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DECLARATION

PROP RSTR (R3)

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR TEMPE ROYAL PALMS VILLAGE

THIS DECLARATION, made on the date hereinafter set forth by U.S. HOME CORPORATION, a Delaware corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Tempe, County of Maricopa, State of Arizona, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

NOW, THEREFORE, Declarant hereby declares that all of the property described above 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 and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Architectural Committee" shall mean the committee created pursuant to ARTICLE VIII hereof.

Section 2. "Architectural Committee Rules" shall mean the rules adopted by the Architectural Committee.

Section 3. "Articles" shall mean the Articles of Incorporation of the Association which are, or shall be, filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 4. "Association" shall mean and refer to Villas Las Palmas, Inc., an Arizona non-profit corporation, its successors and assigns.

Section 5. "Board" shall mean the Board of Directors of the Association.

Section 6. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 7. "Common area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The common area to be owned by the Association at the time of the conveyance of the first improved lot is more particularly described on Exhibit "B" attached hereto and incorporated herein by reference.

Section 8. "Declarant" shall mean U.S. Home Corporation, a Delaware corporation, or any trustee or escrowee which may be designated by it, including its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped lot from Declarant for the purpose of development.

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Section 9. "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as the same may from time to time be amended, together with any and all Tract Declarations which may be recorded by Declarant, as said Tract Declarations may be amended from time to time, relating to all or part of that property which is described on Exhibit "C" attached hereto and incorporated herein by reference.

Section 10. "Improvement" shall mean the buildings, carports, roads, driveways, parking areas, fences, walls, hedges, plantings, planted trees and shrubs and all other structures or landscaping improvements of every type and kind.

Section 11. "Rules" shall mean the rules adopted by the Board, as they may be amended from time to time.

Section 12. "Lot" shall mean any parcel of real property designated as a lot on any recorded subdivision map relating to the property described on Exhibit "C" attached hereto, with the exception of the common area. A lot shall be

deemed "developed" when all offsite streets, curbs, gutters, sidewalks and other utilities have been completely installed. A lot shall be deemed "improved" when a single family residence or other substantial improvement has been completely constructed thereon, but in no event later than one hundred and eighty (180) days after the start of construction thereon. All other lots shall be deemed "undeveloped lots".

Section 13. "Member" shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

Section 14. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any lot. "Owner" shall include the purchaser of a lot under an executory contract for the sale of real property. The foregoing does Unofficial Document include persons or entities who hold an interest in any lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include a lessee or tenant of a single family residence. For the purposes of ARTICLE IV of this Declaration only, unless the context otherwise requires, "Owner" shall also include the family, invitees, licensees and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any lot. The term "Owner" shall not include a developer, who for this Declaration shall be defined as a builder, contractor, investor or other person or entity who purchases a lot in the Subdivision for the purpose of resale thereof to a public purchaser, or for the purpose of constructing improvements thereon for resale to a public purchaser.

Section 15. "Property" or "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

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Section 16. "Public purchaser" shall mean any person or other legal entity who becomes an Owner of any lot within the Subdivision.

Section 17. "Single family" shall mean a group of one or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 18. "Single family residence" shall mean a building, house, townhome, townhouse or patio home used as a residence for a single family, including any appurtenant garage, carport or similar outbuilding.

Section 19. "Single family residential use" shall mean the occupation or use of a single family residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

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Section 20. "Structural maintenance area" or "structural maintenance areas" shall mean the roofs, gutters, downspouts, exterior building surfaces (structural walls only, excluding glass surfaces), trees, shrubs, grass, walks and other exterior improvements.

Section 21. "Subdivision map" or "subdivision plat" shall mean a recorded map or plat covering any or all of the property referred to in this Declaration or annexed hereto.

Section 22. "Property" shall mean all real property located in the County of Maricopa, State of Arizona, which becomes subject to the Declaration, together with such other real property as may from time to time be annexed thereto.

Section 23. "Tract" shall mean any parcel of real property designated as a tract on any recorded subdivision map within Maricopa County, with the exception of the common area.

Section 24. "Tract Declaration" shall mean any declaration of covenants, conditions and restrictions which may

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be recorded by Declarant, relating to all or part of the Sub-division.

Section 25. "Visible from neighboring property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

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(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area, and to reasonably limit the number of guests of Owner;

(b) the right, after reasonable notice and an opportunity to be heard, of the Association to suspend the voting rights and rights to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of this Declaration or the Subdivision Rules;

(c) the right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded; and

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(d) the right of Declarant and its sales agents and representatives, in addition to the rights set forth herein-after, to the non-exclusive use, without extra charge, of the common area and facilities for maintenance of sales facilities, display and exhibit purposes.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, his guests or invitees.

Section 3. Title to Common Area. Declarant covenants that it will convey fee simple title to the common area to the Association, free of all encumbrances, except current real property taxes, which taxes shall be prorated to the date of transfer, and easements, conditions and reservations then of record, including those set forth in this Declaration. The conveyance shall be made to the Association prior to or concurrently with the conveyance of the first lot to a purchaser from Declarant.

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### ARTICLE III

#### PROPERTY SUBJECT TO RESTRICTIONS

##### Section 1. General Declaration Creating.

Declarant shall develop certain properties by subdivision into various lots and tracts. As each is developed, Declarant may, with respect to particular property, record one or more Tract Declarations which will incorporate this Declaration therein by reference, and which may supplement or modify this Declaration with such additional covenants, conditions and restrictions as may be appropriate for that property, subject to the approval of the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), if HUD or VA, or both, are insuring or guaranteeing loans on any lot. Thereafter, Declarant intends to sell and convey, to public purchasers, lots in the property so developed subject to both this Declaration and

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the Tract Declarations, if any, for such tract(s). Declarant hereby declares that all of the real property within the Subdivision is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration and any recorded Tract Declarations, as amended or modified from time to time. This Declaration and said Tract Declarations are declared and agreed to be in furtherance of a general plan for the Subdivision, improvement and sale of said real property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and every part thereof. All of this Declaration shall run with all of said real property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their successors in interest.

Section 2. Staged <sup>Unofficial Document</sup> Developments. Additional land within the area described on Exhibit "C", attached hereto, may be annexed by the Declarant without the consent of members within five (5) years of the date of this Declaration. If HUD or VA, or both, are insuring or guaranteeing loans on a portion of the property, then a condition precedent to such annexation shall be that HUD or VA, or both, determine that the annexation is in accord with the general plan approved by them. Declarant or its successors in interest shall record in the Office of the Recorder of the County of Maricopa, a Declaration of Restrictions as to said property setting forth the legal description of the territory to be added by annexation, and, providing that the Owners of lots in the territory to be annexed shall automatically become members of the Association. Thereafter, the rights and obligations of all Owners of lots located in the annexed territory shall be the same as the rights and obligations of the Owners of lots affected in this Declaration.

ARTICLE IV  
LAND USE CLASSIFICATIONS,  
PERMITTED USES AND RESTRICTIONS

Section 1. Land Use Classifications. As properties are developed and annexed, the use classifications, restrictions, easements, rights-of-way and other matters, including new or different uses and restrictions therefor, including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in the Declaration which may be recorded for that property. In exercising such authority as granted herein, Declarant shall not impose any new land use classifications or new restrictions which would conflict with existing uses and restrictions applicable to the properties. When property is annexed, the use classifications thereof shall be established by the Declaration covering said property.

Section 2. Permitted Unofficial Document and Restrictions - Single Family. The permitted uses, easements and restrictions for all property covered by this Declaration, except for common area, shall be as follows:

(a) Single Family Residential Use. All property shall be used, improved and devoted exclusively to single family residential use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any such property. Nothing herein shall be deemed to prevent the leasing of all such property to a single family from time to time by the Owner thereof, subject to all of the provisions of the Declaration. No structure whatever, other than one private, single family residence containing a minimum of eight hundred (800) square feet of livable floor space, shall be erected, placed or permitted to remain on any lot. Provided, however, that lots owned by Declarant or its nominees may be used as models and sales offices and construction offices for the purpose of selling the lots in the Subdivision until all of the lots therein are sold by Declarant. No boat, truck, trailer, camper or recreation vehicle shall be used as a living area while located on the property.

(b) Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house pets, shall be maintained on any property, and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall

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be maintained so as to be visible from neighboring property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal is a generally recognized house pet, or is a nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as the other restrictions contained herein.

(c) Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property, whether attached to a building or structure or otherwise, unless approved by the Board.

(d) Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any property, unless the same shall be contained in conduits or cables installed and maintained underground or concealed in or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

(e) Improvements and Alterations. No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of any property, or the improvements located in the Subdivision from its natural or improved state existing on the date such property was first conveyed in fee by Declarant to a public purchaser or annexed to the Subdivision whichever is later, shall be made or done without the prior approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Committee or any committee established by the Architectural Committee for the purpose, or by the Declarant. Pursuant to this rulemaking power, the Architectural Committee shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement. The Architectural Committee shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, shall be subject to the prior

approval of the Architectural Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee or the Declarant. All decisions of the Architectural Committee shall be final and no lot owner or other parties shall have recourse against the Architectural Committee for its refusal to approve any such plans and specifications or plot plan, including lawn area and landscaping. No basketball standards or fixed sports apparatus shall be attached to any unit or garage or be erected on any lot without the prior approval of the Architectural Review Committee.

(f) Temporary Occupancy. No trailer, tent, shack, garage or barn, and no temporary building or structure of any kind shall be used at any time for a residence on any property, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

(g) Trucks, Boats, Campers, Trailers and Motor Vehicles. Except with approval of the Architectural Committee, no mobile home, boat, recreational vehicle, trailer of any kind, truck camper, permanent tent or similar structure shall be kept, placed or maintained or constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any property or street (public or private), in such a manner as will be visible from neighboring properties. <sup>Unofficial Document</sup> Provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee. Garages, if any, shall be used for parking vehicles and storage purposes only and shall not be converted for living or recreational activities. Except as provided above, only automobiles in operating condition shall be parked in uncovered parking areas. Notwithstanding the above, a boat, trailer, recreational vehicle, camper or truck may be stored or parked in an area specifically designated for the aforementioned purpose. Any fees or charges for storage or parking shall be determined by the Board of Directors.

(h) Maintenance of Lawns and Plantings.

(1) By Owner. Each Owner of a lot shall keep all shrubs, trees, grass and plantings of every kind on his property neatly trimmed and maintained and free from trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any other area as to which Declarant or the Association has assumed the responsibility. Declarant or the Association or its authorized agents shall have the right at any reasonable time to enter upon any lot of Owner to plant, replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon.

(2) By Declarant or the Association. Declarant or the Association shall have

the right, at any time, to plant, replace, maintain and cultivate shrubs, trees, grass and plantings on any property other than on a lot, and on such easements over an Owner's lot as may have been granted to Declarant or the Association, regardless of whether any Owner or the Association is responsible hereunder for maintenance of such areas. Notwithstanding anything contained herein to the contrary, the Association shall maintain that portion of any lot abutting the common area which extends from the patio wall surrounding the improvements on such lot to the boundary of the common area. No Owner shall erect any fence, wall or barrier of any kind or nature whatsoever within such area and no Owner shall install any plants, trees, grass, gravel, cinders or other landscaping materials or construct any improvements of any kind or nature within such area. No Owner shall remove, alter, injure or interfere in any way with any shrubs, trees, grass or plantings placed upon any such property by Declarant or the Association without the written consent of the Architectural Committee having first been obtained. The Association or its authorized agents shall have the right to enter upon any property within such other areas, at any reasonable time, for the purpose of planting, <sup>Unofficial Document</sup> maintaining or cultivating such shrubs, trees, grass or plantings, and shall not be liable for trespass for so doing.

(i) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Subdivision.

(j) Repair of Buildings. No building or structure upon any property, shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

(k) Trash Containers and Collection. No garbage or trash shall be placed or kept on any property, except in covered containers of a type, size and style which are approved by the Architectural

Committee. In no event shall such containers be maintained so as to be visible from neighboring property, except to make the same available for collection and, then, only the shortest time reasonably necessary to effect such collection. The Board shall have the right, in its sole discretion, to require all Owners to subscribe to a carport trash service. All rubbish, trash or garbage shall be removed from the lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any lot.

(l) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any property, unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.

(m) Encroachments. No tree, shrub or planting of any kind on any property devoted to single family residential use shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of six (6) feet, without the prior approval of the Architectural Committee.

(n) Right of Way. During reasonable hours and after notice, except in the event of an emergency, Declarant, any member of the Architectural Committee, any member of the Board, or any authorized representative of any of the <sup>Unofficial Document</sup> shall have the right to enter upon and inspect any property within the Subdivision, and the improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

(o) Mineral Exploration. No property within the Subdivision shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

(p) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any property within the Subdivision, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures or other improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Subdivision.

(q) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property within the Subdivision which shall induce, breed or harbor infectious plant diseases or noxious insects.

(r) Restriction on Further Subdivision. No lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board. This provision shall not in any way,

limit Declarant from subdividing or separating into smaller lots or parcels any property owned by Declarant. No portion of a lot but for the entire lot, together with the improvements thereon, may be rented, and then only to a single family.

(s) Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are visible from neighboring property shall be erected or maintained on any lot or parcel of property, except:

(1) Such signs as may be required by legal proceedings;

(2) Not more than two (2) residential identification signs each of a combined total face area of seventy-two (72) square inches or less;

(3) During the time of construction of any building or other improvement, one job identification sign not larger than eighteen by twenty-four (18 x 24) inches in height and width and having a face area not larger than three (3) square feet; and

(4) Such signs the nature, number and location of which have been approved in advance by the Architectural Committee.

(5) Such signs, the number, type and size of which as may be approved from time to time by Declarant <sup>Unofficial Document</sup> during the original development and sales as to the properties.

(t) Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, sale, operation or other disposition of property. Declarant is undertaking the work of constructing residential dwellings and incidental improvements upon the lots included within the property. The completion of that work and the sale, rental and other disposal of said residential units is essential to the establishment and welfare of the property as a residential community. In order that the work may be completed and the property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(1) Prevent Declarant, its contractors or subcontractors from doing on the property or any lot thereof, whatever is reasonably necessary or advisable in connection with the completion of said work; or

(2) Prevent Declarant or its representatives from erecting, constructing and maintaining on the property such structures as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise; or

(3) Prevent Declarant from maintaining such signs on the property as may be necessary

for the sale, lease or disposition thereof;  
or

(4) Declarant shall have the right at any time prior to acquisition of title by a purchaser from Declarant to amend this Declaration, to establish on the property additional easements, reservations and rights of way to itself, to utility companies or to others as may from time to time be reasonably necessary to the proper development and disposal of the property. Declarant shall have the right following the acquisition of title by a purchaser from Declarant, to grant easements and rights of way to utility companies for the purpose of serving properties affected by this Declaration. Declarant or the organization for whose benefit said easements, reservations and rights of way have been established shall have the right at any time to cut and remove any trees or branches or any other unauthorized object from such easements, reservations and rights of way, in the common area.

(u) Utility Easements. There is hereby created a blanket easement upon, across, over and under the common area for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the <sup>Unofficial Document</sup> providing utility or service company to install and maintain facilities and equipment on said property and to affix and maintain wires, circuits and conduits on, in and under the common area. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on said premises, except as initially planned and approved by the Declarant or thereafter approved by the Board. In no event shall any portion of the above-mentioned easement for utilities be placed on or installed under any permanent building structure constructed thereon. This easement shall in no way affect any other recorded easement on said property.

(v) Encroachment Easements. Each residence shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the residence is partially or totally destroyed and then rebuilt the Owners agree that minor encroachments of parts of the adjacent residence due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Reciprocal easements are hereby reserved for the benefit of adjoining lot Owners. Declarant expressly reserves for the benefit of all of the property reciprocal easements of access, ingress, egress, for installation and repair of utility services, for repair and maintenance of mechanical or electrical facilities installed in conjunction with the initial construction in the attic areas of the

dwellings and over all of the common area. Such easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of the common area.

(w) Party Walls. The rights and duties of Owners with respect to party walls or party fences shall be as follows:

(1) The Owners of contiguous lots who have a party wall or party fence shall equally have the right to use such wall or fence; provided, that such use by one Owner does not interfere with the use and enjoyment of such by the other Owner.

(2) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining lot Owner or Owners.

(3) In the event any such party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of Unofficial Document adjoining Owner, his agents, guests or family, it shall be the obligation of all Owners whose lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.

(4) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(5) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(6) Each Owner shall permit other Owners or their representatives, when so required, to enter his lot for the purpose of repairing or maintaining a party wall, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services; provided, that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate.

Section 3. Permitted Uses and Restrictions - Common Area. The permitted uses and restrictions for the common area shall be as follows:

(a) Maintenance by Association. The Association shall, at any time, as to any common area, conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:

(1) Reconstruct, repair, replace or re-finish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) in accordance with (i) the last plans thereof approved by the Board, (ii) the original plans for the improvement, or (iii) if neither of the foregoing is applicable, and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed;

(2) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, driveway and parking area; Unofficial Document

(3) Replace injured and diseased trees or other vegetation in any such area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(4) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(5) Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration;

(6) The Board shall be the sole judge as to the appropriate maintenance of all grounds within the common area;

(7) No improvement, excavation or work which in any way alters any common area from its natural or existing state on the date such common area is conveyed by Declarant to the Association shall be made or done, except upon strict compliance with and within the restrictions and limitations of the following provision: No person other than the Association or its duly authorized agents shall alter any portion of the common area or any landscaping thereon.

(b) Structural Maintenance Areas. No improvement, excavation or work which in any way alters the structural maintenance areas from their natural or existing state on the date any such area is conveyed by Declarant to a purchaser of a lot shall be made or done by any person other than the Association or its authorized agents or by Declarant under any warranty. The Association shall maintain, or provide for the maintenance in good order and repair of, and shall reconstruct, replace or refinish the improvements within the structural maintenance areas. It shall be the duty of each Owner to maintain, repair, replace and restore areas subject to his exclusive control, in a neat, sanitary and attractive condition, subject to control and approval of the Association.

(c) Damage or Destruction of Common Area by Owners. In the event the common area or structural maintenance area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

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## ARTICLE V

### THE ASSOCIATION

#### Section 1. Organization

A. The Association. The Association is a nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

B. Subsidiary Associations. The Association shall have the right to form one or more Subsidiary Associations, for any purpose or purposes deemed appropriate by the unanimous vote of the Board. Without limiting the generality of the foregoing, one or more Subsidiary Associations may be formed for the operation and maintenance of any specific area located within the Subdivision. However, such Subsidiary Association shall be subject to this Declaration and may not take any action to lessen

or abate the rights of the Owners herein.

Section 2. Powers and Duties of the Association.

The Association shall have such rights, duties and powers as set forth in the Articles and Bylaws, as same may be amended from time to time, which shall include, but not be limited to the following:

A. Property Taxes and Assessments. To the extent not assessed to or paid directly by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the common area or other property owned by the Association, and all charges for water provided both to the common area and to residences.

B. Insurance.

(a) The Association shall keep all buildings, improvements and fixtures of the common area insured against loss or damage by fire for the full insurable replacement cost thereof, and may obtain insurance against such other hazards as it may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the common area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Premiums for all insurance carried by the Association is a common expense included in the assessments made by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as hereinafter provided.

(b) The Association shall have the power to and shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each lot Owner and the Association, Board of Directors

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and Managing Agent, if any, from liability in connection with the common area, the premiums for which are common expenses included in the assessments made against the Owners.

(c) Each Owner shall insure his entire residence, including the structural portions of his residence against loss or damage by fire or by any casualty insured against under the standard form of extended coverage endorsement now in use in the State of Arizona or under such other insurance as may be required by any mortgagee of the residence. All such insurance shall be for the full replacement value of the structural improvements on Owner's residence. Owner shall, within thirty (30) days after recordation of the conveyance of his lot from Declarant, and thereafter at least ten (10) days prior to the expiration, termination, cancellation or modification of any existing policy, furnish to the Association duplicate copies of policies or certificates thereof showing that such insurance is currently in force certified by the insurance <sup>Unofficial Document</sup> company or by its duly authorized agent. All such policies shall contain a provision that the same shall not be cancelled or terminated except upon at least thirty (30) days' written notice to the Association.

(d) If an Owner shall fail to insure or keep insured any improvements upon his residence in the manner provided above, the Association may, but shall not be required to do so, obtain and pay for such insurance, in which event the cost to the Association of obtaining such insurance shall be repaid by Owner to the Association within ten (10) days as an additional assessment and shall create a lien enforceable in the same manner as other assessments as provided in this Declaration.

(e) The Board of Directors, at its option, may elect to cause the Association to obtain one or more blanket insurance policies as to one or more of the types of insurance required or deemed advisable by the Association or its members, and if such policy or policies are obtained, the Association

shall prorate the cost thereof among the members of the Association.

Section 3. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such recordation, said rules shall have the same force and effect as if they were set forth in and were a part of the Declaration. The rules may govern, among other things:

- (a) Use of the <sup>Unofficial Document</sup> common area;
- (b) Signs;
- (c) Collection and disposal of refuse;
- (d) Minimum standards of maintenance of property;
- (e) Use of any closed circuit television broadcasting system.

The rules may, without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of the common area for all Owners, and the families, invitees, licensees and lessees of Owners, and for guests, restrict and govern the use of the common area, by any guest, by any Owner, by the family of such Owner, or by an invitee, licensee or lessee of such Owner; provided, however, that with respect to use of the common area, the rules may not discriminate between Owners and the families and lessees of Owners. The rules may include, with respect to the common area, but not the public streets adjacent thereto,

- (a) Parking restrictions and limitations on

and adjacent to such areas;

(b) Limitations upon vehicular travel; and

(c) The type or types of vehicles which may be permitted to use the common area.

Section 4. Personal Liability. No member of the Board, or any Committee of the Association, or any officer of the Association, or the Manager, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager or any other representative or employees of the Association, the Architectural Committee, or any other Committee or any officer of the Association; provided, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

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## ARTICLE VI

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every person or entity who is a record Owner in any lot subject by covenants of record to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

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

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among them-

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selves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs first:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) Five (5) years from the date of the issuance of the most recent Arizona Public Report for any phase of the overall development of the property.

Section 3. The vote for each such lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. Unofficial Document If any Owner or Owners casts a vote representing a certain lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same lot. In the event more than one vote is cast for a particular lot, none of said votes shall be counted as said votes shall be deemed void.

Section 4. In any election of the members of the Board, every Owner entitled to vote at such an election shall have the right to cumulate his votes and give one candidate, or divide among any number of the candidates, a number of votes equal to the number of lots owned by the Owner multiplied by the number of Directors to be elected. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

Section 5. In the event any Owner shall be in arrears in the payment of any amounts due under any of the provisions herein, or shall be in default in the performance of or in

breach of any of the terms herein, said Owner's right to vote as a member of the Association and right to use of the recreational facilities may be suspended and may remain suspended until all payments are brought current and all defaults and breaches remedied.

Section 6. Each member shall have such other rights, duties and obligations as set forth in the Articles and Bylaws, as same may be amended from time to time.

Section 7. The Association membership of each Owner of a lot within the Subdivision shall be appurtenant to said lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership to the Owner's lot and then only to the transferee of ownership to such lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under a deed of trust or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to said lot shall operate to transfer said membership to the new Owner thereof.

#### ARTICLE VII

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Subdivision, hereby covenants, and each Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with any interest,

costs and reasonable attorneys fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Subdivision, and for the improvement and maintenance of the common area and of the homes situated in the Subdivision.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first improved lot to an Owner, the maximum annual assessment in all areas designated for single family residential use shall be Unofficial Document Sixty Five Dollars (\$65.00) per each improved lot owned by an Owner other than Declarant; and thirty-three and one-third percent (33-1/3%) of the said assessment per each improved lot owned by Declarant; and ten percent (10%) of the said assessment for each undeveloped lot owned by Declarant.

(a) From and after January 1 of the year immediately following the conveyance of the first single family residence to an Owner, the maximum annual assessment may be increased each year up to twelve percent (12%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first single family residence to an Owner, the maximum annual assessment may be increased above twelve percent (12%) by a vote of two-thirds (2/3) of each class of members who are voting in person or

by proxy, at a meeting duly called for this purpose.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments For Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the common area, including fixtures and personal property related thereto; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of <sup>Unofficial Document</sup> taking any action authorized under Section 3 or Section 4 shall be sent to all members not less than seven (7) days, nor more than thirty (30) days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite number of each class of members, members who were not present in person or by proxy may give their assent in writing; provided, that the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly, quarterly or annual basis. However, the amount of the assessment in any one year and from year to year may vary between undeveloped, developed and improved lots.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. Unofficial Document The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner of any lot shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or member. In the event of a default in payment of any such assessment

when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of ten percent (10%) per annum from the date of delinquency until paid, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner.

B. Enforcement by Lien. There is hereby created a claim of lien, with power of <sup>Unofficial Document</sup> sale, on each and every lot within the Subdivision to secure payment to the Association of any and all assessments levied against any and all Owners of such lots under this Declaration, together with interest thereon at the rate of ten (10) percent per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time within ninety (90) days after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative, shall make a written demand for payment by certified or registered mail, return receipt requested. Such demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the

Association may elect to file such a claim of lien on behalf of the Association against the lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (a) The legal description and street address of the lot against which claim of lien is made;
- (b) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs and reasonable attorneys' fees (with any proper offset allowed);
- (c) That the claim of lien is made by the Association pursuant to this Declaration, and
- (d) That a lien is claimed against said lot in the amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the lot against which such assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any lot, assessments on any lot in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 9 hereinafter. Any such lien may be foreclosed by appropriate action in court or in a manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any lot. In the event such fore-

closure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a lot in the Subdivision, hereby expressly waives any objection to the enforcement and foreclosure of said lien in such manner.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. No breach of the covenants, conditions or restrictions in this Declaration, nor the enforcement thereof or of any lien provision herein, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value. However, all of the covenants, conditions and restrictions in this Declaration shall be binding upon any Owner whose title is derived through foreclosure or exercise of a power of sale.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Organization, Power of Appointment and Removal of Members. There shall be an Architectural Committee, organized as follows:

A. Committee Composition. The Architectural Committee shall consist of three (3) regular members and two (2) alternate members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member

of the Board or an officer of the Association.

B. Alternate Members. In the event of the absence or disability of one or two regular members of said Committee, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

C. Initial Members. The following persons are hereby designated as the initial members of the Architectural Committee:

(a) Office No. 1 - WALTER GORDY, as a regular member.

(b) Office No. 2 - RICHARD EVERHART, as a regular member.

(c) Office No. 3 - JAMES DOIMAS, as a regular member.

(d) Office No. 4 - LE OHLIN, as an alternate member.

(e) Office No. 5 - JOHN DUNCHUS, as an alternate member.

D. Terms of Office. Unless the initial members of the Architectural Committee have resigned or been removed, their terms of office shall be for the periods of time indicated below, and until the appointment of their respective successors:

(a) The term of Office No. 1 shall expire on 17, March, 1983;

(b) The term of Office No. 2 shall expire on 17, March, 1984;

(c) The term of Office No. 3 shall expire on 17, March, 1985;

(d) The terms of Office No. 4 and Office No. 5 shall both expire on 17, March, 1986.

Thereafter, the term of each Architectural Committee member appointed shall be for a period of three (3) years and until the appointment of his successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be re-appointed.

E. Appointment and Removal. The right to appoint and remove all regular and alternate members of the Architectural Committee at any time shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Architectural Committee by the Board, except by the vote or written consent of two-thirds (2/3) of all of the members of the Board. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the recordation with the Maricopa County Recorder of a Declaration Unofficial Document identifying each new regular or alternate member appointed to the Committee and each regular or alternate member replaced or removed therefrom.

F. Resignations. Any regular or alternate member of the Architectural Committee may at any time resign from the Committee by giving written notice thereof to Declarant or to the Board, whichever then has the right to appoint Committee members.

G. Vacancies. Vacancies on the Architectural Committee however caused, shall be filled by the Board. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

Section 2. Duties. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Committee Rules, to perform other duties delegated to it by the Board, and to carry out all

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other duties imposed upon it by this Declaration.

Section 3. Meetings and Compensation. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of Paragraph B of Section 1 above, the vote or written consent of any two (2) regular members, at a meeting or otherwise, shall constitute the act of the Committee, unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee shall not be entitled to compensation for their services.

Section 4. Architectural Committee Rules. The Architectural Committee may, from time to time, and in its sole vote or written consent, adopt rules and regulations, to be known as "Architectural Committee Rules". Said Rules shall interpret and implement the Unofficial Document Restrictions by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Subdivision.

Section 5. Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 6. Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifica-

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tions, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any property within the Subdivision; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee.

Section 7. Time for Approval. In the event said Board or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

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## ARTICLE IX

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall re-

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main in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with, and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Owners in the Subdivision. Any amendment must be recorded, after having received the prior written approval from the office of the City Attorney of the City of Tempe.

Section 4. Annexation. Additional residential property and common area may be annexed to the Subdivision with the consent of two-thirds (2/3) of each class of members, except as provided in Article III, Section 2.

Section 5. HUD/VA Approval. As long as there is a Class B membership, and provided they are guaranteeing or insuring loans or a lot or lots, the following actions will require the prior approval of the Department of Housing and Urban Development or the Veterans Administration: annexation of additional properties, dedication of common area and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners of lots within the Subdivision. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of this Declaration.

Section 7. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, per-

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taining to the ownership, occupation or use of any property within the Subdivision is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

Section 8. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 9. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, at 3910 S. Rural, Tempe, Arizona 85282; if to the Architectural Committee, at 3910 S. Rural, Tempe, AZ 85282; if to an Owner, to the address of any lot within the Subdivision owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association; and if to Declarant, at 3910 South Rural Road, Tempe, Arizona 85282; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 10. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition,

each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration as of this 5<sup>th</sup> day of MARCH, 1982.

U.S. HOME CORPORATION, a Delaware corporation

Unofficial Document

BY Walter Gordy  
Its Division President

STATE OF ARIZONA )  
                          ) ss.  
County of Maricopa )

On this 5th day of March, 1982, before me personally appeared Walter Gordy, Division President of U. S. Home Corporation.

Gilbert M. Shaul  
Notary Public

My commission will expire: 6/20/84

MAR 18 1982 - 3 00

STATE OF ARIZONA }  
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of  
TRANSAMERICA TITLE INS. CO.

In Doc# 15900  
on page 155 - 190

Witness my hand and official seal the day and year above said.  
Bill Stony

County Recorder  
By [Signature]  
Deputy Recorder

18.50



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TEMPE ROYAL PALMS VILLAGE

MOD RSTR 111828

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THIS DECLARATION, made on the date hereinafter set forth by U.S. HOME CORPORATION, a Delaware corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Tempe, County of Maricopa, State of Arizona, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

NOW, THEREFORE, Declarant hereby declares that all of the property described above 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 and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Architectural Committee" shall mean the committee created pursuant to ARTICLE VIII hereof.

Section 2. "Architectural Committee Rules" shall mean the rules adopted by the Architectural Committee.

Section 3. "Articles" shall mean the Articles of Incorporation of the Association which are, or shall be, filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 4. "Association" shall mean and refer to Villas Las Palmas, Inc., an Arizona non-profit corporation, its successors and assigns.

\*THIS DOCUMENT IS BEING RE-RECORDED FOR THE SOLE PURPOSE OF ADDING ON EXHIBITS A, B AND C.

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Section 5. "Board" shall mean the Board of Directors of the Association.

Section 6. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 7. "Common area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The common area to be owned by the Association at the time of the conveyance of the first improved lot is more particularly described on Exhibit "B" attached hereto and incorporated herein by reference.

Section 8. "Declarant" shall mean U.S. Home Corporation, a Delaware corporation, or any trustee or escrowee which may be designated by it, including its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped lot from Declarant for the purpose of development.

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Section 9. "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as the same may from time to time be amended, together with any and all Tract Declarations which may be recorded by Declarant, as said Tract Declarations may be amended from time to time, relating to all or part of that property which is described on Exhibit "C" attached hereto and incorporated herein by reference.

Section 10. "Improvement" shall mean the buildings, carports, roads, driveways, parking areas, fences, walls, hedges, plantings, planted trees and shrubs and all other structures or landscaping improvements of every type and kind.

Section 11. "Rules" shall mean the rules adopted by the Board, as they may be amended from time to time.

Section 12. "Lot" shall mean any parcel of real property designated as a lot on any recorded subdivision map relating to the property described on Exhibit "C" attached hereto, with the exception of the common area. A lot shall be

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deemed "developed" when all offsite streets, curbs, gutters, sidewalks and other utilities have been completely installed. A lot shall be deemed "improved" when a single family residence or other substantial improvement has been completely constructed thereon, but in no event later than one hundred and eighty (180) days after the start of construction thereon. All other lots shall be deemed "undeveloped lots".

Section 13. "Member" shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

Section 14. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any lot. "Owner" shall include the purchaser of a lot under an executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include a lessee or tenant of a single family residence. For the purposes of ARTICLE IV of this Declaration only, unless the context otherwise requires, "Owner" shall also include the family, invitees, licensees and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any lot. The term "Owner" shall not include a developer, who for this Declaration shall be defined as a builder, contractor, investor or other person or entity who purchases a lot in the Subdivision for the purpose of resale thereof to a public purchaser, or for the purpose of constructing improvements thereon for resale to a public purchaser.

Section 15. "Property" or "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

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Section 16. "Public purchaser" shall mean any person or other legal entity who becomes an Owner of any lot within the Subdivision.

Section 17. "Single family" shall mean a group of one or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 18. "Single family residence" shall mean a building, house, townhome, townhouse or patio home used as a residence for a single family, including any appurtenant garage, carport or similar outbuilding.

Section 19. "Single family residential use" shall mean the occupation or use of a single family residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

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Section 20. "Structural maintenance area" or "structural maintenance areas" shall mean the roofs, gutters, downspouts, exterior building surfaces (structural walls only, excluding glass surfaces), trees, shrubs, grass, walks and other exterior improvements.

Section 21. "Subdivision map" or "subdivision plat" shall mean a recorded map or plat covering any or all of the property referred to in this Declaration or annexed hereto.

Section 22. "Property" shall mean all real property located in the County of Maricopa, State of Arizona, which becomes subject to the Declaration, together with such other real property as may from time to time be annexed thereto.

Section 23. "Tract" shall mean any parcel of real property designated as a tract on any recorded subdivision map within Maricopa County, with the exception of the common area.

Section 24. "Tract Declaration" shall mean any declaration of covenants, conditions and restrictions which may

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be recorded by Declarant, relating to all or part of the Sub-division.

Section 25. "Visible from neighboring property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area, and to reasonably limit the number of guests of Owner;

(b) the right, after reasonable notice and an opportunity to be heard, of the Association to suspend the voting rights and rights to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of this Declaration or the Subdivision Rules;

(c) the right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded; and

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(d) the right of Declarant and its sales agents and representatives, in addition to the rights set forth herein-after, to the non-exclusive use, without extra charge, of the common area and facilities for maintenance of sales facilities, display and exhibit purposes.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, his guests or invitees.

Section 3. Title to Common Area. Declarant covenants that it will convey fee simple title to the common area to the Association, free of all encumbrances, except current real property taxes, which taxes shall be prorated to the date of transfer, and easements, conditions and reservations then of record, including those set forth in this Declaration. The conveyance shall be made to the Association prior to or concurrently with the conveyance of the first lot to a purchaser from Declarant.

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### ARTICLE III

#### PROPERTY SUBJECT TO RESTRICTIONS

##### Section 1. General Declaration Creating.

Declarant shall develop certain properties by subdivision into various lots and tracts. As each is developed, Declarant may, with respect to particular property, record one or more Tract Declarations which will incorporate this Declaration therein by reference, and which may supplement or modify this Declaration with such additional covenants, conditions and restrictions as may be appropriate for that property, subject to the approval of the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), if HUD or VA, or both, are insuring or guaranteeing loans on any lot. Thereafter, Declarant intends to sell and convey, to public purchasers, lots in the property so developed subject to both this Declaration and

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the Tract Declarations, if any, for such tract(s). Declarant hereby declares that all of the real property within the Subdivision is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration and any recorded Tract Declarations, as amended or modified from time to time. This Declaration and said Tract Declarations are declared and agreed to be in furtherance of a general plan for the Subdivision, improvement and sale of said real property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and every part thereof. All of this Declaration shall run with all of said real property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their successors in interest.

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Section 2. Staged Developments. Additional land within the area described on Exhibit "C", attached hereto, may be annexed by the Declarant without the consent of members within five (5) years of the date of this Declaration. If HUD or VA, or both, are insuring or guaranteeing loans on a portion of the property, then a condition precedent to such annexation shall be that HUD or VA, or both, determine that the annexation is in accord with the general plan approved by them. Declarant or its successors in interest shall record in the Office of the Recorder of the County of Maricopa, a Declaration of Restrictions as to said property setting forth the legal description of the territory to be added by annexation, and, providing that the Owners of lots in the territory to be annexed shall automatically become members of the Association. Thereafter, the rights and obligations of all Owners of lots located in the annexed territory shall be the same as the rights and obligations of the Owners of lots affected in this Declaration.

ARTICLE IV

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LAND USE CLASSIFICATIONS,PERMITTED USES AND RESTRICTIONS

Section 1. Land Use Classifications. As properties are developed and annexed, the use classifications, restrictions, easements, rights-of-way and other matters, including new or different uses and restrictions therefor, including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in the Declaration which may be recorded for that property. In exercising such authority as granted herein, Declarant shall not impose any new land use classifications or new restrictions which would conflict with existing uses and restrictions applicable to the properties. When property is annexed, the use classifications thereof shall be established by the Declaration covering said property.

Section 2. Permit <sup>Unofficial Document</sup> and Restrictions - Single Family. The permitted uses, easements and restrictions for all property covered by this Declaration, except for common area, shall be as follows:

(a) Single Family Residential Use. All property shall be used, improved and devoted exclusively to single family residential use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any such property. Nothing herein shall be deemed to prevent the leasing of all such property to a single family from time to time by the Owner thereof, subject to all of the provisions of the Declaration. No structure whatever, other than one private, single family residence containing a minimum of eight hundred (800) square feet of livable floor space, shall be erected, placed or permitted to remain on any lot. Provided, however, that lots owned by Declarant or its nominees may be used as models and sales offices and construction offices for the purpose of selling the lots in the Subdivision until all of the lots therein are sold by Declarant. No boat, truck, trailer, camper or recreation vehicle shall be used as a living area while located on the property.

(b) Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house pets, shall be maintained on any property, and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall

be maintained so as to be visible from neighboring property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal is a generally recognized house pet, or is a nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as the other restrictions contained herein.

(c) Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property, whether attached to a building or structure or otherwise, unless approved by the Board.

(d) Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any property, unless the same shall be contained in conduits or cables installed and maintained underground or concealed in or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

(e) Improvements and Alterations. No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of any property, or the improvements located in the Subdivision from its natural or improved state existing on the date such property was first conveyed in fee by Declarant to a public purchaser or annexed to the Subdivision whichever is later, shall be made or done without the prior approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Committee or any committee established by the Architectural Committee for the purpose, or by the Declarant. Pursuant to this rulemaking power, the Architectural Committee shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement. The Architectural Committee shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, shall be subject to the prior

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approval of the Architectural Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee or the Declarant. All decisions of the Architectural Committee shall be final and no lot owner or other parties shall have recourse against the Architectural Committee for its refusal to approve any such plans and specifications or plot plan, including lawn area and landscaping. No basketball standards or fixed sports apparatus shall be attached to any unit or garage or be erected on any lot without the prior approval of the Architectural Review Committee.

(f) Temporary Occupancy. No trailer, tent, shack, garage or barn, and no temporary building or structure of any kind shall be used at any time for a residence on any property, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

(g) Trucks, Boats, Campers, Trailers and Motor Vehicles. Except with approval of the Architectural Committee, no mobile home, boat, recreational vehicle, trailer of any kind, truck camper, permanent tent or similar structure shall be kept, placed or maintained or constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any property or street (public or private), in such a manner as will be visible from neighboring property. Unofficial Document Provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee. Garages, if any, shall be used for parking vehicles and storage purposes only and shall not be converted for living or recreational activities. Except as provided above, only automobiles in operating condition shall be parked in uncovered parking areas. Notwithstanding the above, a boat, trailer, recreational vehicle, camper or truck may be stored or parked in an area specifically designated for the aforementioned purpose. Any fees or charges for storage or parking shall be determined by the Board of Directors.

(h) Maintenance of Lawns and Plantings.

(1) By Owner. Each Owner of a lot shall keep all shrubs, trees, grass and plantings of every kind on his property neatly trimmed and maintained and free from trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any other area as to which Declarant or the Association has assumed the responsibility. Declarant or the Association or its authorized agents shall have the right at any reasonable time to enter upon any lot of Owner to plant, replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon.

(2) By Declarant or the Association. Declarant or the Association shall have

the right, at any time, to plant, replace, maintain and cultivate shrubs, trees, grass and plantings on any property other than on a lot, and on such easements over an Owner's lot as may have been granted to Declarant or the Association, regardless of whether any Owner or the Association is responsible hereunder for maintenance of such areas. Notwithstanding anything contained herein to the contrary, the Association shall maintain that portion of any lot abutting the common area which extends from the patio wall surrounding the improvements on such lot to the boundary of the common area. No Owner shall erect any fence, wall or barrier of any kind or nature whatsoever within such area and no Owner shall install any plants, trees, grass, gravel, cinders or other landscaping materials or construct any improvements of any kind or nature within such area. No Owner shall remove, alter, injure or interfere in any way with any shrubs, trees, grass or plantings placed upon any such property by Declarant or the Association without the written consent of the Architectural Committee having first been obtained. The Association or its authorized agents shall have the right to enter upon any property within such other areas, at any reasonable time, for the purpose of planting, <sup>Unofficial Document</sup> replacing, maintaining or cultivating such shrubs, trees, grass or plantings, and shall not be liable for trespass for so doing.

(i) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Subdivision.

(j) Repair of Buildings. No building or structure upon any property, shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

(k) Trash Containers and Collection. No garbage or trash shall be placed or kept on any property, except in covered containers of a type, size and style which are approved by the Architectural

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Committee. In no event shall such containers be maintained so as to be visible from neighboring property, except to make the same available for collection and, then, only the shortest time reasonably necessary to effect such collection. The Board shall have the right, in its sole discretion, to require all Owners to subscribe to a carport trash service. All rubbish, trash or garbage shall be removed from the lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any lot.

(l) Clothes Drying Facilities. Outside clothes-lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any property, unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.

(m) Encroachments. No tree, shrub or planting of any kind on any property devoted to single family residential use shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of six (6) feet, without the prior approval of the Architectural Committee.

(n) Right of Way. During reasonable hours and after notice, except in the event of an emergency, Declarant, any member of the Architectural Committee, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any property within the Subdivision, and the improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

(o) Mineral Exploration. No property within the Subdivision shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

(p) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any property within the Subdivision, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures or other improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Subdivision.

(q) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property within the Subdivision which shall induce, breed or harbor infectious plant diseases or noxious insects.

(r) Restriction on Further Subdivision. No lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board. This provision shall not in any way,

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limit Declarant from subdividing or separating into smaller lots or parcels any property owned by Declarant. No portion of a lot but for the entire lot, together with the improvements thereon, may be rented, and then only to a single family.

(s) Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are visible from neighboring property shall be erected or maintained on any lot or parcel of property, except:

(1) Such signs as may be required by legal proceedings;

(2) Not more than two (2) residential identification signs each of a combined total face area of seventy-two (72) square inches or less;

(3) During the time of construction of any building or other improvement, one job identification sign not larger than eighteen by twenty-four (18 x 24) inches in height and width and having a face area not larger than three (3) square feet; and

(4) Such signs the nature, number and location of which have been approved in advance by the Architectural Committee.

(5) Such signs, the number, type and size of which as may be approved from time to time by <sup>Unofficial Document</sup> Declarant during the original development and sales as to the properties.

(t) Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, sale, operation or other disposition of property. Declarant is undertaking the work of constructing residential dwellings and incidental improvements upon the lots included within the property. The completion of that work and the sale, rental and other disposal of said residential units is essential to the establishment and welfare of the property as a residential community. In order that the work may be completed and the property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(1) Prevent Declarant, its contractors or subcontractors from doing on the property or any lot thereof, whatever is reasonably necessary or advisable in connection with the completion of said work; or

(2) Prevent Declarant or its representatives from erecting, constructing and maintaining on the property such structures as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise; or

(3) Prevent Declarant from maintaining such signs on the property as may be necessary

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for the sale, lease or disposition thereof;  
or

(4) Declarant shall have the right at any time prior to acquisition of title by a purchaser from Declarant to amend this Declaration, to establish on the property additional easements, reservations and rights of way to itself, to utility companies or to others as may from time to time be reasonably necessary to the proper development and disposal of the property. Declarant shall have the right following the acquisition of title by a purchaser from Declarant, to grant easements and rights of way to utility companies for the purpose of serving properties affected by this Declaration. Declarant or the organization for whose benefit said easements, reservations and rights of way have been established shall have the right at any time to cut and remove any trees or branches or any other unauthorized object from such easements, reservations and rights of way, in the common area.

(u) Utility Easements. There is hereby created a blanket easement upon, across, over and under the common area for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and to affix and maintain wires, circuits and conduits on, in and under the common area. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on said premises, except as initially planned and approved by the Declarant or thereafter approved by the Board. In no event shall any portion of the above-mentioned easement for utilities be placed on or installed under any permanent building structure constructed thereon. This easement shall in no way affect any other recorded easement on said property.

(v) Encroachment Easements. Each residence shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the residence is partially or totally destroyed and then rebuilt the Owners agree that minor encroachments of parts of the adjacent residence due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Reciprocal easements are hereby reserved for the benefit of adjoining lot Owners. Declarant expressly reserves for the benefit of all of the property reciprocal easements of access, ingress, egress, for installation and repair of utility services, for repair and maintenance of mechanical or electrical facilities installed in conjunction with the initial construction in the attic areas of the

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dwellings and over all of the common area. Such easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of the common area.

(w) Party Walls. The rights and duties of Owners with respect to party walls or party fences shall be as follows:

(1) The Owners of contiguous lots who have a party wall or party fence shall equally have the right to use such wall or fence; provided, that such use by one Owner does not interfere with the use and enjoyment of such by the other Owner.

(2) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining lot Owner or Owners.

(3) In the event any such party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests or family, it shall be the obligation of all Owners whose lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.

(4) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(5) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

(6) Each Owner shall permit other Owners or their representatives, when so required, to enter his lot for the purpose of repairing or maintaining a party wall, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services; provided, that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate.

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Section 3. Permitted Uses and Restrictions - Common Area. The permitted uses and restrictions for the common area shall be as follows:

(a) Maintenance by Association. The Association shall, at any time, as to any common area, conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:

(1) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) in accordance with (i) the last plans thereof approved by the Board, (ii) the original plans for the improvement, or (iii) if neither of the foregoing is applicable, and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed;

(2) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, driveway and parking area;Unofficial Document

(3) Replace injured and diseased trees or other vegetation in any such area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(4) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(5) Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration;

(6) The Board shall be the sole judge as to the appropriate maintenance of all grounds within the common area;

(7) No improvement, excavation or work which in any way alters any common area from its natural or existing state on the date such common area is conveyed by Declarant to the Association shall be made or done, except upon strict compliance with and within the restrictions and limitations of the following provision: No person other than the Association or its duly authorized agents shall alter any portion of the common area or any landscaping thereon.

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(b) Structural Maintenance Areas. No improvement, excavation or work which in any way alters the structural maintenance areas from their natural or existing state on the date any such area is conveyed by Declarant to a purchaser of a lot shall be made or done by any person other than the Association or its authorized agents or by Declarant under any warranty. The Association shall maintain, or provide for the maintenance in good order and repair of, and shall reconstruct, replace or refinish the improvements within the structural maintenance areas. It shall be the duty of each Owner to maintain, repair, replace and restore areas subject to his exclusive control, in a neat, sanitary and attractive condition, subject to control and approval of the Association.

(c) Damage or Destruction of Common Area by Owners. In the event the common area or structural maintenance area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

## ARTICLE V

### THE ASSOCIATION

#### Section 1. Organization

A. The Association. The Association is a nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

B. Subsidiary Associations. The Association shall have the right to form one or more Subsidiary Associations, for any purpose or purposes deemed appropriate by the unanimous vote of the Board. Without limiting the generality of the foregoing, one or more Subsidiary Associations may be formed for the operation and maintenance of any specific area located within the Subdivision. However, such Subsidiary Association shall be subject to this Declaration and may not take any action to lessen

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or abate the rights of the Owners herein.

Section 2. Powers and Duties of the Association.

The Association shall have such rights, duties and powers as set forth in the Articles and Bylaws, as same may be amended from time to time, which shall include, but not be limited to the following:

A. Property Taxes and Assessments. To the extent not assessed to or paid directly by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the common area or other property owned by the Association, and all charges for water provided both to the common area and to residences.

B. Insurance.

(a) The Association shall keep all buildings, improvements and fixtures of the common area insured against loss or damage by fire for the full insurable replacement cost thereof, and may obtain insurance against such other hazards as it may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the common area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Premiums for all insurance carried by the Association is a common expense included in the assessments made by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as hereinafter provided.

(b) The Association shall have the power to and shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each lot Owner and the Association, Board of Directors

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and Managing Agent, if any, from liability in connection with the common area, the premiums for which are common expenses included in the assessments made against the Owners.

(c) Each Owner shall insure his entire residence, including the structural portions of his residence against loss or damage by fire or by any casualty insured against under the standard form of extended coverage endorsement now in use in the State of Arizona or under such other insurance as may be required by any mortgagee of the residence. All such insurance shall be for the full replacement value of the structural improvements on Owner's residence. Owner shall, within thirty (30) days after recordation of the conveyance of his lot from Declarant, and thereafter at least ten (10) days prior to the expiration, termination, cancellation or modification of any existing policy, furnish to the Association duplicate copies of policies or certificates thereof showing that such insurance is currently in force certified by the insurance company or by its duly authorized agent. All such policies shall contain a provision that the same shall not be cancelled or terminated except upon at least thirty (30) days' written notice to the Association.

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(d) If an Owner shall fail to insure or keep insured any improvements upon his residence in the manner provided above, the Association may, but shall not be required to do so, obtain and pay for such insurance, in which event the cost to the Association of obtaining such insurance shall be repaid by Owner to the Association within ten (10) days as an additional assessment and shall create a lien enforceable in the same manner as other assessments as provided in this Declaration.

(e) The Board of Directors, at its option, may elect to cause the Association to obtain one or more blanket insurance policies as to one or more of the types of insurance required or deemed advisable by the Association or its members, and if such policy or policies are obtained, the Association

shall prorate the cost thereof among the members of the Association.

Section 3. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such recordation, said rules shall have the same force and effect as if they were set forth in and were a part of the Declaration. The rules may govern, among other things:

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- (a) Use of the common area;
- (b) Signs;
- (c) Collection and disposal of refuse;
- (d) Minimum standards of maintenance of property;
- (e) Use of any closed circuit television broadcasting system.

The rules may, without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of the common area for all Owners, and the families, invitees, licensees and lessees of Owners, and for guests, restrict and govern the use of the common area, by any guest, by any Owner, by the family of such Owner, or by an invitee, licensee or lessee of such Owner; provided, however, that with respect to use of the common area, the rules may not discriminate between Owners and the families and lessees of Owners. The rules may include, with respect to the common area, but not the public streets adjacent thereto,

- (a) Parking restrictions and limitations on

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and adjacent to such areas;

(b) Limitations upon vehicular travel; and

(c) The type or types of vehicles which may be permitted to use the common area.

Section 4. Personal Liability. No member of the Board, or any Committee of the Association, or any officer of the Association, or the Manager, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager or any other representative or employees of the Association, the Architectural Committee, or any other Committee or any officer of the Association; provided, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

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## ARTICLE VI

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every person or entity who is a record Owner in any lot subject by covenants of record to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

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

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among them-

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selves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

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Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs first:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) Five (5) years from the date of the issuance of the most recent Arizona Public Report for any phase of the overall development of the property.

Section 3. The vote for each such lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. Unofficial Document If any Owner or Owners casts a vote representing a certain lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same lot. In the event more than one vote is cast for a particular lot, none of said votes shall be counted as said votes shall be deemed void.

Section 4. In any election of the members of the Board, every Owner entitled to vote at such an election shall have the right to cumulate his votes and give one candidate, or divide among any number of the candidates, a number of votes equal to the number of lots owned by the Owner multiplied by the number of Directors to be elected. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

Section 5. In the event any Owner shall be in arrears in the payment of any amounts due under any of the provisions herein, or shall be in default in the performance of or in

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breach of any of the terms herein, said Owner's right to vote as a member of the Association and right to use of the recreational facilities may be suspended and may remain suspended until all payments are brought current and all defaults and breaches remedied.

Section 6. Each member shall have such other rights, duties and obligations as set forth in the Articles and Bylaws, as same may be amended from time to time.

Section 7. The Association membership of each Owner of a lot within the Subdivision shall be appurtenant to said lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership to the Owner's lot and then only to the transferee of ownership to such lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under a deed of trust or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to said lot shall operate to transfer said membership to the new Owner thereof.

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## ARTICLE VII

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Subdivision, hereby covenants, and each Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with any interest,

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costs and reasonable attorneys fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Subdivision, and for the improvement and maintenance of the common area and of the homes situated in the Subdivision.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first improved lot to an Owner, the maximum annual assessment in all areas designated for single family residential use shall be Unofficial Document Sixty Five Dollars (\$65.00) per each improved lot owned by an Owner other than Declarant; and thirty-three and one-third percent (33-1/3%) of the said assessment per each improved lot owned by Declarant; and ten percent (10%) of the said assessment for each undeveloped lot owned by Declarant.

(a) From and after January 1 of the year immediately following the conveyance of the first single family residence to an Owner, the maximum annual assessment may be increased each year up to twelve percent (12%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first single family residence to an Owner, the maximum annual assessment may be increased above twelve percent (12%) by a vote of two-thirds (2/3) of each class of members who are voting in person or

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by proxy, at a meeting duly called for this purpose.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments For Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the common area, including fixtures and personal property related thereto; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Unofficial Document Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all members not less than seven (7) days, nor more than thirty (30) days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite number of each class of members, members who were not present in person or by proxy may give their assent in writing; provided, that the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

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Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly, quarterly or annual basis. However, the amount of the assessment in any one year and from year to year may vary between undeveloped, developed and improved lots.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. Unofficial Document The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner of any lot shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or member. In the event of a default in payment of any such assessment

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when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of ten percent (10%) per annum from the date of delinquency until paid, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner.

B. Enforcement by Lien. There is hereby created a claim of lien, with power of <sup>Unofficial Document</sup> sale, on each and every lot within the Subdivision to secure payment to the Association of any and all assessments levied against any and all Owners of such lots under this Declaration, together with interest thereon at the rate of ten (10) percent per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time within ninety (90) days after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative, shall make a written demand for payment by certified or registered mail, return receipt requested. Such demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the

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Association may elect to file such a claim of lien on behalf of the Association against the lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (a) The legal description and street address of the lot against which claim of lien is made;
- (b) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs and reasonable attorneys' fees (with any proper offset allowed);
- (c) That the claim of lien is made by the Association pursuant to this Declaration, and
- (d) That a lien is claimed against said lot in the amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the lot against which such assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any lot, assessments on any lot in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 9 hereinafter. Any such lien may be foreclosed by appropriate action in court or in a manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any lot. In the event such fore-

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closure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a lot in the Subdivision, hereby expressly waives any objection to the enforcement and foreclosure of said lien in such manner.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. No breach of the covenants, conditions or restrictions in this Declaration, nor the enforcement thereof or of any lien provision herein, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value. However, all of the covenants, conditions and restrictions in this Declaration shall be binding upon any Owner whose title is derived through foreclosure or exercise of a power of sale.

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ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Organization, Power of Appointment and Removal of Members. There shall be an Architectural Committee, organized as follows:

A. Committee Composition. The Architectural Committee shall consist of three (3) regular members and two (2) alternate members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member

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of the Board or an officer of the Association.

B. Alternate Members. In the event of the absence or disability of one or two regular members of said Committee, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

C. Initial Members. The following persons are hereby designated as the initial members of the Architectural Committee:

- (a) Office No. 1 - WALTER GORDY, as a regular member.
- (b) Office No. 2 - RICHARD EVERHART, as a regular member.
- (c) Office No. 3 - JAMES DOIMAS, as a regular member.
- (d) Office No. 4 - <sup>Unofficial Document</sup> DALE OHLIN, as an alternate member.
- (e) Office No. 5 - JOHN DUNCHUS, as an alternate member.

D. Terms of Office. Unless the initial members of the Architectural Committee have resigned or been removed, their terms of office shall be for the periods of time indicated below, and until the appointment of their respective successors:

- (a) The term of Office No. 1 shall expire on 17, March, 1983;
- (b) The term of Office No. 2 shall expire on 17, March, 1984;
- (c) The term of Office No. 3 shall expire on 17, March, 1985;
- (d) The terms of Office No. 4 and Office No. 5 shall both expire on 17, March, 1986.

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Thereafter, the term of each Architectural Committee member appointed shall be for a period of three (3) years and until the appointment of his successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be re-appointed.

E. Appointment and Removal. The right to appoint and remove all regular and alternate members of the Architectural Committee at any time shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Architectural Committee by the Board, except by the vote or written consent of two-thirds (2/3) of all of the members of the Board. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the recordation with the Maricopa County Recorder of a Declaration identifying each new regular or alternate member appointed to the Committee and each regular or alternate member replaced or removed therefrom.

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F. Resignations. Any regular or alternate member of the Architectural Committee may at any time resign from the Committee by giving written notice thereof to Declarant or to the Board, whichever then has the right to appoint Committee members.

G. Vacancies. Vacancies on the Architectural Committee however caused, shall be filled by the Board. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

Section 2. Duties. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Committee Rules, to perform other duties delegated to it by the Board, and to carry out all

other duties imposed upon it by this Declaration.

Section 3. Meetings and Compensation. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of Paragraph B of Section 1 above, the vote or written consent of any two (2) regular members, at a meeting or otherwise, shall constitute the act of the Committee, unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee shall not be entitled to compensation for their services.

Section 4. Architectural Committee Rules. The Architectural Committee may, from time to time, and in its sole vote or written consent, adopt rules and regulations, to be known as "Architectural Committee Rules". Said Rules shall interpret and implement the Restrictions by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Subdivision.

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Section 5. Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 6. Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifica-

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tions, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any property within the Subdivision; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee.

Section 7. Time for Approval. In the event said Board or its designated committee, fails to approve or disapprove such design and location <sup>Unofficial Document</sup> within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE IX

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall re-

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main in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with, and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Owners in the Subdivision. Any amendment must be recorded, after having received the prior written approval from the office of the City Attorney of the City of Tempe.

Section 4. Annexation. Additional residential property and common area may be annexed to the Subdivision with the consent of two-thirds (2/3) of each class of members, except as provided in Article III, Section 2.

Section 5. HUD/VA Approval. As long as there is a Class B membership, and proUnofficial Document they are guaranteeing or insuring loans on a lot or lots, the following actions will require the prior approval of the Department of Housing and Urban Development or the Veterans Administration: annexation of additional properties, dedication of common area and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners of lots within the Subdivision. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of this Declaration.

Section 7. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, per-

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taining to the ownership, occupation or use of any property within the Subdivision is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

Section 8. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 9. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, at 3910 S. Rural, Tempe, Arizona 85282; if to the Architectural Committee, at 3910 S. Rural, Tempe, AZ 85282; if to an Owner, to the address of any lot within the Subdivision owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association; and if to Declarant, at 3910 South Rural Road, Tempe, Arizona 85282; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 10. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition,

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each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration as of this 5<sup>th</sup> day of MARCH, 1982.

U.S. HOME CORPORATION, a  
Delaware corporation

Unofficial Document  
By Walter Gordy  
Its Division President

STATE OF ARIZONA )  
                          ) ss.  
County of Maricopa )

On this 5th day of March, 1982, before me personally appeared Walter Gordy, Division President of U. S. Home Corporation.

Gilbert M. Shavel  
Notary Public

My commission will expire: 6/20/84

MAR 18 1982 - 3 00

STATE OF ARIZONA )  
County of Maricopa ) ss.

I hereby certify that the within instrument was filed and recorded at request of  
TRANSAMERICA MILLERS, INC.

in Doc. No. 15980  
on page 185 - 190

Witness my hand and official seal this day and year aforesaid  
Bill Chang

County Recorder  
By W. Cochran  
Deputy Recorder

18.50

**DKT15954 P61476**

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lots 1 to 175, inclusive, Tracts A to H, inclusive, and J to V, inclusive, TEMPE ROYAL PALMS VILLAGE, according to Book 233 of Maps, page 30, records of Maricopa County, Arizona and Certificate of Correction recorded in Docket 15559, page 85, records of Maricopa County, Arizona (Lots 106 and 107 only).

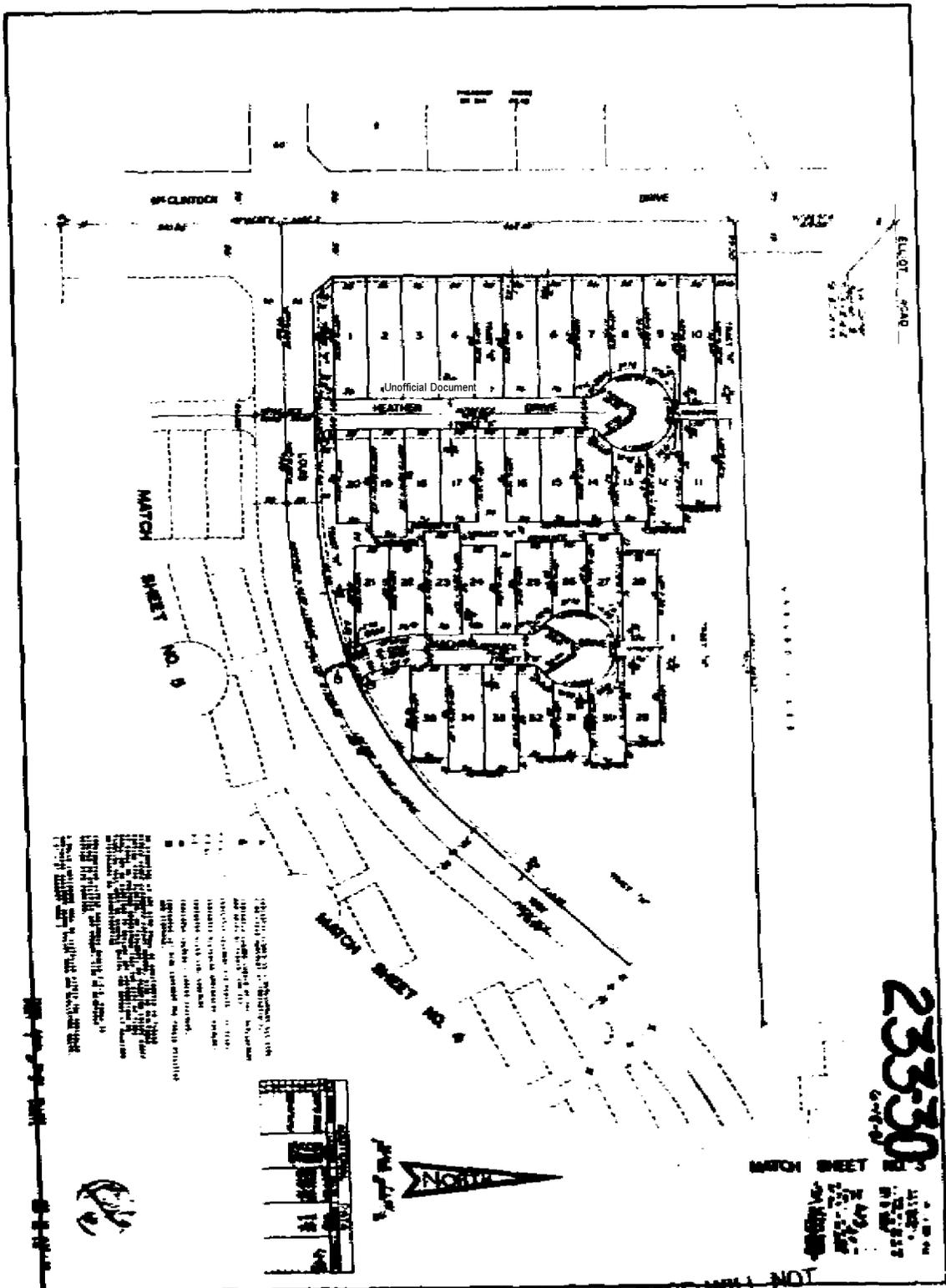
**DKT15954 PC1477**

**EXHIBIT B**

Tracts A to H, inclusive and J to V, inclusive, TEMPE ROYAL PALMS VILLAGE, according to Book 233 of Maps, page 30, records of Maricopa County, Arizona and Certificate of Correction recorded in Docket 15559, page 85, records of Maricopa County, Arizona (Lots 106 and 107 only).

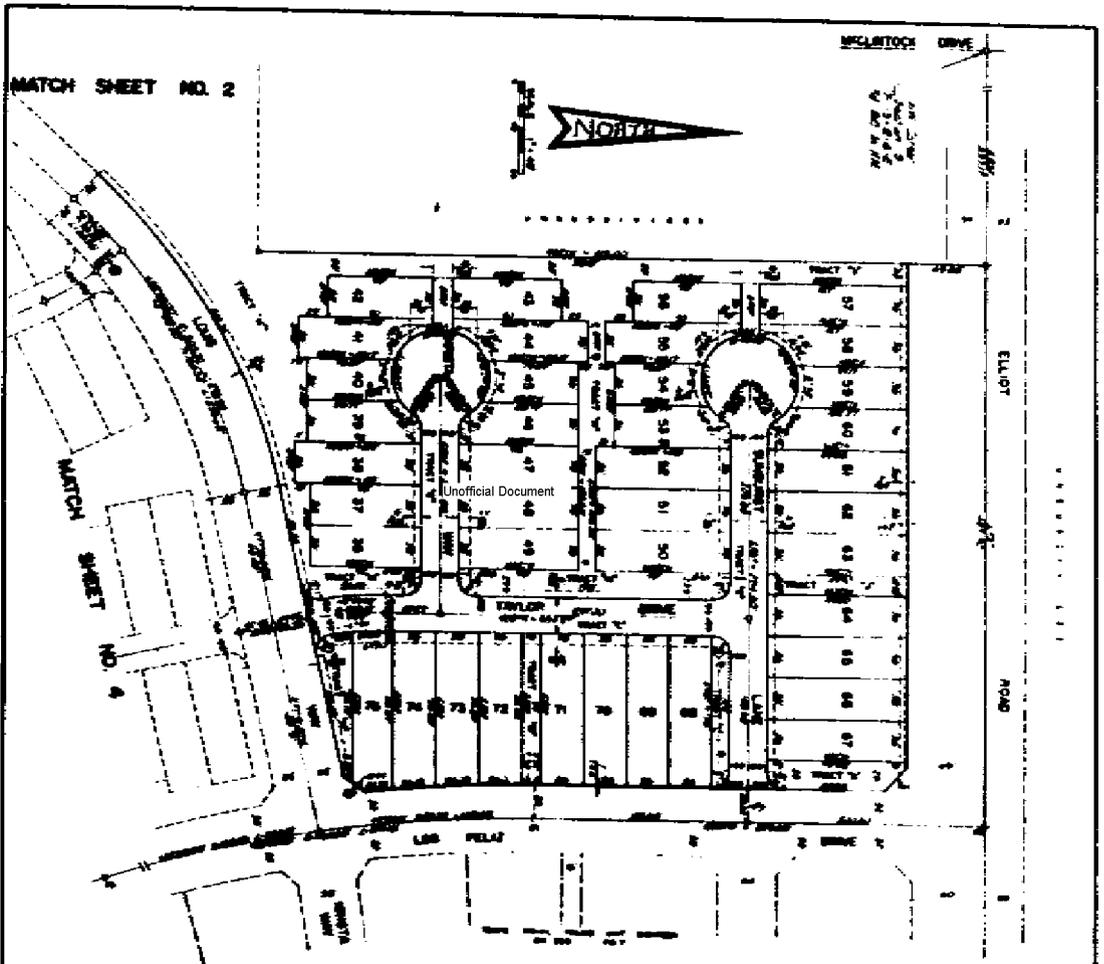


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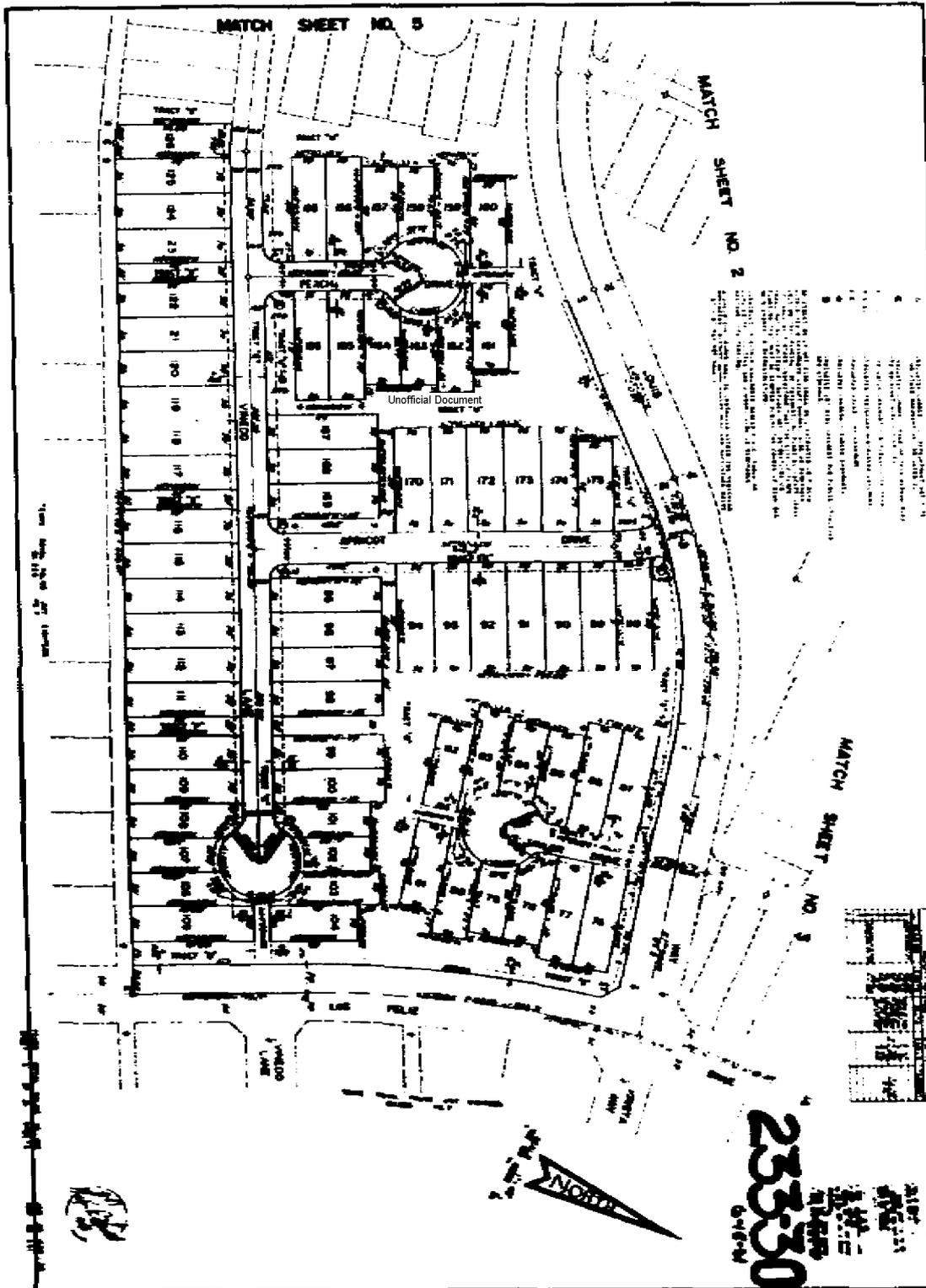
• THE INFORMATION CONTAINED HEREIN IS UNOFFICIAL AND IS NOT TO BE USED FOR ANY PURPOSE THAT MAY IMPOSE A LIABILITY ON THE STATE OF CALIFORNIA OR ANY OF ITS AGENCIES, OFFICERS OR EMPLOYEES.  
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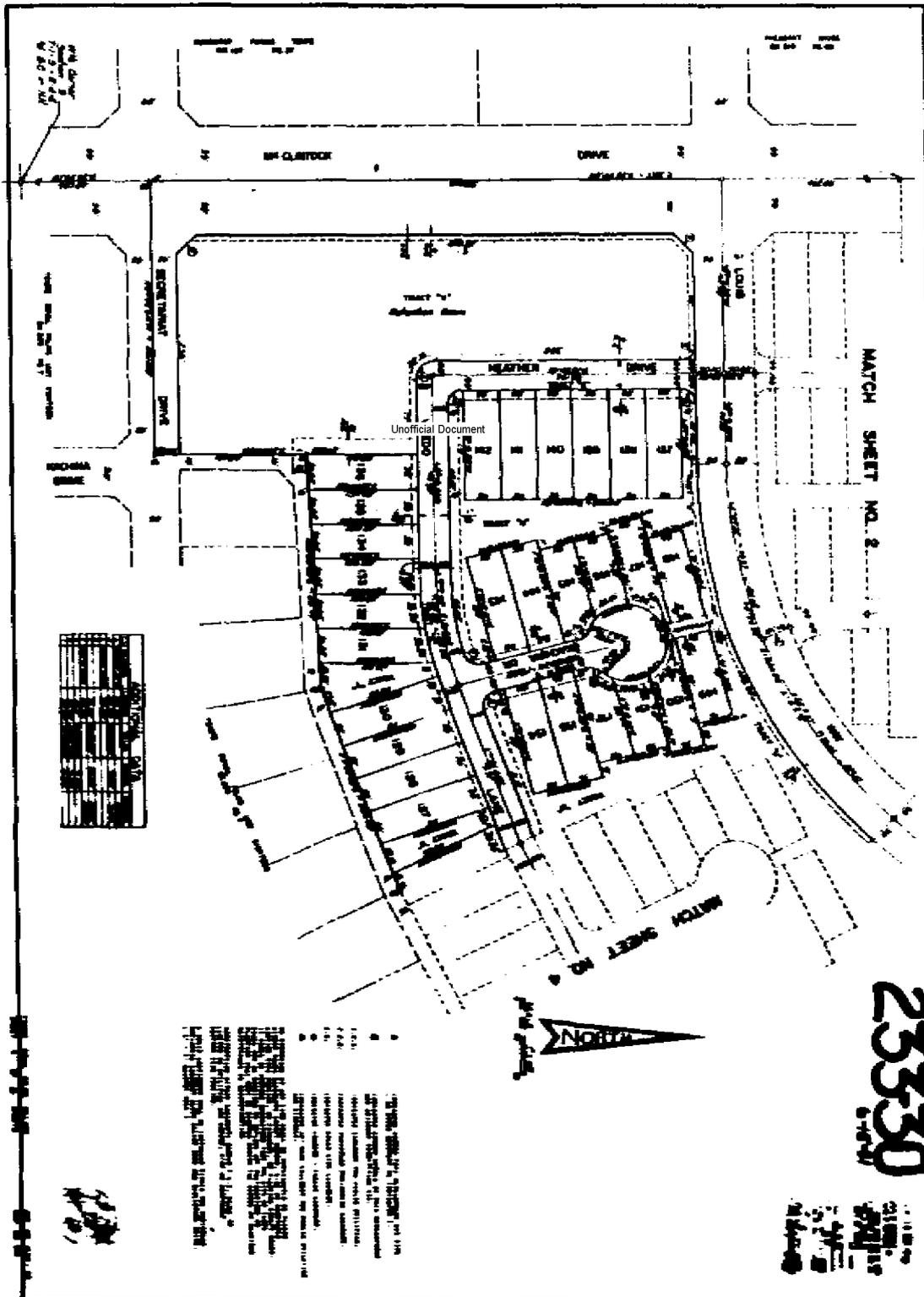
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• THE INFORMATION CONTAINED HEREIN IS UNOFFICIAL AND IS NOT TO BE USED FOR ANY PURPOSES WITHOUT THE WRITTEN CONSENT OF THE ENGINEER.

• THE ENGINEER HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS NOT BEEN ADVISED OF ANY CHANGES TO THE INFORMATION CONTAINED HEREIN.

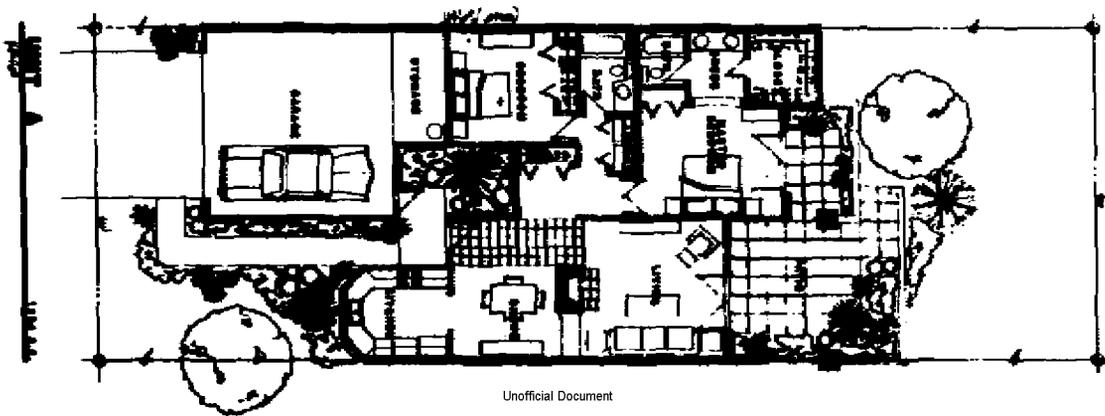
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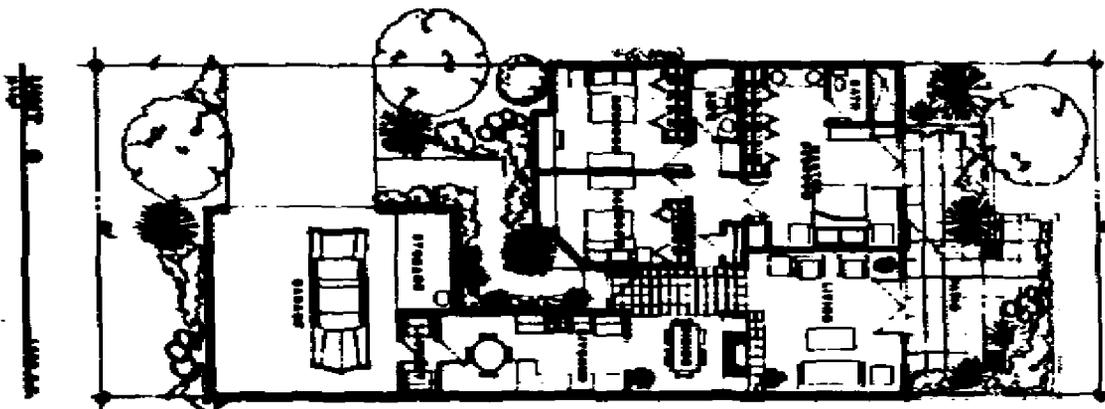
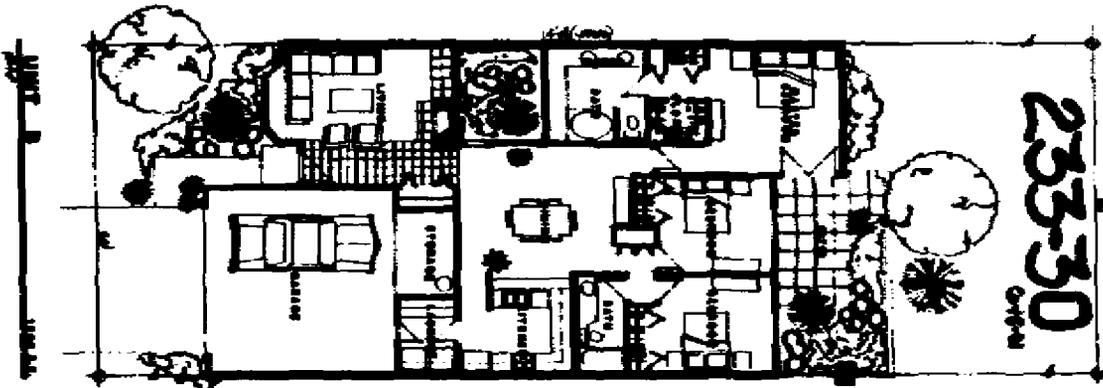
• THE ENGINEER HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS NOT BEEN ADVISED OF ANY CHANGES TO THE INFORMATION CONTAINED HEREIN.



DKT 15954 PG 1484



Unofficial Document



**TEMPE ROYAL PALM**  
 L.L. HOME, SLISS DIVISION  
 LINDROTH ASSOCIATES ARCHITECTS  
 1000 N. GILBERT AVENUE, SUITE 100, GILBERT, ARIZONA 85234

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APR 13 1982 -2 20

STATE OF ARIZONA }  
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of

TRANSAMERICA TITLE INS. CO.

Unofficial Document

in Docket 15954  
on page 1440-1486

Witness my hand and official seal the 13th day of April 1982.

*Bill Henry*  
County Recorder  
*[Signature]*  
Deputy Recorder

2300

When Recorded Return To:

John M. Randolph, Esq.  
Mohr, Hackett, Pederson,  
Blakley & Randolph, P.C.  
3443 N. Central, Suite 1010  
Phoenix, Arizona 85012

36

SECOND AMENDMENT TO  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TEMPE ROYAL PALMS VILLAGE  
AKA VILLAS LAS PALMAS

MOD RES

DATE: November 17, 1982

DECLARANT: U.S. HOME CORPORATION, a Delaware corporation

DECLARATION TO WHICH THIS AMENDMENT RELATES:

That certain declaration of covenants, conditions and restrictions for Tempe Royal Palms Village recorded in Docket 15900 at page 155 and rerecorded in Docket 15954 at page 1440, as amended by first amendment recorded in Docket 16283 at page 754, of the records of the County Recorder of Maricopa County, Arizona ("the declaration")

RECITALS:

WHEREAS, Declarant is desirous of amending the declaration;

NOW, THEREFORE, in consideration of the foregoing, the declaration is hereby amended as follows:

1. Article I, Section 9 of the declaration is deleted in its entirety and the following inserted in lieu thereof:

Section 9. "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as the same may from time to time be amended.

2. Article I, Section 14 of the declaration is deleted in its entirety and the following inserted in lieu thereof:

Section 14. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple, equitable or beneficial title (or legal title if same has merged) of any lot. "Owner" shall include the purchaser of a lot under an executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include a lessee or tenant of a single family residence. For the purposes of ARTICLE IV of this Declaration only, unless the context otherwise requires, "Owner" shall also include the family, invitees, licensees and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any lot.

I do hereby certify that the within named instrument is a true and correct copy of the original as recorded in the records of TRANSAMERICA TITLE Company, Maricopa County, Arizona. Docket 16437 8792893 NOV 22 82 4 15 EILL HENRY, Maricopa County Recorder. By MARILYN LEVANTINO Deputy

15.00

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3. Article I, Section 21 of the declaration is deleted in its entirety and the following inserted in lieu thereof:

Section 21. "Subdivision map" or "subdivision plat" shall mean the plat attached hereto as Exhibit "C" which plat was recorded in Book 233 of Maps, page 30, records of Maricopa County, Arizona, covering any or all of the property referred to in this Declaration or annexed hereto.

4. Article II, Section 1(b) of the declaration is deleted in its entirety and the following inserted in lieu thereof:

(b) the right, after reasonable notice and an opportunity to be heard, of the Association to suspend the voting rights and rights to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

5. Article II, Section 1(d) of the declaration is deleted in its entirety and the following inserted in lieu thereof:

(d) the right of Declarant and its sales agents and representatives, in addition to the rights set forth herein-after, to the reasonable use, without extra charge, of the common area and facilities for maintenance of sales facilities, display and exhibit purposes.

6. Article III, Section 1 of the declaration is deleted in its entirety and the following inserted in lieu thereof:

Section 1. General Declaration Creating.

Declarant shall develop certain properties by subdivision into various lots and tracts. As each is developed, Declarant may, with respect to particular property, record one or more Tract Declarations which will incorporate this Declaration therein by reference, subject to the approval of the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), if HUD or VA, or both, are insuring or guaranteeing loans on any lot. Thereafter, Declarant intends to sell and convey, to public purchasers, lots in the property so developed subject to both this Declaration and the Tract Declarations, if any, for such tract(s). Declarant hereby declares that all of the real property within the Subdivision is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration and any recorded Tract Declarations, as amended or modified from time to time. This Declaration and said Tract Declarations are declared and agreed to be in furtherance of a general plan for the Subdivision, improvement and sale of said real property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and every part thereof. All of this Declaration shall run with all of said real property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their successors in interest.

7. Article IV, Section 2(e) of the declaration is deleted in its entirety and the following inserted in lieu thereof:

(e) Improvements and Alterations. No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of any property, or the improvements located in the Subdivision from its natural or improved state existing on the date such property was first conveyed in fee by Declarant to a public purchaser or annexed to the Subdivision whichever is later, shall be made or done without the prior approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Committee or any committee established by the Architectural Committee for the purpose. Pursuant to this rulemaking power, the Architectural Committee shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement. The Architectural Committee shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All subsequent additions to or changes in alterations in any building, fence, wall or other structure, including exterior color scheme, shall be subject to the prior approval of the Architectural Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee. All decisions of the Architectural Committee shall be final and no lot owner or other parties shall have recourse against the Architectural Committee for its refusal to approve any such plans and specifications or plot plan, including lawn area and landscaping. No basketball standards or fixed sports apparatus shall be attached to any unit or garage or be erected on any lot without the prior approval of the Architectural Review Committee.

8. Article IV, Section 2(h)(1) and (2) of the declaration are deleted in their entirety and the following inserted in lieu thereof:

(h) Maintenance of Lawns and Plantings.

(1) By Owner. Each Owner of a lot shall keep all shrubs, trees, grass and plantings of every kind on his property neatly trimmed and maintained and free from trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any other area as to which the Association has assumed the responsibility. The Association or its authorized agents shall have the right at any reasonable time to enter upon any lot of Owner to

plant, replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon.

(2) By the Association. The Association shall have the right, at any time, to plant, replace, maintain and cultivate shrubs, trees, grass and plantings on any property other than on a lot, and on such easements over an Owner's lot as may have been granted to the Association, regardless of whether any Owner or the Association is responsible hereunder for maintenance of such areas. Notwithstanding anything contained herein to the contrary, the Association shall maintain that portion of any lot abutting the common area which extends from the patio wall surrounding the improvements on such lot to the boundary of the common area. No Owner shall erect any fence, wall or barrier of any kind or nature whatsoever within such area and no Owner shall install any plants, trees, grass, gravel, cinders or other landscaping materials or construct any improvements of any kind or nature within such area. No Owner shall remove, alter, injure or interfere in any way with any shrubs, trees, grass or plantings placed upon any such property by Declarant or the Association without the written consent of the Architectural Committee having first been obtained. The Association or its authorized agents shall have <sup>Unofficial Document</sup> right to enter upon any property within such other areas, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such shrubs, trees, grass or plantings, and shall not be liable for trespass for so doing.

9. Article IV, Section 2(n) of the declaration is deleted and the following inserted in lieu thereof:

(n) Right of Way. During reasonable hours and after notice, except in the event of an emergency, any member of the Architectural Committee, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any property within the Subdivision, and the improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

10. Article IV, Section 2(r) of the declaration is deleted and the following inserted in lieu thereof:

(r) Restriction on Further Subdivision. No lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner. No portion of a lot but for the entire lot, together with the improvements thereon, may be rented, and then only to a single family.

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11. Article IV, Section 2(t)(4) of the declaration is hereby deleted in its entirety.

12. Article IV, Section 2(w)(2) of the declaration is hereby deleted and the following inserted in lieu thereof:

(2) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner, if found legally liable under Arizona State law, to rebuild and repair the party wall or party fence without cost to the other adjoining lot Owner or Owners.

13. Article IV, Section 2(w)(5) of the declaration is deleted in its entirety and the following inserted in lieu thereof:

(5) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to an arbitrator appointed by the American Arbitration Association who shall determine such dispute in accordance with the rules of the American Arbitration Association, the decision of which shall be binding.

14. Article IV, Section 2(w)(5)(c) of the declaration is deleted in its entirety and the following inserted in lieu thereof:

(c) Damage or Destruction of Common Area by Owners. In the event the common area or structural maintenance area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, if found legally liable under Arizona State law, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

15. Article V, Section 1 B. of the declaration is hereby deleted in its entirety.

16. Article V, Section 2 B.(c)(d) and (e) are deleted in their entirety and the following inserted in lieu thereof:

(c) The Association shall obtain and maintain fidelity bonds covering all persons or entities which handle funds of the Association, including without limitation any professional manager employed by the Association and any of such professional manager's employees in amounts not less than

one hundred fifty percent (150%) of the estimated annual budget of the Association from time to time.

17. The first paragraph of Article V, Section 3 of the declaration is deleted in its entirety and the following inserted in lieu thereof:

Section 3. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. The rules may govern, among other things:

18. The last paragraph of Article VI, Section 2 of the declaration is deleted in its entirety and the following inserted in lieu thereof:

(b) Five (5) years from the date of conveyance of the first Lot to a Lot Owner other than Declarant.

19. Article VI, Section 3 of the declaration is deleted in its entirety and the following inserted in lieu thereof:

Section 3. The vote for each such lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall <sup>Unofficial Document</sup> cast, they shall lose their right to vote on the matter in question. If any Owner or Owners casts a vote representing a certain lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same lot. In no event shall more than one vote be cast with respect to any Class A Lot.

20. Article VI, Section 5 of the declaration is deleted in its entirety and the following inserted in lieu thereof:

Section 5. In the event any Owner shall be in arrears in the payment of any amounts due under any of the provisions herein, or shall be in default in the performance of or in breach of any of the Association's published rules and regulations, said Owner's right to vote as a member of the Association and right to use of the recreational facilities may be suspended and may remain suspended until all payments are brought current or for a period not to exceed sixty (60) days for default or breach of said rules and regulations.

21. Article VII, Section 5 of the declaration is deleted in its entirety and the following inserted in lieu thereof:

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all members not less than seven (7) days, nor more than thirty (30) days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meet-

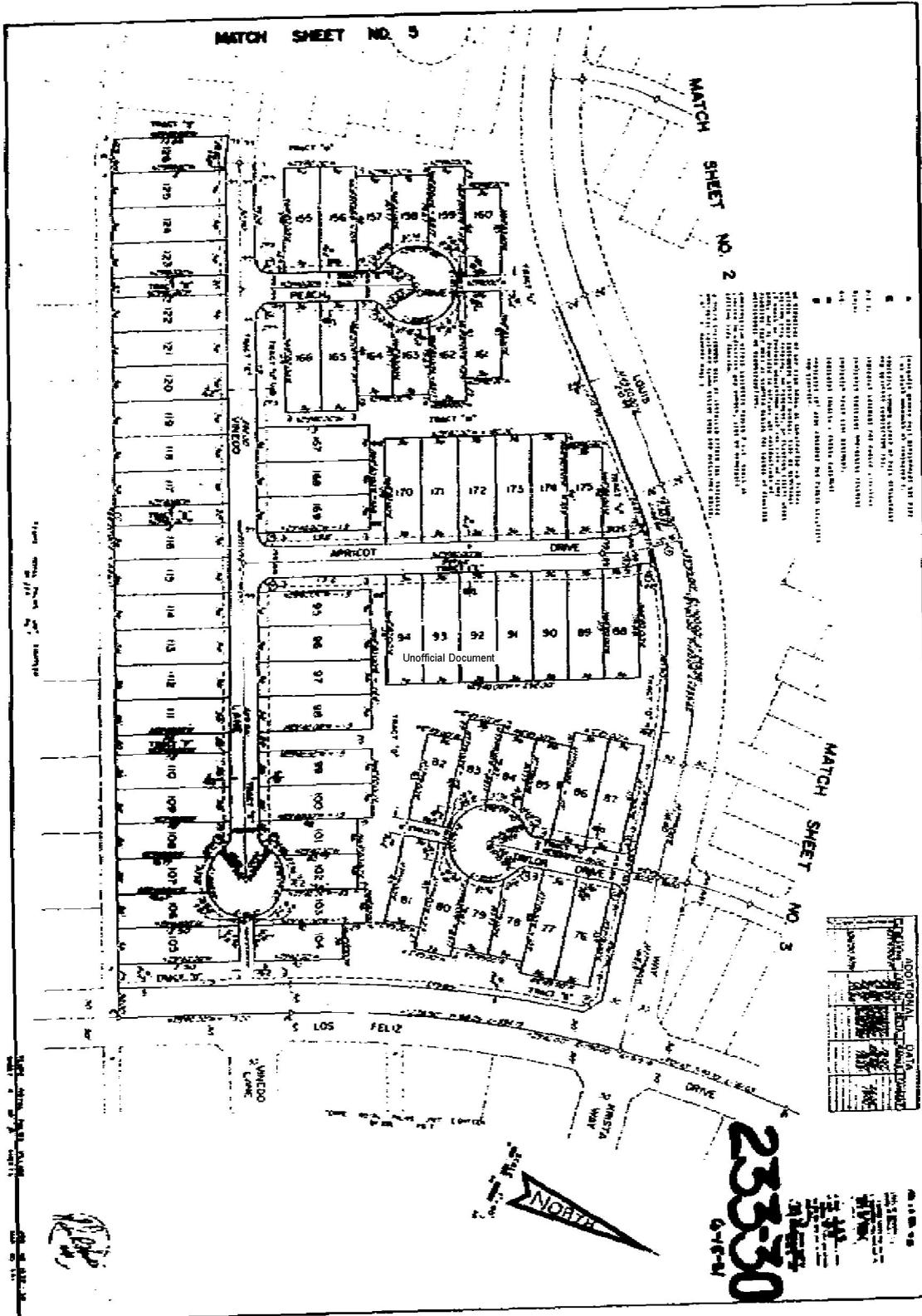




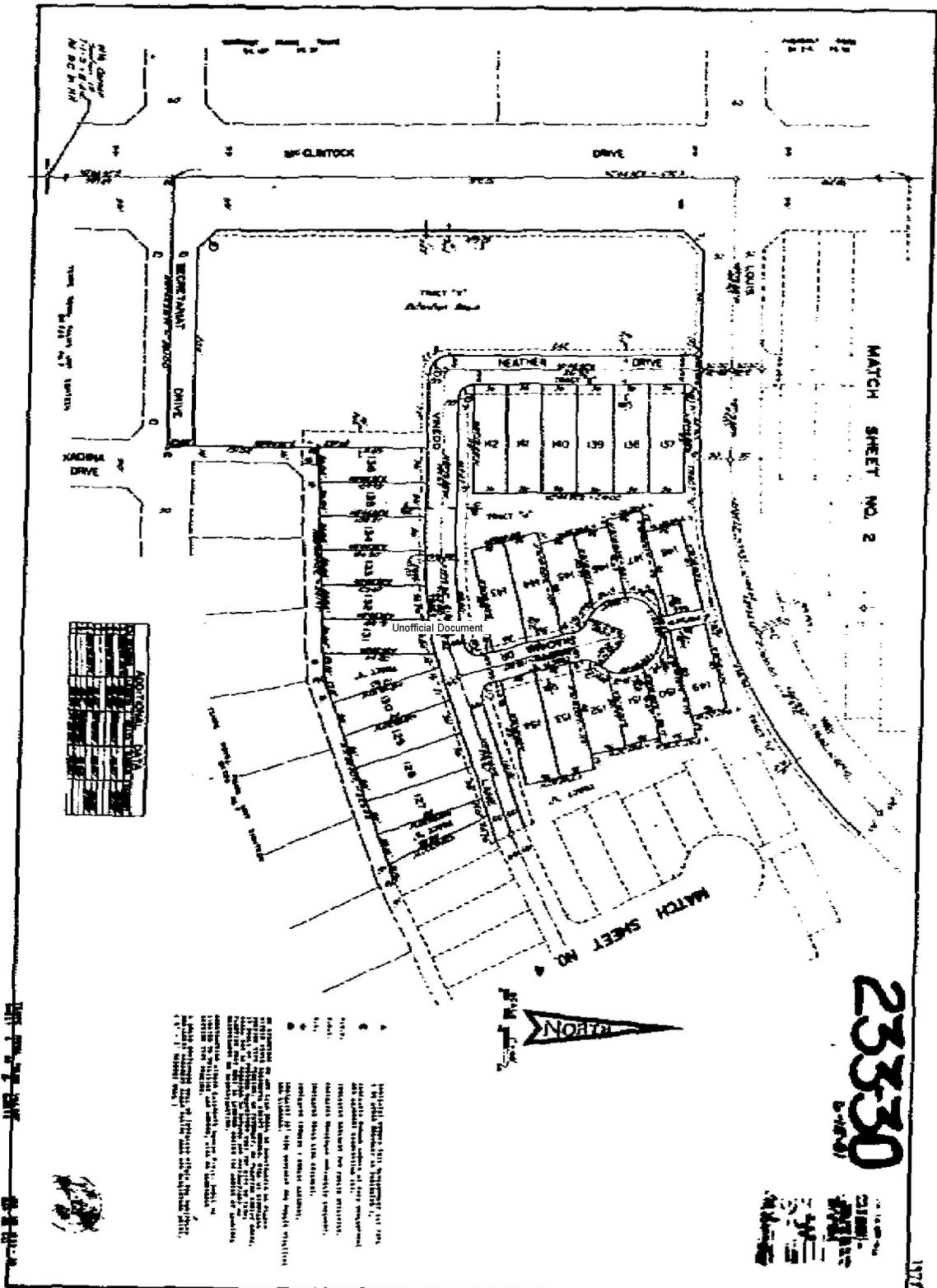




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1. ALL LOTS SHOWN ARE SUBJECT TO THE EXISTING AND PROPOSED EASEMENTS AND RIGHTS OF WAY SHOWN ON THIS PLAN.

2. THE PROPOSED LOTS ARE SHOWN WITH DOTTED LINES AND THE EXISTING LOTS ARE SHOWN WITH SOLID LINES.

3. THE PROPOSED LOTS ARE SHOWN WITH DOTTED LINES AND THE EXISTING LOTS ARE SHOWN WITH SOLID LINES.

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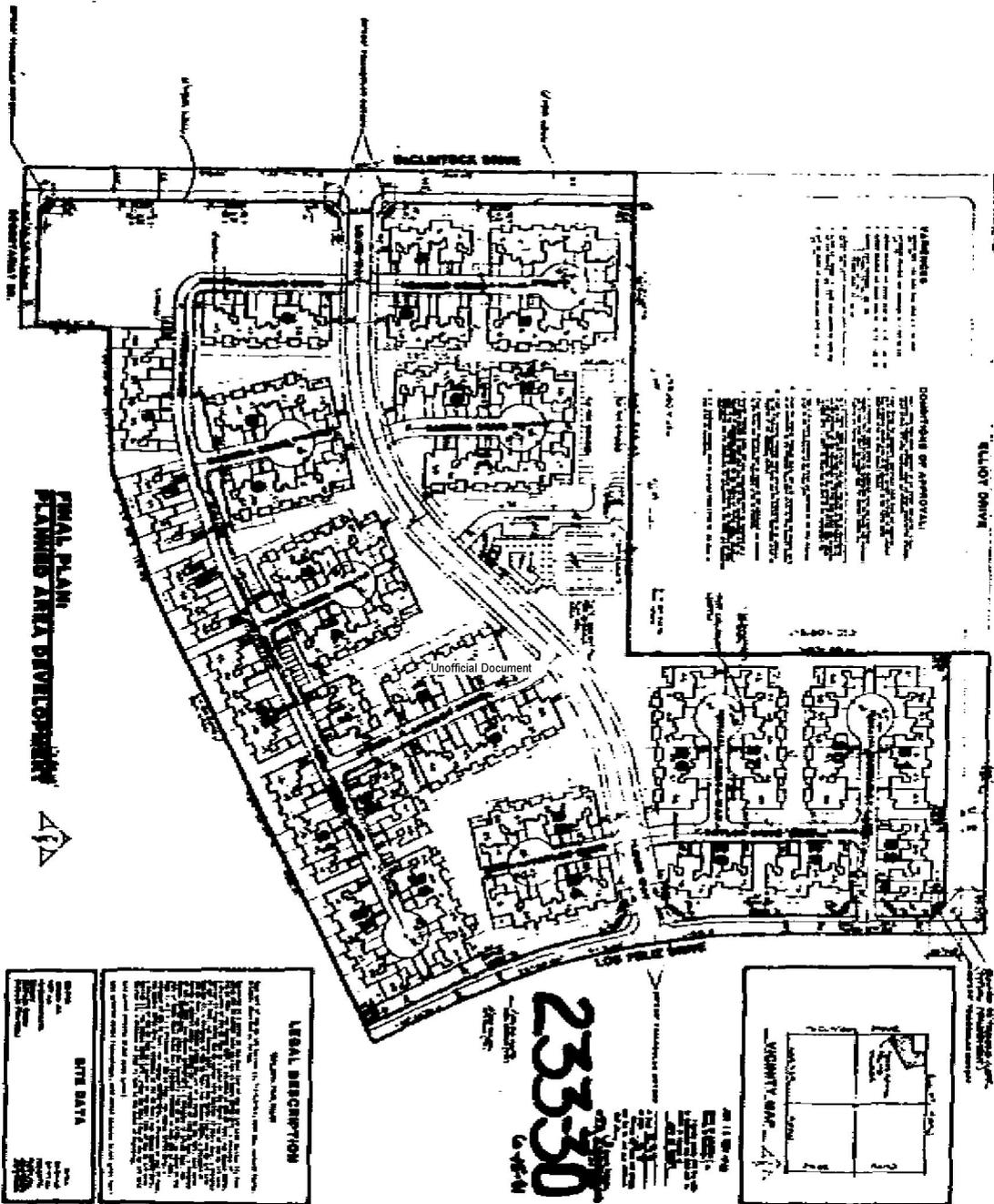
10. THE PROPOSED LOTS ARE SHOWN WITH DOTTED LINES AND THE EXISTING LOTS ARE SHOWN WITH SOLID LINES.

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C. M. ...  
D. M. ...

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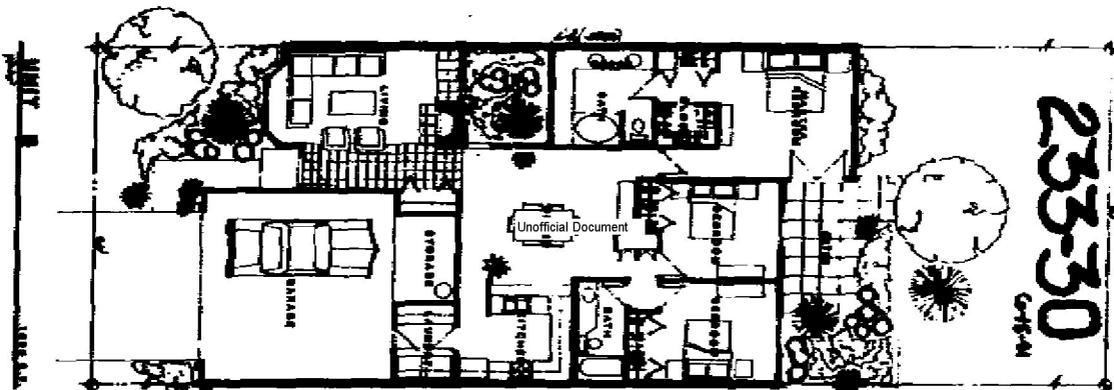
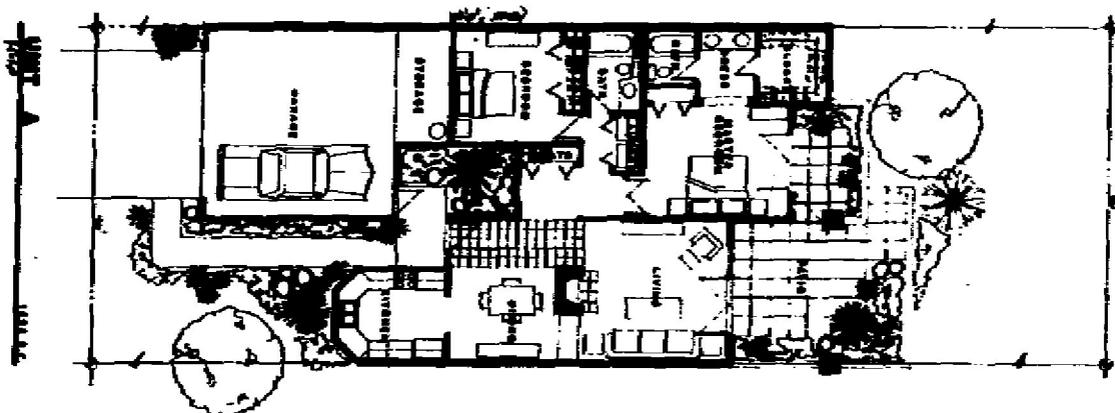


8 OF 8

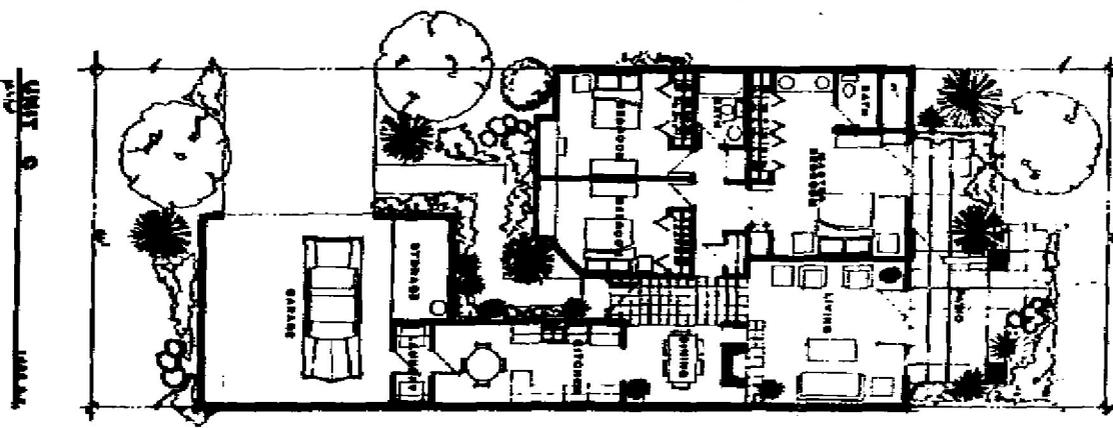
**TEMPE ROYAL PALMS** PLAN  
 U.S. HOME, SUBS. DIVISION  
 UNDEROTH ASSOCIATES ARCHITECTS  
 807 EAST DOWNSIDE ROAD, GAITHERSBURG, MARYLAND

1/27/82

DKT 16437'S 892



233-30  
C-15-84



**7 OF 8**

**TEMPER ROYAL PALMS**  
 U.S. HOME, SUGGS DIVISION  
 LINDROTH ASSOCIATES, ARCHITECTS  
 2801 EAST GARDEN ROAD, SCOTTSDALE, ARIZONA

197125

