

NORTH AMERICAN TITLE AGENCY, INC.

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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
WARNER RANCH MEADOWS

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
WARNER RANCH MEADOWS

This Declaration of Covenants, Conditions and Restrictions is made as of February 28, 1996, by UDC HOMES, INC., a Delaware corporation ("Declarant"), and NORTH AMERICAN TITLE AGENCY, INC., an Arizona corporation, as Trustee of its Trust 1050, and not personally ("Trustee"), with reference to the following:

A. As of the date hereof, Trustee, as trustee of its Trust No. 1050, is the owner of fee title to the Property; Declarant is the sole beneficiary of such trust.

B. Declarant and Trustee intend by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property within the Property. Declarant and Trustee desire 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. By virtue of the Annexation Document, the Property is subject to the Master Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property now and hereafter subjected to this Declaration and which shall be binding on all parties having any right, title or interest in said real property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

ARTICLE 1

DEFINITIONS

Except as otherwise expressly provided in this Declaration, the following terms shall, for purposes of this Declaration, have the meanings set forth below:

1.1 "Annexation Document" means the Declaration of Annexation and Covenants, Conditions and Restrictions dated March 1, 1993, and Recorded on June 22, 1993, at Recorder's No. 93-0396074.

1.2 "Annual Assessments" means those Assessments designated as such in this Declaration and computed and levied as provided in Section 8.5.

1.3 "Articles" means the articles of incorporation of the Association, as amended from time to time.

1.4 "Assessments" means the Annual Assessments and the Special Assessments (as well as any other amounts declared by this Declaration to be a part of the Assessments or declared by this Declaration to be secured by the lien created under Section 8.3).

1.5 "Association" means Warner Ranch Meadows Association, an Arizona non-profit corporation, and its successors and assigns.

1.6 "Association Rules" means the reasonable rules and regulations adopted by the Association pursuant to Section 7.3.

1.7 "Board" means the board of directors of the Association.

1.8 "Bylaws" means the bylaws of the Association, as amended from time to time.

1.9 "Common Area" means all real property (including the improvements thereto), all easements and licenses, and all personal property and facilities owned by the Association for the common use and enjoyment of the Owners, including, but not limited to, Tracts A, B, C and D, as shown on the Plat.

1.10 "Common Expenses" means all expenses of operating the Association, of exercise by the Association of its rights hereunder and of performance by the Association of its duties and obligations imposed hereby, including without limitation establishing and maintaining reasonable reserves.

1.11 "Declarant" means UDC H^{Unofficial Document} ., a Delaware corporation, and any assignee of the rights and duties granted or reserved to the Declarant in this Declaration. Any assignment of the rights and duties of Declarant shall be evidenced by a duly executed and acknowledged Recorded instrument executed by the assigning Declarant which expressly makes such assignment.

1.12 "Declarant Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.13 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

1.14 "Dwelling Unit" means any building or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

1.15 "Eligible Mortgage Holder" means any holder (as evidenced by a Recorded instrument) of a First Mortgage who or which shall have made written request to the Association for notice of any proposed action that, pursuant to Section 9.2 or Section 9.12, requires the consent of a specified percentage of Eligible Mortgage Holders (which written request must contain the name and address of the Eligible Mortgage Holder and the Lot number or street address of the Lot against which the First Mortgage held by said Eligible Mortgage Holder is Recorded).

1.16 "First Mortgage" means a Mortgage Recorded against a Lot which has priority over all other Mortgages Recorded against that Lot.

1.17 "Lot" means a lot into which any part of the Property is subdivided as set forth on the Plat.

1.18 "Master Association" means Warner Ranch Phase II Association, an Arizona non-profit corporation, and its successors and assigns.

1.19 "Master Declaration" means the Declaration of Covenants, Conditions and Restrictions for Warner Ranch Phase II dated May 5, 1987, and Recorded May 6, 1987, at Recorder's No. 87-281073, as amended from time to time.

1.20 "Maximum Annual Assessment" means the amount determined for each fiscal year of the Association in accordance with Section 8.7.

1.21 "Member" means any Person entitled to membership in the Association, as provided in this Declaration.

1.22 "Mortgage" means a deed of trust, as well as a mortgage, which, in either case, is Recorded against a Lot.

1.23 "Mortgagee" means a beneficiary under a deed of trust, as well as a mortgagee under a mortgage, which, in either case, is Recorded against a Lot.

Unofficial Document

1.24 "Occupant" means any Person other than an Owner who occupies or is in possession of a Lot, whether as a lessee under a lease or otherwise.

1.25 "Owner" means the Person or Persons who individually or collectively own fee title to a Lot (as evidenced by a Recorded instrument), provided that: (a) Declarant (and not the fee title holder) shall be deemed to be the "Owner" of each Lot with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of Declarant or a Declarant Affiliate; (b) in the event that, and for so long as, Declarant or a Declarant Affiliate has an existing right or option to acquire any one or more Lots, pursuant to a written agreement, and for so long as such right or option has not previously expired or been terminated as to all of such Lots, Declarant shall also be deemed to be the "Owner" of each Lot with respect to which Declarant or a Declarant Affiliate has such right or option; and (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to Chapter 6.1 of Title 33 of the Arizona Revised Statutes, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot. Throughout this Declaration, references to a Lot or Lots, or any other property, "owned by" a Person shall be deemed to mean and refer to a Lot or Lots, or other property, as applicable, of which such Person is the Owner, as provided in this Section.

1.26 "Person" means a natural person, corporation, partnership, trustee or other legal entity.

1.27 "Plat" means the plat Recorded in Book 397 of Maps, page 9, as hereafter amended, corrected or supplemented.

1.28 "Property" means the property described on Exhibit A hereto, together with any other property annexed pursuant to Article 6.

1.29 "Record", "Recording", "Recorded" and "Recordation" means placing or having placed an instrument of public record in the official records of Maricopa County, Arizona, or of such other governmental authority, office or official with which or whom the applicable laws of the State of Arizona prescribe that documents affecting title to real property in the area including the Property are to be placed of public record.

1.30 "Single Family" means a group of persons related by blood, marriage or legal adoption, or a group of not more than three unrelated persons maintaining a common household.

1.31 "Special Assessments" means those Assessments levied in accordance with Section 8.9.

ARTICLE 2

PROPERTY RIGHTS

Every Owner shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, subject to any restrictions or limitations contained in this Declaration or in any Recorded instrument conveying such property. ^{Unofficial Document} Association or subjecting such property to this Declaration, and subject further to the Association Rules. Any Owner may assign his, her or its right of enjoyment to (and share the same with) the members of his or her household and assign the same to and share the same with his, her or its tenants and invitees subject to the provisions of this Declaration and to reasonable regulation by the Board and otherwise in accordance with such procedures as the Board may adopt. An Owner who leases his, her or its Lot shall be deemed to have delegated such Owner's rights and easements under this Article 2 to the lessee of such Lot for the term of such lease.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS

3.1 Votes of Owners of Lots. Every Owner of a Lot automatically shall be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner's membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable. In the event the Owner of a Lot consists of two or more Persons, each such Person shall be considered a Member but the membership as to such Lot shall be joint, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall make such designation and such designation shall be binding for all purposes. Notwithstanding the foregoing, so long as the Class B membership is in existence, no Class B Member shall at the same time be a Class A Member nor shall a Class B Member

have any Class A votes, and the membership and number of votes of the Class B Member(s) shall be determined in accordance with Subsection 3.3.2. Each Owner (other than Declarant, so long as the Class B membership is in existence) shall have one (1) vote for each Lot owned by such Owner.

3.2 Declarant. Declarant shall be a Member of the Association for so long as it holds a Class A or Class B membership.

3.3 Voting Classes. The Association shall have two classes of voting Members.

3.3.1 Class A. Class A Members shall be all Owners except Declarant (until the conversion of Declarant's Class B membership to Class A membership as provided below); and

3.3.2 Class B. The Class B Member shall be Declarant, who shall be entitled to three (3) votes for each Lot owned by Declarant. Declarant shall have the right, at any time and from time to time, to assign all or any part of its voting rights appurtenant to its Class B membership (as well as all or any other rights appurtenant thereto) to one or more Persons acquiring, for purposes of development and sale, any part of the Property. Further, Declarant shall have the right, at any time and from time to time, to designate an individual or individuals to exercise Declarant's voting rights (whether appurtenant to Class A or Class B membership), provided, however, that such designation shall not act as an assignment by Declarant of its membership or voting rights hereunder. The Class B membership automatically shall cease and be converted to Class A membership upon the happening of the first of the following events:

(a) the date which is 90 days after the date upon which the total number of votes of the Class A Members equals the total number of votes of the Class B Member;

(b) the date which is seven (7) years after the date this Declaration is Recorded;

or

(c) the date on which Declarant Records a written notice electing to convert the Class B membership to Class A membership.

3.4 Right to Vote. In the event of a change in ownership of a Lot, the Board may, in its reasonable discretion, require that the new Owner provide reasonably satisfactory evidence of its interest in the Lot as a condition to permitting such Owner to vote. Owners shall not be permitted to cast fractional votes. Where the Owner of a Lot consists of more than one Person, if one of those Persons casts a vote or votes attributable to that Lot, that Person will thereafter be conclusively presumed to be acting with the authority and consent of all other Persons constituting the Owner of such Lot unless and until objection thereto is made to the Board, in writing. Any Owner of a Lot which is leased may, in the lease or other written instrument, assign the voting right appurtenant to the Lot to the lessee thereof, provided that a copy of the written assignment of such voting rights is furnished to the secretary of the Association prior to any meeting at which such lessee seeks to exercise such voting right.

3.5 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws and the Association Rules.

3.6 Transfer of Membership. Except as otherwise provided in this Declaration, the rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure or other legal process authorized under Arizona law, shall operate to transfer the membership appurtenant thereto to the new Owner and any attempt to make any other form of transfer shall be void.

ARTICLE 4

MAINTENANCE

4.1 Association's General Responsibilities. The Association shall maintain and keep in good repair the Common Area (and certain other areas, as more expressly provided in this Section 4.1), and the costs of such maintenance shall be Common Expenses of the Association (subject to any insurance then in effect. This maintenance shall include, but not be limited to:

4.1.1 maintenance, repair and replacement of all landscaping and other flora, structures and improvements situated upon the Common Area;

4.1.2 maintenance, repair and replacement of landscaping and flora in or upon public rights-of-way immediately adjacent to the exterior boundaries of the Property, and of any perimeter or boundary walls on or surrounding the exterior boundaries of the Property;

4.1.3 maintenance, repair, ^{Unofficial Document} replacement of landscaping and signs within areas designated on one or more subdivision plats or other instruments Recorded by, or bearing the written approval of, Declarant (or, after termination of the Class B membership, the Association) with respect to all or portions of the Property as "landscape easements," "landscape and wall easements" or "landscape and sign easements" (or similar designations) to be maintained by the Association;

4.1.4 maintenance, repair and replacement of the side facing a street or portion of the Common Area of any boundary or perimeter wall situated within areas designated on one or more subdivision plats or other instruments Recorded by, or bearing the written approval of, Declarant (or, for subdivision plats Recorded after termination of the Class B membership, the Association) with respect to the Property as "wall easements" (or similar designations) to be maintained by the Association; and

4.1.5 maintenance and repair of any drainage easements upon or across the Common Area.

Notwithstanding anything to the contrary in the foregoing, except where otherwise provided in an instrument Recorded by, or bearing the written approval of, Declarant, the Association shall be responsible for maintaining the side of any boundary wall facing a public street or roadway (or a private street or roadway owned by the Association), while the Owner of a Lot shall be responsible for maintaining the side of any boundary wall facing such Owner's Lot. For purposes of the preceding sentence a "boundary wall" shall be any wall or fence separating a Lot from a public street or roadway adjacent to or along the exterior perimeter boundaries of Warner Ranch Meadows or adjacent to or

along a major arterial street or roadway (whether public or owned by the Association) within Warner Ranch Meadows if, in the case of a wall within Warner Ranch Meadows, such wall is designed as a "common" or "theme" wall presenting a uniform appearance along its length. All landscaping on the Common Area which the Association is required to maintain pursuant to this Declaration shall be maintained by the Association in accordance with landscaping plans approved by the City of Tempe. Notwithstanding any other provision of this Declaration, this Section 4.1 (including, but not limited to, the immediately preceding sentence) shall not be amended without the prior written approval of the City Attorney for the City of Tempe.

4.2 Maintenance of Owner's Structures. Each Owner shall be responsible for the maintenance, cleaning, painting, repair and general care of all structures existing or constructed upon such Owner's Lot and, in particular, each Owner shall cause the exterior of said structures to be maintained in good condition and repair and in an attractive state consistent with the Association Rules and general community standards within the Property. In the event that the Board shall determine, after providing reasonable notice and an opportunity to be heard, that any Owner is in breach of such Owner's obligations under the preceding sentence, the Board shall promptly give such Owner written notice of such determination, including a reasonably detailed list or description of the repairs, maintenance or other work required to cure such Owner's breach, and in the event the Owner shall not have cured such breach within thirty (30) days after the date of said written notice, the Association may, in the discretion of the Board, cause the repairs, maintenance or other work to be performed so as to cure such Owner's breach, and the costs of doing so, together with interest from the date of expenditure at the rate set forth in Section 9.9, shall be the personal obligation of such Owner and shall constitute a lien on such Owner's Lot, which lien shall have the priority and may be enforced in the manner described in Section 8.3, the Association shall also have standing and authority to request that a court of competent jurisdiction compel such Owner to cure such breach, and to the extent not inconsistent with an order of such court, the Association may pursue either or both of the courses of action described in this sentence. The Association shall have an easement on, over, across and through each Lot to permit it to carry out its duties and obligations under this Article 4.

4.3 Publicly-Dedicated Areas. Except as expressly provided in this Article 4 (and, in particular, in Subsection 4.1.3), and except as may otherwise be required by applicable law, the Association shall have no responsibility to maintain any areas within the Property (including, but not limited to, public streets) which are dedicated to or the responsibility of a municipality or other governmental entity.

4.4 No Discrimination. The provision of services in accordance with this Article shall not be deemed to be discrimination in favor of or against any Owner.

ARTICLE 5

INSURANCE AND FIDELITY BONDS; CASUALTY LOSSES

5.1 Insurance to be Obtained by the Association.

5.1.1 Hazard Insurance.

(a) The Board, acting on behalf of the Association, shall obtain and maintain at all times insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona, against all other perils customarily covered for similar types of projects (including those covered by the standard "all risk" endorsement available from time to time in the State of Arizona), and against loss or damage due to vandalism and malicious mischief. Said insurance shall be in an amount equal to 100% of the current replacement cost, from time to time, without deduction for depreciation, of all such insurable improvements (excluding land, foundations, excavations and other items usually excluded from such insurance coverage, but including fixtures and building service equipment and personal property and supplies owned by the Association), with such amount to be redetermined annually (and upon the subjection of any additional property to the effect of this Declaration if such subjection results in an addition to the Common Area of property upon which are situated improvements required to be insured hereunder) by the Board with the assistance of the insurer or insurers providing such coverage.

(b) The policy ^{Unofficial Document} providing the insurance required by this Subsection 5.1.1 shall provide that: (i) any insurance trust agreement shall be recognized; (ii) the insurer shall waive any right of subrogation against the Owners, the Board or the Association, and their respective agents, tenants, servants, employees, guests and household members; (iii) such insurance shall not be cancelled, invalidated or suspended by reason of any acts or omissions of any Owner (or of such Owner's invitees, agents, tenants, servants, employees, guests or household members), or of any member, officer or employee of the Board without a prior written demand to the Board that any such act or omission be cured and without providing a sixty (60) day period within which the Board may cure such act or omission (or cause the same to be cured); (iv) such insurance coverage shall be primary, and shall in no event be brought into contribution with any insurance maintained by individual Owners, their Mortgagees or other lien holders; and (v) the coverage afforded by such policy or policies shall not be prejudiced by any act or omission of any Owner or Occupant (or their agents) when such act or omission is not within the control of the Association.

(c) The policy or policies providing the insurance required by this Subsection 5.1.1 shall also contain the following endorsements (or their equivalents): (i) "agreed amount" and "inflation protection" endorsements; (ii) "increased cost of construction" endorsement; (iii) "contingent liability from operation of building laws or codes" endorsement; (iv) "demolition cost" endorsement; and (v) "current replacement cost" endorsement.

(d) The policy or policies providing the insurance required by this Subsection 5.1.1 shall also contain a steam boiler and machinery endorsement providing coverage in

an amount not less than the lesser of \$2,000,000 or the insurable value of the building(s) housing such boiler and machinery, if any.

(e) Unless a higher maximum deductible amount is required by applicable law, each policy providing the insurance coverage required by this Subsection 5.1.1 shall provide for a deductible not to exceed the lesser of \$10,000 or one percent (1%) of the face amount of such policy.

5.1.2 Liability Insurance. The Board, acting on behalf of the Association, shall obtain and maintain at all times a comprehensive general liability policy insuring the Association, each member of the Board, each Owner and each Declarant Designee (as defined below), against any liability to the public or to any Owner or Occupant (and such Owner's or Occupant's invitees, agents, employees, tenants, guests, servants and household members) for death, bodily injury and property damage arising out of or incident to the ownership or use of the Common Area or arising out of or incident to the performance by the Association of its maintenance and other obligations hereunder. The Board, with the assistance of the insurer(s) providing such coverage, shall review annually the amounts of coverage afforded by said comprehensive general liability policy or policies and adjust such amounts of coverage as the Board deems appropriate, but in no event shall said policy or policies provide coverage less than One Million Dollars (\$1,000,000.00) for death, bodily injury and property damage for any single occurrence. The policy or policies providing such insurance shall, by specific endorsement or otherwise, preclude denial by the insurer(s) providing such insurance of a claim under such policy or policies because of negligent acts or omissions of the Association, any Owner(s) or any Declarant Designee(s) or any other Person named as an insured or additional insured thereunder. For purposes of this Subsection 5.1.2 (and Subsection 5.1.7), the term "Declarant Designee" shall mean Declarant and, so long as Declarant or any affiliate ^{Unofficial Document} Declarant, or any Person with whom Declarant or any such affiliate contracts directly for the performance of all or a substantial portion of Declarant's rights and obligations hereunder, or for the construction of substantial improvements on the Property, retains an interest in the Property or any Lot, such affiliate and such other Person, if identified by Declarant to the Association, provided that any added premium cost or other expense resulting from naming Declarant, such affiliate or such other Person as insureds shall be borne by Declarant, such affiliate or such other Person.

5.1.3 Flood Insurance. In the event any part of the Common Area is in a "special flood hazard area," as defined by the Federal Emergency Management Agency (or its successors), the Board, acting on behalf of the Association, shall obtain (and maintain at all times during which any part of the Common Area is in such a "special flood hazard area") a "master" or "blanket" policy of flood insurance covering all insurable improvements on the Common Area and covering any personal property situated from time to time within such improvements (to the extent such personal property is normally covered by the standard flood insurance policy available from time to time in the State of Arizona). Said insurance shall be in an amount not less than the lesser of: (a) 100% of the current replacement cost, from time to time, of all such insurable improvements (and such insurable personal property) located in the "special flood hazard area"; or (b) the maximum coverage available for such insurable improvements and insurable personal property under the National Flood Insurance Program. Unless a higher maximum deductible amount is required by applicable law, the policy providing such insurance shall provide for a deductible not to exceed the lesser of \$5,000 or one percent (1%) of the face amount of such policy.

5.1.4 General Provisions Governing Insurance. The insurance required to be obtained under Subsections 5.1.1, 5.1.2 and 5.1.3 shall be written in the name of the Association as trustee for each of the Owners and for each Mortgagee (as their respective interests may appear) and shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with one or more companies authorized to provide such insurance in the State of Arizona;

(b) Exclusive authority to adjust losses under policies in force on property owned or insured by the Association shall be vested in the Board;

(c) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, Occupants or their Mortgagees or other lienholders, and the insurance carried by the Association shall be primary;

(d) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Board or the Owners and their respective tenants, servants, agents, employees, guests and household members;

(e) Each policy providing insurance coverage required by Subsections 5.1.1, 5.1.2 and 5.1.3 shall require the applicable insurer to give not less than ten (10) days written notice to the Association, and to each Mortgagee which shall have given such insurer written notice of such Mortgagee's interest in a Lot (which Unofficial Document must include the name and address of such Mortgagee), of any cancellation, refusal to renew or material modification of such policy; and

(f) To the extent reasonably available, each policy providing insurance coverage required by Subsections 5.1.1, 5.1.2 and 5.1.3 shall contain a waiver by the applicable insurer of its rights to repair and reconstruct instead of paying cash.

5.1.5 Fidelity Bonds. The Board, acting on behalf of the Association, shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of officers, directors and employees of the Association and all others who handle, or are responsible for handling, funds held or administered by the Association, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Association. Any independent management agent which handles funds for the Association shall also obtain (and pay for) such fidelity bond coverage with respect to its own activities (and those of its directors, officers and employees, whether or not such directors, officers or employees receive compensation for services rendered). Such fidelity bonds: (a) shall name the Association as obligee; (b) shall be issued by one or more companies authorized to issue such bonds in the State of Arizona; and (c) shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Board to be in the custody of the Association or such agent at any time while such bond is in force, but in no event shall the amount of such fidelity bond coverage be less than the sum of three (3) months' Annual Assessments on all Lots, plus the total of funds held in the Association's reserves. Each such fidelity bond shall provide that the issuer thereof shall provide not less than ten (10) days written notice to

the Association and to each Eligible Mortgage Holder before such bond may be cancelled or substantially modified for any reason.

5.1.6 Workers' Compensation Insurance. The Board, acting on behalf of the Association, shall obtain and maintain workers' compensation insurance if and to the extent necessary to meet the requirements of applicable law.

5.1.7 Cost of Insurance. All premiums for the insurance or bonds required to be obtained by the Board by this Section 5.1 shall be Common Expenses (except that, as provided in Subsection 5.1.5, the cost of the fidelity bond required to be furnished by any independent management agent shall be paid by such agent, and, as provided in Subsection 5.1.2, any added cost of naming Declarant, or any other Declarant Designee, shall be borne by Declarant or such other Declarant Designee). The Board shall not be liable for failure to obtain or maintain any of the insurance coverage required by this Section 5.1, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such insurance coverage from reputable companies authorized to provide such insurance in the State of Arizona, or if such insurance coverage is available only at an unreasonable cost.

5.1.8 Subsequent Changes in Insurance Requirements. It is the intention of this Article 5 (and, in particular, of this Section 5.1), to impose upon the Association the obligation to obtain and maintain in full force and effect at least those types and amounts of insurance as are required, at the time this Declaration is Recorded, by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and Federal Housing Administration. However, notwithstanding any provision of this Declaration to the contrary, should any or all of said agencies subsequently amend^{Unofficial Document}ify their respective requirements regarding the insurance coverage required to be maintained by the Association, the Board, acting on behalf of the Association, shall, promptly upon receiving notice of such amendment or modification from any such agency, from any Owner or Eligible Mortgage Holder or from Declarant, obtain such additional, modified or amended policy or policies of insurance as may be necessary to conform to such amended or modified requirements (provided, however, that the Board shall not be required to alter the types or amounts of coverage if the amendments or modifications adopted by any such agency reduce or eliminate required types or amounts of insurance). Should such requirements of any such agency conflict with the requirements of any other such agency or with applicable provisions of law, the Board, acting on behalf of the Association, shall diligently work with such agency or agencies to resolve such conflict and shall thereafter obtain and maintain such additional, modified or amended policy or policies of insurance as may be necessary to conform with the requirements of such agencies, taking into account the resolution of said conflict. In the event the Board, after exercise of such diligence, is unable to resolve such conflict, the Board, acting on behalf of the Association, shall exercise its good faith business judgment and obtain and maintain in full force and effect such insurance coverage as the Board, in the exercise of such judgment, deems to conform as closely as possible with the applicable requirements of all such agencies, and of law, taking into account such conflict.

5.2 Insurance to be Obtained by the Owners.

5.2.1 Public Liability Insurance. It shall be the individual responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, such comprehensive

public liability insurance as such Owner may desire against loss or liability for damages and any expense of defending against any claim for damages which might result from the ownership, use or occupancy of such Owner's Lot.

5.2.2 Hazard and Contents Insurance. It shall be the individual responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, such fire, liability, theft and any other insurance covering: (a) any Dwelling Unit and any other structure on such Owner's Lot; and (b) any and all fixtures and personal property upon such Lot or in such Dwelling Unit or other structure(s).

5.3 Casualty Losses.

5.3.1 Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the property required to be insured by the Association under Section 5.1, the Board or its duly authorized agent shall: (i) proceed with the filing and adjustment of all claims arising under such insurance; (ii) obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property; and (iii) upon receipt of the proceeds of such insurance and except as is otherwise provided in this Subsection 5.3.1, use such proceeds to repair or reconstruct the damaged or destroyed property. The terms "repair" and "reconstruction" (or variants thereof), as used in this Article 5 shall mean repairing or restoring the property in question to substantially the same condition as that in which it existed prior to the fire or other casualty (or, where applicable, replacing the damaged or destroyed property with property substantially similar to the damaged or destroyed property as it existed prior to such damage or destruction).

(b) Any major damage or destruction to the property required to be insured by the Association under Section 5.1 shall be repaired or reconstructed unless: (i) at a special meeting of the Members of the Association duly noticed and convened within sixty (60) days after the occurrence of such damage or destruction, the Members determine, by a vote of Persons holding not less than seventy-five percent (75%) of the votes in each class of Members, not to so repair or reconstruct; and (ii) Eligible Mortgage Holders representing at least fifty-one percent (51%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders concur in such determination not to so repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made or become available; provided, however, that such extension shall not exceed an additional sixty (60) days. The Board shall determine whether any minor damage or destruction to the Common Area should be repaired or reconstructed.

(c) In the event that it is determined in the manner described above that the damage or destruction of any part of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event such property shall be maintained by the Association in a neat and attractive condition as an undeveloped portion of the Common Area.

5.3.2 Excess or Deficiency of Proceeds. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to pay the cost thereof, the Board shall, without the necessity of a vote of the Members, levy assessments against the Owners of all Lots, which assessments shall be allocated equally among all Lots. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Any assessments levied pursuant to this Subsection 5.3.2 shall be deemed to be a part of the Assessments and shall be secured by the lien created by Section 8.3. If the funds available from insurance exceed the cost of repair, such excess shall be used to meet Common Expenses or, in the discretion of the Board, placed in a reserve account for contingencies or capital improvements.

5.3.3 Repair or Reconstruction of Dwelling Units or Other Structures. In the event of the destruction of a Dwelling Unit or other structure on a Lot, or of damage to such Dwelling Unit or other structure which, in the reasonable judgment of the Board, materially affects the exterior appearance thereof, the Board shall have the right, at its option, exercisable by written notice to the Owner of the Lot upon which such Dwelling Unit or other structure is situated, to require such Owner to repair or reconstruct (or cause to be repaired or reconstructed), at such Owner's expense (subject to any insurance proceeds as such Owner may then or thereafter receive in respect of such destruction or damage), such Dwelling Unit or other structure within such reasonable period of time as shall be specified by the Board in such notice (which period of time shall in no event be less than eight (8) months from the date of such destruction or damage). The Board may exercise such right and establish such time period notwithstanding such Owner's failure to maintain hazard or casualty insurance upon such Owner's Lot or any structures thereon and notwithstanding any unavailability or delay in receipt of proceeds of any insurance policy or policies, although the Board may take such matters into account in establishing or extending the time period within which such repair or reconstruction must be completed. Any such repair or reconstruction work shall be performed in compliance with all applicable provisions of this Declaration and of the Master Declaration, and the Owner of such Lot shall take such steps as are reasonably necessary to prevent damage to surrounding property and injury to persons as may result from or arise in connection with the destroyed or damaged Dwelling Unit or other structure or the repair or reconstruction activities with respect thereto.

ARTICLE 6

ANNEXATION OF ADDITIONAL PROPERTY; DEANNEXATION

6.1 Limitations on Annexations. As of the date this Declaration is Recorded, Declarant does not anticipate that any additional property will be annexed to the Property, and additional 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 approval of the applicable percentage of Eligible Mortgage Holders, as provided in Section 9.2; and (c) with the express written consent of each owner of all or any part of the property proposed to be annexed; and (d) with such consent or approvals as may be required by the Master Declaration.

6.2 FHA and VA Approval. In addition to the requirements imposed by Sections 6.1, 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 (except to the extent such annexation is in accordance with a plan of annexation or expansion previously approved by such agencies).

6.3 Recordation of Annexation Instrument. Upon approval to the extent required by this Article 6 of any annexation of property to the Property, the President and Secretary of the Association shall execute, acknowledge and Record an instrument effecting and 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 6 and executed by the Owner of such annexed property) may subject the annexed property to such additional covenants, conditions and restrictions as the owner thereof may deem appropriate or desirable (subject, however, to approval thereof by the Association, and to such other approval rights as may be granted hereby to other parties in connection with such annexation), provided, however, that any and all such additional covenants, conditions and restrictions shall be subordinate and subject to the provisions of this Declaration and of the Master Declaration.

6.4 Effect of Annexation. Upon the effective date of an annexation pursuant to this Article 6: (a) the property so annexed shall immediately be and become a part of the Property and subject to all of the provisions hereof; (b) any Lot then or thereafter constituting a part of the annexed property, and the Owner of any such Lot, shall thereupon be subject to all of the provisions of this Declaration; (c) any part or parts of the property annexed which is or are designated or declared to be Common Area shall thereupon be subject to the provisions of this Declaration; and (d) improvements then or thereafter situated ^{Unofficial Document} on the annexed property shall be subject to the provisions of this Declaration and shall be reasonably consistent, in terms of quality of construction, with the improvements situated upon other portions of the Property prior to such annexation.

6.5 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 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.

ARTICLE 7

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

7.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of the Common Area, and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof. All landscaping on the Common Area which the Association is required to maintain pursuant to this Declaration shall be maintained by the Association in accordance with landscaping plans approved by the City of Tempe. Notwithstanding any other provision of this Declaration, this Section 7.1 (including, but not limited to, the immediately preceding

sentence) shall not be amended without the prior written approval of the City Attorney for the City of Tempe.

7.2 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property, except that, subject to the provisions of Sections 9.2, 9.11 and 9.12, no dedication, sale or transfer of all or any part of the Common Area shall be made or effective unless approved by not less than 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 such purpose. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the Property as may be conveyed or assigned to the Association by Declarant (including, but not limited to, such parts of the Common Area as may now or hereafter be held by Declarant).

7.3 Rules and Regulations. 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 the Association Rules. The Association Rules may restrict and govern the use of the Common Area, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Property and the Common Area. Upon adoption, the Association rules shall have the same force and effect as if they were set forth herein. Sanctions for violation of the Association Rules or of this Declaration may be imposed by the Board and may include suspension of the right to vote and the right to use the recreational facilities on the Common Area, and may also include reasonable monetary fines (so long as Unofficial Document es are reasonable and nondiscriminatory, and are in accordance with a general schedule of fines adopted or amended by the Board prior to the date of the particular violation for which a fine is to be imposed). No suspension of an Owner's right to vote or of the right of such Owner (or any Occupant of such Owner's Lot or any guest or household member of such Owner or Occupant) to use the recreational facilities on the Common Area due to a violation of the Association Rules may be for a period longer than sixty (60) days (except where such Owner or Occupant fails or refuses to cease or correct an on-going violation or commits the same or another violation, in which event such suspension may be extended for additional periods not to exceed sixty (60) days each until such violation ceases or is corrected).

7.4 Availability of Books, Records and Other Documents. The Association shall maintain complete and current copies of this Declaration, the Articles, the Bylaws and the Association Rules (as well as any amendments to the foregoing) and of the books, records and financial statements of the Association, and, upon the prior written request to the Association by any Owner or by any holder, insurer or guarantor of a First Mortgage, shall make the same available for inspection, at reasonable times and under reasonable circumstances, by such Owner or such holder, insurer or guarantor.

7.5 Audited Financial Statements. In the event any holder, insurer or guarantor of a First Mortgage submits to the Association a written request for an audited financial statement of the Association for the most recently concluded fiscal year of the Association, the Association shall promptly deliver such an audited financial statement to such holder, insurer or guarantor, and in the event no such audited financial statement has been prepared for the most recently concluded fiscal

year, the Association shall cause the same to be prepared and delivered to such holder, insurer or guarantor as soon as reasonably possible. The cost of having such an audited financial statement prepared shall be a Common Expense.

7.6 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

7.7 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. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area. The Board shall determine the compensation to be paid to the manager.

ARTICLE 8

ASSESSMENTS

8.1 Creation of Assessment Right. In order to provide funds to enable the Association to meet its financial and other obligations and to create and maintain appropriate reserves, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Annual Assessments and Special Assessments shall be for Common Expenses and shall be allocated equally among all Lots, subject to the provisions of Unofficial Document 8.

8.2 Covenants with Respect to Assessments. Each Owner, by acceptance of his, her or its deed (or other conveyance instrument) with respect to a Lot, is deemed to covenant and agree to pay the Assessments levied pursuant to this Declaration with respect to such Owner's Lot, together with interest from the date due at a rate equal to the greater of: (a) ten percent (10%) per annum; or (b) the annual rate of interest then in effect for new first priority single family residential mortgage loans guaranteed by the Veterans Administration, and together with such costs and reasonable attorneys' fees as may be incurred by the Association in seeking to collect such Assessments. Each of the Assessments with respect to a Lot, together with interest, costs and reasonable attorneys' fees as provided in this Section 8.2, shall also be the personal obligation of the Person who or which was the Owner of such Lot at the time such Assessment arose with respect to such Lot, provided, however, that the personal obligation for delinquent Assessments shall not pass to a successor in title of such Owner unless expressly assumed by such successor. No Owner shall be relieved of his, her or its obligation to pay any of the Assessments by abandoning or not using his, her or its Lot or the Common Area, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot, as evidenced by a Recorded instrument, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements

which are the responsibility of the Association, or from any action taken to comply with any law or ordinance or with any order or directive of any municipal or other governmental authority.

8.3 Lien for Assessments; Foreclosure. There is hereby created and established a lien against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner or Occupant thereof (together with any present or future charges, fines, penalties or other amounts levied against such Lot or the Owner or Occupant thereof pursuant to this Declaration or the Articles, the Bylaws or the Association Rules). Such lien is and shall be prior and superior to all other liens affecting the Lot in question, except: (e) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale and transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage and convey the same. During the period any Lot is owned by the Association, no right to vote shall be exercised with respect to said Lot and no Assessments (whether Annual Assessments or Special Assessments) shall be assessed or levied on or with respect to said Lot, provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Area. The Association may maintain a suit to recover a money judgment for unpaid Assessments, rent, interest and attorneys' fees without foreclosing or waiving the lien securing same. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments Unofficial Document her amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

8.4 Dates Assessments Commence; Declarant's Rate. Assessments shall be payable in respect of a Lot (including any Lot owned by Declarant) from the date upon which title to said Lot, or any other Lot within the Property, shall first be conveyed to a retail purchaser, and such Assessments shall be payable regardless of whether a Dwelling Unit or other structure shall be situated upon such Lot on such date. As to any Lot owned by Declarant with respect to which Assessments shall have commenced as provided in the preceding sentence, the Assessments payable by Declarant with respect to such Lot shall be an amount equal to twenty-five (25%) of the Assessments which would otherwise be payable hereunder with respect to such Lot if it were owned by an Owner other than Declarant. No Assessments shall be payable with respect to a Lot so long as Declarant shall own all of the Lots within the Property. As to any Lot conveyed by Declarant to a retail purchaser, Assessments as to such Lot shall be prorated as of the close of escrow with respect to such Lot (or, if no escrow is utilized, as of the date of Recordation of the deed conveying such Lot to such retail purchaser).

8.5 Computation of Assessments; Annual Budget. The Board shall prepare and adopt an estimated annual budget for each fiscal year of the Association, which annual budget shall serve as the basis for determining the Annual Assessments for the applicable fiscal year (subject to the limitations of Section 8.7 hereof). Such budget shall take into account the estimated Common

Expenses and cash requirements of the Association for the year. The annual budget shall also take into account the estimated net available cash income for the year, if any, from the operation or use of any of the Common Area. The annual budget shall also provide for reserves, in such reasonably adequate amounts as shall be determined by the Board: (a) for contingencies for the year (and for subsequent fiscal years); (b) for maintenance, repairs and replacements; and (c) to cover deductible amounts under insurance policies owned or held by the Association. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause to be delivered or mailed to each Owner a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot for the fiscal year in question. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the Annual Assessments provided for therein) for the year immediately preceding shall remain in effect. Subject to the provisions of this Section 8.5 and of Sections 8.7 and 8.9, neither the annual budget (nor any amended budget) adopted by the Board, nor any Assessment levied pursuant thereto, shall be required to be ratified or approved by the Owners. If, at any time during a fiscal year of the Association the Board deems it necessary to amend the budget for such year, the Board may do so and may levy an additional Annual Assessment for such year (subject to the limitations imposed by Section 8.7) or may call a meeting of the Members to request that the Members approve a Special Assessment pursuant to Section 8.9. Within sixty (60) days after adoption of the amended budget (if the Board elects to levy an additional Annual Assessment), the Board shall cause a copy of the amended budget and a statement of the additional Annual Assessments to be levied against the Lots to be delivered or mailed to each Owner; if, instead, the Board elects to call a meeting of Members to seek approval of a Special Assessment, the Board shall cause a copy of the amended budget proposed by the Board to be delivered or mailed to each Owner with the notice of such meeting, and if a Special Assessment is duly approved by the Members ^{Unofficial Document} meeting, shall cause a statement of the Special Assessment to be levied against each Lot to be promptly mailed or delivered to each Owner.

8.6 Due Dates. Annual Assessments for each fiscal year shall be due and payable in equal periodic installments, payable not more frequently than monthly nor less frequently than semiannually, as determined for such fiscal year by the Board, with each such installment to be due and payable on or before the first day of the applicable period during that fiscal year. Special Assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board. In addition to any other powers of collection or enforcement granted hereunder, in the event any Assessments (or installments thereof) with respect to a Lot are delinquent, the Board shall have the right, in its sole discretion, to accelerate the date on which all Assessments with respect to such Lot are due and payable. For purposes of this Declaration, Assessments shall be deemed "paid" when actually received by the Association or by its manager or agent designated by the Association to collect the same (provided, however, that if any Assessments were paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due).

8.7 Maximum Annual Assessment. The Annual Assessments provided for herein shall not at any time exceed the Maximum Annual Assessment, as determined in accordance with this Section 8.7. For the fiscal year ending December 31, 1996, the Maximum Annual Assessment shall be Eight Hundred Seventy-Six Dollars (\$876.00) for each Lot. Thereafter, unless a greater increase is approved 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 such purpose, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to the greater of: (a) the percentage increase for the applicable fiscal year over the immediately preceding fiscal year in the Consumer Price Index -- All Urban Consumers -- All Items (1982-1984 Average = 100 Base) published by the Bureau of Labor Statistics of the U.S. Department of Labor (or its successor governmental agency), or, if such index is no longer published by said Bureau or successor agency, in the index most similar in composition to such index; or (b) ten percent (10%). Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by the Declaration to be maintained by the Association; or (ii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, in either case (i) or (ii) notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is at a rate greater than otherwise permitted under the preceding sentence. Nothing herein shall obligate the Board to levy, in any fiscal year, Annual Assessments in the full amount of the Maximum Annual Assessment for such fiscal year, and the election by the Board not to levy Annual Assessments in the full amount of the Maximum Annual Assessments for any fiscal year shall not prevent the Board from levying Annual Assessments in subsequent fiscal years in the full amount of the Maximum Annual Assessment for such subsequent fiscal year (as determined in accordance with this Section 8.7). In the event that, for any fiscal year, the Board elects to levy an Annual Assessment at less than the full amount of the Maximum Annual Assessment for such fiscal year, the Board may, if in its reasonable discretion circumstances so warrant, subsequently levy a supplemental Annual Assessment during said fiscal year so long as the total of the Annual Assessments levied during said fiscal year does not exceed the Maximum Annual Assessment for such fiscal year.

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8.8 Notice and Quorum for Meetings to Consider Special Assessments and Certain Increases in Annual Assessments. Notwithstanding any other provision hereof or of the Articles, Bylaws or Association Rules, written notice of any meeting called for the purpose of: (a) approving the establishment of any Special Assessment, as required by Section 8.9 hereof; or (b) approving any increase in the Maximum Annual Assessment greater than that permitted by application of the formula as set forth in Section 8.7, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting. At the first meeting thus called to consider the particular Special Assessment or increase in the Maximum Annual Assessment, a quorum shall consist of sixty percent (60%) of the votes in each class of Members (whether represented in person or by valid proxy), provided, however, that if a quorum, as so determined, is not present at said first meeting, a second meeting may be called (subject to the same notice requirements as set forth above) to consider the same issue, and a quorum at said second meeting shall be one-half (1/2) of the required quorum at the first meeting, as described above. Such second meeting may not be held more than sixty (60) days after the first meeting.

8.9 Special Assessments. In addition to the Annual Assessments, the Association may levy Special Assessments from time to time, provided, however, that any Special Assessment shall be effective only with the approval of not less than 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 and convened to consider such Special Assessment. Subject to Section 8.4, Special Assessments shall be allocated equally among all Lots.

8.10 Certificates. The Association shall, upon the written request of any Owner or the holder, insurer or guarantor of any Mortgage, and upon payment of such reasonable charge as may be determined by the Board, furnish to the requesting party a certificate, executed by an officer of the Association, stating the date to which Assessments with respect to such Owner's Lot have been paid and the amount, if any, of any Assessments which have been levied with respect to said Lot but which remain unpaid as of the date of such certificate; said certificate shall be binding upon the Association as to the matters set forth therein as of the date thereof.

8.11 Surplus Monies. Unless otherwise expressly determined by the Board, any surplus monies of the Association shall be held by the Association and placed in one or more reserve accounts as determined by the Board, and shall not be paid to the Owners or credited against the Owners' respective liabilities for Assessments.

8.12 Declarant's Obligation for Deficiencies. So long as the Class B membership exists, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Assessments levied by the Association pursuant to this Declaration, to provide for: (a) the operation and maintenance of the Common Area and the recreational facilities located thereon; (b) the maintenance of adequate reserves; and (c) the performance by the Association of all other obligations of the Association under this Declaration or the Articles or Bylaws. Declarant's obligations under this Section 8.12 may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both.

8.13 Common Expenses Resulting from Misconduct. Notwithstanding any other provision of this Article 8, if any Common Expense ^{Unofficial Document} caused by the misconduct of any Owner (or of any Occupant, tenant, employee, servant, agent, guest or invitee for whose actions such Owner is responsible under applicable law), the Association may assess that Common Expense exclusively against such Owner and such Owner's Lot, which amount (together with any and all costs and expenses, including but not limited to attorneys' fees, incurred by the Association in recovering the same) shall be secured by the lien created pursuant to Section 8.3.

8.14 Assessments by Master Association. The Assessments shall be in addition to the assessments provided for in and levied pursuant to the terms of the Master Declaration and the Annexation Document.

ARTICLE 9

GENERAL PROVISIONS

9.1 Term. The covenants, conditions and restrictions of this Declaration: (a) shall run with and bind the Property; (b) shall inure to the benefit of and shall be enforceable by the Association or by the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns; and (c) shall remain in full force and effect until January 1, 2047; beginning January 1, 2047, and at January 1 every twenty-five (25) years thereafter, this Declaration, and all of the conditions, covenants and restrictions herein, shall automatically be extended for successive periods of twenty-five (25) years each, unless and until revoked by an affirmative vote of Members holding not less than sixty-seven percent (67%) of all votes then entitled

to be cast. For any such revocation to be effective, the vote required by this Section 9.1 shall be taken at a special meeting of Members duly called for such purpose, which meeting shall be held no earlier than six (6) months before the January 1 date at which this Declaration would automatically be extended absent such vote; in the event such meeting is duly called and held, and at that meeting the requisite number of votes are cast to revoke this Declaration, the President and Secretary of the Association shall execute and Record a notice of such revocation, and such revocation shall be effective as of the applicable January 1 date at which this Declaration would automatically be extended absent such vote. Notwithstanding any such revocation of this Declaration, each Owner of a Lot (and such Owner's Occupants, tenants, agents, guests and invitees) shall nevertheless have a permanent easement across the Common Area for access to such Lot and for access to and use of such recreational facilities as may exist on the Common Area at the time of such revocation.

9.2 Amendment. Except as otherwise provided herein (and subject to the provisions of Sections 9.11, 9.12, 9.13, and 9.14), this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of: (i) Members holding not less than sixty-seven percent (67%) of all Class A votes then entitled to be cast; and (ii) so long as the Class B membership is in existence, Declarant. No amendment to this Declaration shall be effective unless and until such amendment is Recorded. In addition to and notwithstanding the foregoing: (a) so long as the Class B membership exists, no amendment to this Declaration shall be effective without the prior approval of the Federal Housing Administration and the Veterans Administration; and (b) no amendment of a material nature to this Declaration (or to the Articles or the Bylaws) shall be effective unless approved by Eligible Mortgage Holders representing at least fifty-one percent (51%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders. A change to any of the following would be considered to be a change of a material nature:

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- 9.2.1 provisions relating to voting rights in the Association;
- 9.2.2 provisions relating to Assessments, Assessment liens or subordination of Assessments;
- 9.2.3 provisions relating to reserves for maintenance and repairs;
- 9.2.4 provisions relating to Owner's rights to use the Common Area;
- 9.2.5 boundaries of any Lot (except for minor adjustments to such boundaries);
- 9.2.6 conversion of any Lot into Common Area or vice versa (except in connection with minor adjustments of boundaries between any Lot and adjacent Common Area);
- 9.2.7 addition or annexation of property to, or withdrawal, removal or deletion of property from, the Property, or addition or annexation of any property to, or withdrawal, removal or deletion of any property from, the Common Area;
- 9.2.8 provisions relating to insurance or fidelity bonds;

- 9.2.9 provisions relating to the leasing of Lots (or Dwelling Units thereon);
- 9.2.10 provisions relating to the right of an Owner to sell or transfer such Owner's Lot;
- 9.2.11 restoration or repair of any structures or improvements on the Common Area following a hazard damage or condemnation in a manner other than as specified in this Declaration;
- 9.2.12 any action to dissolve or otherwise terminate the Association or the legal status of the Property after substantial destruction or condemnation of improvements on the Property occurs; or
- 9.2.13 any provisions that expressly benefit the holders, insurers or guarantors of Mortgages.

An Eligible Mortgage Holder shall be deemed to have approved a proposed material change if such Eligible Mortgage Holder fails to submit to the Association a response to a written notice of the proposed material change within thirty (30) days after its receipt of such notice, so long as such notice is sent by certified or registered mail, return receipt requested.

9.3 Indemnification. The Association shall indemnify each and every officer and director of the Association (including, for purposes of this Section, former officers and directors of the Association) against any and all expenses, including ^{Unofficial Document} attorneys' fees, reasonably incurred by or imposed upon any officer or director of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an officer or director of the Association, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except indirectly to the extent that such officers or directors may also be Members of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director of the Association, may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any director or officer (or former director or officer) of the Association who may be entitled to indemnification hereunder to enable such Person to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Person by reason of his or her being, or having been, an officer or director of the Association. In the event it is ultimately determined that a current or former officer or director to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 9.3 or otherwise under the Articles, Bylaws or applicable law, such current or former officer or director shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit,

with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

9.4 Easements for Utilities. There is hereby reserved to the Association the power to grant blanket easements upon, across, over and under all of the Common Area for installation, replacement, repair, and maintenance of master television antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewer, telephone, cable television, gas and electricity, and for delivering or providing public or municipal services such as refuse collection and fire and other emergency vehicle access (which easements shall also include appropriate rights of ingress and egress to facilitate such installation, replacement, repair and maintenance, and the delivery or provision of such public, municipal or emergency services), provided that no such easement shall interfere with a Dwelling Unit or its reasonable use or with Declarant's construction and sales activities and such easements shall require the holder of the easement to repair any damage caused to the property of any Owner. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate Recordable document, the Association shall have the right to grant such easement on said property in accordance with the terms hereof.

9.5 Relationship to Master Declaration. This Declaration shall be in addition and subordinate to the Master Declaration and the Annexation Document, and the Property (including, but not limited to, each Lot) shall be subject not only to this Declaration but also to all of the provisions of the Master Declaration and the Annexation Document, provided, however, that to the extent any provision of this Declaration imposes upon the Property or any part thereof any added or greater restriction than is contained in the Master Declaration or in the Annexation Document, such added or greater restriction shall control. All Owners and Members shall not only be entitled to the rights and privileges and subject to the duties^{Unofficial Document} obligations granted and imposed by or pursuant to this Declaration but shall also be entitled to the rights and privileges and subject to the duties and obligations granted and imposed by or pursuant to the Master Declaration or in the Annexation Document. Any and all Assessments or other charges levied or imposed by or pursuant to this Declaration shall be in addition to any and all assessments or other charges levied or imposed by or pursuant to the Master Declaration or the Annexation Document.

9.6 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Area or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot or Parcel (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area) which may or may not be subject to this Declaration.

9.7 Severability; Interpretation; Exhibits; Gender. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. The provisions hereof shall be construed and interpreted with reference to the laws of the State of Arizona. References in this Declaration to Articles, Sections and Subsections shall be deemed to be references to the specified Articles, Sections and Subsection of this Declaration (unless otherwise specifically stated), whether or not phrases such as "of this Declaration,"

"hereof" or "herein" are used in connection with such references. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof. Where the context hereof so requires, any personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all genders, and the singular shall include the plural and vice versa. Titles of Articles and Sections are for convenience only and shall not affect the interpretation hereof.

9.8 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

9.9 Enforcement. The Association shall have the standing and power to enforce the provisions of this Declaration, the Articles, the Bylaws and the Association Rules, and the provisions of any other Recorded document pertaining to any Lot or Lots, and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the costs are expended at a rate equal to the greater of: (a) ten percent (10%) per annum; or (b) the annual rate of interest then in effect for new residential first priority mortgage loans guaranteed by the Veterans Administration, shall constitute a lien on all Lots owned by the Owner or Owners against whom the action is taken (or against whose Occupants the action is taken), which lien shall have the priority and may be enforced in the manner described in Section 8.3. Further, any Owner shall have the standing and the right to bring an action against the Association for any violation or breach by the Association of any provision hereof or of the Articles or the Bylaws. In addition, any Owner or Owners shall have the standing and power to enforce the provisions of this Declaration, the Articles and the Bylaws, and the prevailing party or parties in any action by an Owner or Owners to enforce any such provisions shall be entitled to recover from the other party or parties its or their costs in such action (including reasonable attorneys' fees), together with interest thereon at a rate equal to the greater of: (a) ten percent (10%) per annum; or (b) the annual rate of interest then in effect for new residential first priority loans guaranteed by the Veterans Administration, and shall further be entitled to have all such costs (including such interest) included in any judgment awarded to the prevailing party or parties in such action. Failure by the Association or by any Owner to take any such enforcement action shall in no event be deemed a waiver of the right to do so thereafter.

9.10 Property Held in Trust. Any and all portions of the Property which are now or hereafter held in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is Declarant or a Declarant Affiliate, shall be deemed for all purposes under this Declaration to be owned by Declarant, and shall be treated for all purposes under this Declaration in the same manner as if such property were owned in fee by Declarant. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by Declarant or a Declarant Affiliate to any such trust (or the trustee thereof) or to Declarant or a Declarant Affiliate by any such trust (or the trustee thereof) shall be deemed for purposes of this Declaration to be a sale of such property or any right, title or interest therein.

9.11 FHA/VA Approval. So long as the Class B membership is in existence, the following actions shall not be taken without the prior approval of the Federal Housing Administration and the Veterans Administration: (a) annexation of additional properties to the Property (except to

the extent such annexation is in accordance with a plan of annexation or expansion previously approved by such agencies); (b) dedication of any part or all of the Common Area; or (c) amendment of this Declaration.

9.12 Notices to Certain Mortgage Holders, Insurers or Guarantors. The Association shall give timely written notice of any of the following actions, events or occurrences to any holder, insurer or guarantor of a Mortgage who or which, prior to such action, event or occurrence, shall have made written request to the Association for such notice (which written request shall state the name and address of such holder, insurer or guarantor and the Lot number or street address of the Lot to which the applicable Mortgage pertains):

9.12.1 Any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing the applicable Mortgage;

9.12.2 Any delinquency lasting sixty (60) days or more in payment of any Assessments or other charges owed to the Association by the Owner of the Lot securing the applicable Mortgage, or any other breach or default hereunder by the Owner of the Lot securing the applicable Mortgage which is not cured within sixty (60) days after notice thereof from the Association to such Owner;

9.12.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

9.12.4 Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders, as provided in Unofficial Document 2.

9.13 Dissolution or Termination of the Association or Legal Status of the Property. No action to dissolve or otherwise terminate the Association or the legal status of the Property for any reason other than the substantial destruction or condemnation of the Property shall be taken without the consent of Eligible Mortgage Holders representing not less than sixty-seven percent (67%) of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

9.14 Amendments Requested by Governmental Agency. Notwithstanding any other provision of this Declaration, Declarant shall have the right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other governmental or quasi-governmental agency which issues, guarantees, insures or purchases Mortgages (or securities or other debt instruments backed or secured by Mortgages), or otherwise governs transactions involving Mortgages or instruments evidencing same, or otherwise governs development of the Property or the Annexable Property, as a condition to such agency's approval of this Declaration, the development encompassing the Property or any subdivision constituting a part of the Property. Any such amendment shall be effected by Declarant's Recording an instrument executed by Declarant and appropriately acknowledged, specifying the governmental or quasi-governmental agency requesting such amendment and setting forth the appropriate amendatory language. Recording of such amendment shall constitute conclusive proof of such governmental or quasi-governmental agency's request for such amendment. Such amendment shall be effective, without the consent or approval of any other Person, on and as of the date the same is

Recorded, and shall thereupon and thereafter be binding upon any and all Owners or other Persons having any interest in all or any part of the Property. Except as expressly provided in this Section, neither Declarant nor any other Person(s) shall have the right to amend this Declaration except in accordance with and pursuant to the other provisions and requirements of this Declaration.

9.15 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

9.16 Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same as or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other non-profit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

9.17 Temporary Sign Easement. Declarant hereby reserves to itself and its agents a temporary easement over, upon and across those portions of the Common Area adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs identifying Persons building upon or developing portions of the Property. Unofficial Document The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Property, but in no event later than ten (10) years after the date this Declaration is Recorded.

9.18 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of this Declaration, the Articles, the Bylaws or the Association Rules. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Lot Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

9.19 Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Warner Ranch Meadows can or will be carried out, or that any real property now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such real property (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 that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive 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 restrictive covenant. Any Owner acquiring a Lot 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 agrees to hold Declarant harmless therefrom.

9.20 Declarant's Rights. Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided, further, that no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly Recorded. Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and sale of Lots by or for Declarant or a Declarant Affiliate shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units and sales offices, and Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots owned by Declarant and any clubh(Official Document) mmunity center which may be owned by the Association, as models, sales offices and other purposes related to Declarant's sales activities on the Property. So long as Declarant continues to have rights under this Section, no Person shall Record any subdivision plat or map, any declaration of covenants, conditions and restrictions, any declaration of condominium or any similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted Recordation without compliance herewith shall result in such subdivision plat or map, declaration of covenants, conditions and restrictions, declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by Recorded consent signed by Declarant. This Section may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Section shall terminate upon the earlier of: (a) ten (10) years from the date this Declaration is Recorded; or (b) upon Recording by Declarant of a written statement that all sales activity has ceased.

9.21 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon Declarant any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as Declarant or a trustee for the benefit of Declarant owns any portion of the Property, without the express written consent of Declarant.

9.22 References to VA and FHA. In various places throughout this Declaration, references are made to the Veterans Administration ("VA") and the Federal Housing Administration

("FHA") and, in particular, to various consents or approvals required of either or both of such agencies. These references are included so as to cause this Declaration to meet certain requirements of such agencies should Declarant submit the Warner Ranch Meadows project (or portions thereof) for approval by either or both of such agencies. However, Declarant shall have no obligation to submit the Warner Ranch Meadows project (or any portion thereof) for approval by either or both of such agencies, and Declarant shall have full discretion whether to submit the Warner Ranch Meadows project (or any portion thereof) for approval by either or both of such agencies. Unless and until the VA or the FHA shall have approved the Warner Ranch Meadows project, and at any time during which both: (a) such approval, once given, shall be revoked, withdrawn, cancelled or suspended; and (b) there are no outstanding mortgages or deeds of trust Recorded against any Lot or other portion of the Property to secure payment of an FHA-insured or VA-guaranteed loan, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no force or effect.

9.23 Amendments to Articles and Bylaws. Except as otherwise provided in the Declaration, 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 meeting 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 but subject to Section 9.22, 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 or the Bylaws; (b) dissolution of the Association; and (c) merger or consolidation of the Association with any other entity.

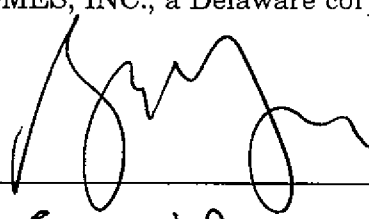
IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the day and year first set forth above.

DECLARANT:

UDC HOMES, INC., a Delaware corporation

By

Its



Exec. V.P.

TRUSTEE:

NORTH AMERICAN TITLE AGENCY, INC., an
Arizona corporation, as Trustee of its Trust No.
1050, and not personally

By: 

John Lotardo

Its: Vice President

APPROVED AS TO FORM:

City Attorney for
City of Tempe, Arizona

By: 

Date: 2-28-96

Unofficial Document

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 28 day of FEBRUARY, 1996, before me, the undersigned officer, personally appeared GARY HAARER, who acknowledged himself to be EXECUTIVE VICE PRESIDENT of UDC HOMES, INC., a Delaware corporation, and that he/she, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation by himself/herself.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Carmir Foley
Notary Public

My commission expires:

04/30/98

STATE OF ARIZONA)
) ss.
County of Maricopa)

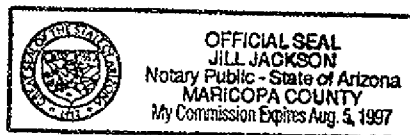
Unofficial Document

On this 29th day of February, 1996, before me, the undersigned officer, personally appeared John Lotardo, who acknowledged himself/herself to be Vice President of NORTH AMERICAN TITLE AGENCY, INC., an Arizona corporation, and that he/she, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation by himself/herself.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jill Jackson
Notary Public

My commission expires:



STATE OF ARIZONA)
)
County of Maricopa)

On this 28th day of February, 1996, before me, the undersigned officer, personally appeared W. Kent Force, who acknowledged himself/herself to be the Assistant City Attorney in the office of the City Attorney for the City of Tempe, Arizona, and that he/she, in such capacity, being authorized to do so, executed the foregoing instrument on behalf of such office.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Glendy F. Gatesh
Notary Public

My commission expires:

6/3/96



Unofficial Document

Exhibit A

The following real property situated in Maricopa County, Arizona:

Lots 1 through 68, inclusive, and Tracts A through D, inclusive, Warner Ranch Meadows, according to the plat recorded in Book 397 of Maps, page 9, records of Maricopa County, Arizona.

Unofficial Document

ARR0D6CC