION OR THE FAILURE OF THE PALM VALLEY PHASE IIIA PARCEL 5 ARCHITECTURAL COMMITTEE TO ENFORCE ANY OF THE PROVISIONS OF THIS OR ANY OTHER PROVISION CONTAINED IN THIS TRACT DECLARATION.

Section 7.9. Enforcement.

- (a) Any Work performed in violation of or in a manner inconsistent with the approved Plans shall be deemed to be nonconforming. Upon written request from the Board or FDG, Owners shall, at their own cost and expense, correct any nonconforming condition or remove any nonconforming structure or Improvement and restore the property to substantially the same condition as existed prior to the nonconforming Work. Should an Owner fail to remove and restore as required, the Board, FDG, or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Association or the Palm Valley Phase IIIA Parcel 5 Architectural Committee may assess any costs incurred in taking enforcement action under this Section, together with interest at the maximum rate then allowed by law, against the benefited Lot as an Assessment. Failure by the Palm Valley Phase IIIA Parcel 5 Architectural Committee or the Board to enforce the provisions of this Section in any instance shall not be deemed a waiver by the Palm Valley Phase IIIA Parcel 5 Architectural Committee or the Board to

enforce the provisions hereof in any other instance or to withhold approval as to similar matters thereafter.

- (b) FDG and the Association, acting separately or jointly, may preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Tract Declaration and/or the Design Guidelines from continuing or performing any further activities on the property. In such event, neither FDG, Taro nor the Association, nor their officers, directors or agents shall be held liable to any Person for exercising the rights granted by this Section.
- (c) In addition to the foregoing, FDG or the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Tract Declaration and the decisions of the Palm Valley Phase IIIA Parcel 5 Architectural Committee.

ARTICLE VIII

MAINTENANCE

Section 8.1. Areas of Association Responsibility.

- (a) The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon.
- (b) The Board shall have the right to do all acts it deems necessary to preserve and protect the Common Areas and the beauty thereof, and shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association.
- (c) Any part of the Common Area which is subject to an easement for an encroachment pursuant to Section 6 of this Tract Declaration shall be maintained, repaired and replaced by the Owner of the Lot benefited by the easement.

Section 8.2. Installation of Landscaping. Builder intends to install front yard landscaping on the Lot within sixty (60) days after the Lot is first conveyed to a Purchaser, as evidenced by recordation of a deed (the "Closing Date"). Within ninety (90) days after the Closing Date, the Owner of the Lot upon which the Residential Unit is situated shall install grass, trees, plants and other approved landscaping improvements (together with an automatic irrigation system sufficient to maintain said improvements) in the side and backyard of the Lot. All landscaping to be installed pursuant to this Section shall be installed in accordance with plans approved by the Design Review Committee and the Palm Valley Phase IIIA Parcel 5 Architectural Committee. If any Owner fails to landscape, or to properly maintain such landscaping, his/her Lot in the manner and within the time provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install or maintain such landscaping improvements as the Association deems appropriate (together with an irrigation system sufficient to adequately water the same), and the cost of any such installation or maintenance shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by an assessment lien against the Lot, and the Association may enforce the collection of such amounts in the same manner and to the same extent as provided in the Declaration for the collection and enforcement of Assessments.

Section 8.3. Lots. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing all buildings, Residential Units, landscaping or other Improvements situated on his/her Lot, except for any portion of the Lot which is an Area of Association Responsibility or is subject to the easement of an Adjacent Lot Owner provided for in Section 6 of this Tract Declaration. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be removed promptly by the Owner and replaced by an Owner at its expense with living foliage of like kind. No yard equipment, woodpiles or storage areas may be maintained so as to be Visible From Neighboring Property or any Private Accessway or any Private Joint Ingress/Egress Easement. Each Owner shall be responsible for the maintenance, repair and replacement of the wall around the patio or backyard area of the Owner's Lot. In the event an Owner fails to comply with the provisions of this section, the Association and the Palm Valley Phase IIIA Parcel 5 Architectural Committee shall have the right, but not the obligation, to enter upon such Owner's Lot for the purpose of maintaining, repairing or replacing such Improvements and to charge the cost thereof, plus any reasonable fees, expenses

or fines, to the Owner, which amounts shall be secured by the Assessment Lien against the Lot.

ARTICLE IX

AMENDMENTS

Section 9.1. Required Approvals. This Tract Declaration may be amended only upon receipt of the approval of: (i) the Declarant, so long as Declarant owns any property which is subject to the Declaration; (ii) the Builder, so long as Builder is the owner of any Lots subject to this Tract Declaration or an option on the purchase of any such Lots; (iii) Taro, so long as Taro owns any Lots which are subject to this Tract Declaration; (iv) Owners of at least seventy-five percent (75%) of all Lots within the Project which is subject to this Tract Declaration; and (v) the Association, if at the time this Tract Declaration is amended the Class B membership no longer exists. This Tract Declaration may be amended without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Tract Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project is required by law or requested by the Builder. Notwithstanding anything contained herein to the contrary, if the Association is deemed to be under the control of a "Developer" (as defined by the applicable guidelines of the Department of Housing and Urban Development or any other federal authority), the Federal Housing Administration or the Veterans Administration must grant approval before any amendment to this Tract Declaration will be effective. Any amendment approved pursuant to this Section shall be signed by the parties required to approve the same, and shall be recorded with the County Recorder of Maricopa County, Arizona; provided, however, that in lieu of requiring that Owners of at least seventy five percent (75%) of all Lots within the Project sign such Recorded instrument, the President of the Association may certify in such Recorded instrument that: (i) at a meeting of such Owners, Owners of at least seventy-five percent (75%) of the Lots within the Project voted in favor of such amendment; or (ii) attached to such recorded instrument are originals or true and correct copies of one or more petitions, ratifications or similar written instruments collectively bearing the signatures of Owners of the requisite number of Lots; and, provided, that in the event the Association's approval of such an amendment is required pursuant to this Section, such approval may be evidenced by the signature on such recorded

instrument by the Association's President, Secretary or other duly authorized officer, and need not be submitted to or approved by the Association's Members (other than Members who are Owners of Lots within the Project).

Section 9.2. Meeting of Owners. A meeting of Owners of Lots within the Parcel subject to the Tract Declaration for the purposes of voting on a proposed amendment to this Tract Declaration shall be called by the President of the Association if requested in writing by the Builder or by Owners of at least ten percent (10%) of the Lots within the Tract. Notice, quorums and the like for any such meeting shall be governed by provisions of the Bylaws relating to special meetings of the Members of the Association; provided, that notices of the meeting need be sent only to Owners of Lots within the Tract, and only Owners of Lots within the Tract (or their duly authorized representative) shall be considered in determining a quorum at such meeting and in determining eligibility to vote at such meeting. No Members of the Association other than Owners of Lots within the Tract, Declarant, Builder and the President or other officer of the Association shall be entitled to notice of, to attend, appear or speak at, or to vote at any such meeting.

Section 9.3. Amendment to Correct Errors and Comply with Applicable Law. Notwithstanding any other provisions of this Tract Declaration to the contrary, Declarant and Builder (so long as Builder owns or has an option to own any of the Lots within the Project) shall alone have the right, at any time, to amend this Tract Declaration to comply with applicable laws or to correct any error or inconsistency in this Tract Declaration, if the Amendment does not adversely affect the rights of any Owner of any Lot within the Tract.

ARTICLE X

GENERAL PROVISIONS

Section 10.1. Interpretation. This Tract Declaration is intended as a supplement to the Master Declaration, and therefore, in the event of any ambiguity in any provision of this Tract Declaration, or of any direct conflict between a provision in this Tract Declaration and a provision in the Master Declaration, the provisions of this Tract Declaration shall be interpreted and construed, to the extent reasonably possible, so as to be consistent with the Master Declaration. Notwithstanding the foregoing, it is understood and agreed that this Tract Declaration contains restrictions, easements, and restrictions in addition to those contained in the Master Declaration, and, furthermore, covers some matters not dealt with in the Master Declaration (or matters dealt with in a

less specific or less restrictive manner); and therefore, this Tract Declaration shall be interpreted, construed and enforced in accordance with its terms unless clearly and specifically prohibited by the Master Declaration. Where a conflict exists between the terms of this Tract Declaration and the terms of the Master Declaration or any other document created in connection therewith, the more restrictive terms shall apply.

Section 10.2. Binding Effect. This Tract Declaration shall run with title to each of the Lots within the Tract and shall be binding upon and inure to the benefit of the Owners of such Lots, the owners or holders of any interest therein, and their respective successors and assigns. This Tract Declaration shall be enforceable by any Owner of a Lot within the Tract, by the Association, by the Builder (so long as Builder is constructing or responsible for the condition of any home or Lot within the Tract) or by Declarant (so long as Declarant owns any property which is subject to the Master Declaration or any portion of the Annexable Property). In the case of any action taken to enforce any provision of this Tract Declaration, the prevailing party or parties shall be entitled to recover its costs and attorneys' fees, together with interest thereon at the rate of ten percent (10%) per annum. Failure by the Association, Builder, Declarant or any Owner to take such enforcement action shall in no event be deemed a waiver of a right to do so thereafter.

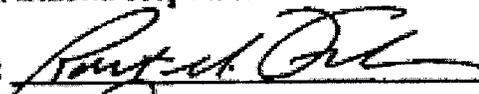
IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Tract Declaration as of the day and year first above written.

SUNCOR DEVELOPMENT COMPANY,
an Arizona corporation

By: 

Its: Vice President

THE FRANK DEVELOPMENT GROUP, INC.,
an Arizona corporation

By: 

Its: President

TARO PROPERTIES ARIZONA I, L.L.C.,
an Arizona limited liability company

By: *Shirley Cox*

Its: *MANAGER/MEMBER*

PALM VALLEY PHASES II AND III
COMMUNITY ASSOCIATION, an Arizona
Corporation

By: *L. T. [Signature]*

Its: *Resident*

APPROVED AND ACCEPTED BY:

James Oeser
James Oeser, Owner Lot 66

Harriet Oeser
Harriet Oeser, Owner Lot 66

Howard Eisenhut
Howard Eisenhut, Owner Lot 61

Nancy Eisenhut
Nancy Eisenhut, Owner Lot 61

James R. Fay
James R. Fay, Owner Lot 69

Florrie C. Fay
Florrie C. Fay, Owner Lot 69

Keavin D. Grob
Keavin D. Grob, Owner Lot 67

Karen E. Grob
Karen E. Grob, Owner Lot 67

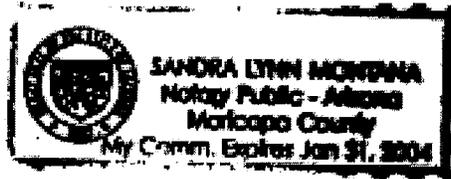
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 21 day of July, 2000, by Jay Ellington, the Vice President, of SUNCOR DEVELOPMENT COMPANY, an Arizona corporation.

My Commission Expires:

January 31, 2004

Sandra Lynn Montana
Notary Public



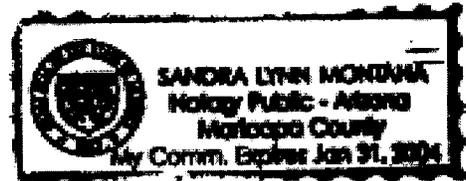
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 24 day of July, 2000, by Robert Frank, the President of THE FRANK DEVELOPMENT GROUP, INC., an Arizona corporation.

My Commission Expires:

January 31, 2004

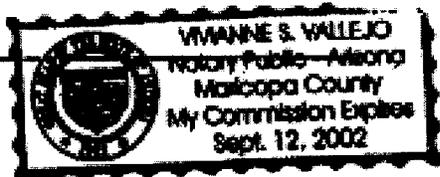
Sandra Lynn Montana
Notary Public



STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 26 day of July, 2000, by Shawnack, the Manager/Member of TARO PROPERTIES ARIZONA I, L.L.C., an Arizona limited liability company.

My Commission Expires:



Yvonne S. Vallejo
Notary Public

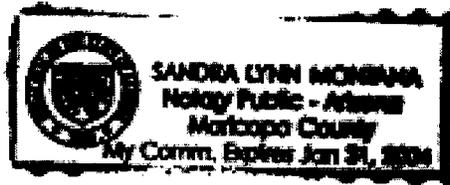
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 21 day of July, 2000, by Jay Ellingson, the President of PALM VALLEY PHASES II AND III COMMUNITY ASSOCIATION, an Arizona corporation.

My Commission Expires:

January 31, 2004

Sandra Lynn Montana
Notary Public



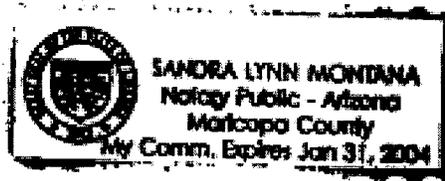
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 27 day of June, 2000, by JAMES OESER, the Owner of Lot 66.

My Commission Expires:

January 31, 2004

Sandra Lynn Montana
Notary Public



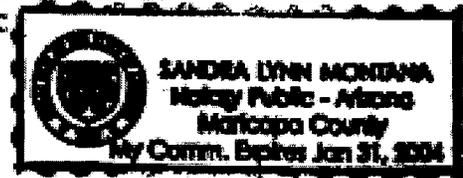
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 27 day of June, 2000, by HARRIET OESER, the Owner of Lot 66.

My Commission Expires:

January 31, 2004

Sandra Lynn Montana
Notary Public



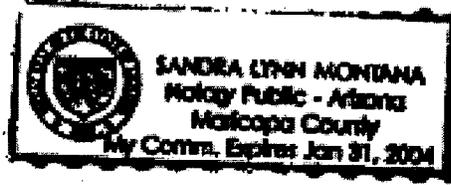
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29 day of June, 2000, by HOWARD EISENHUT, the Owner of Lot 61.

My Commission Expires:

January 31, 2004

Sandra Lynn Montana
Notary Public



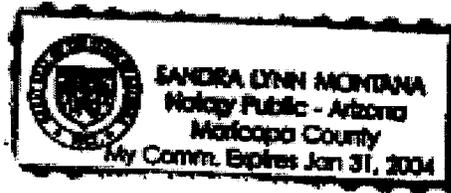
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29 day of June, 2000, by NANCY EISENHUT, the Owner of Lot 61.

My Commission Expires:

January 31, 2004

Sandra Lynn Montana
Notary Public



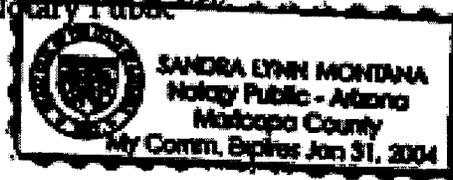
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29 day of June, 2000, by JAMES R. FAY, the Owner of Lot 69.

My Commission Expires:

January 31, 2004

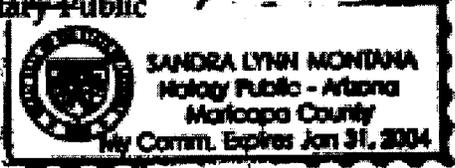
Sandra Lynn Montana
Notary Public



STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29 day of June, 2000, by FLORRIE C. FAY, the Owner of Lot 69.

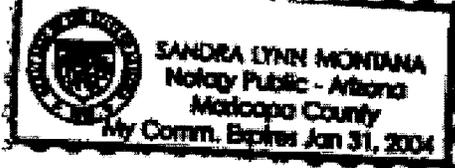
My Commission Expires:
January 31, 2004

Sandra Lynn Montana
Notary Public


STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29 day of June, 2000, by KEAVIN D. GROB, the Owner of Lot 67.

My Commission Expires:
January 31, 2004

Sandra Lynn Montana
Notary Public


STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29 day of June, 2000, by KAREN E. GROB, the Owner of Lot 67.

My Commission Expires:
January 31, 2004

Sandra Lynn Montana
Notary Public
