

Sunny Lane Estates HOA.
P.O. Box 1117
Apache Junction, AZ 85278



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

DATE/TIME: 10/22/03 1200
FEE: \$51.00
PAGES: 40
FEE NUMBER: 2003-073896

"Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin are deleted unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons."

**THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
SUNNY LANE ESTATES**

**DELETION TO SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR
SUNNY LANE ESTATES**

1340-359

The instrument previously recorded on docket 1281, page 637, the following sections are deleted: Section 3.43

**THIRD AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SUNNY LANE ESTATES**

I N D E X

ARTICLE I

DEFINITIONS

Section 1.0	Articles
Section 1.1	Association
Section 1.2	Association Rules
Section 1.3	Board
Section 1.4	Residence
Section 1.5	Bylaws
Section 1.6	Common Area
Section 1.7	Common Expenses
Section 1.8	Declarant
Section 1.9	Declaration
Section 1.10	Eligible Insurer or Guarantor
Section 1.11	Eligible Mortgage Holder
Section 1.12	First Mortgage
Section 1.13	First Mortgagee
Section 1.14	Improvement
Section 1.15	Lot
Section 1.16	Member
Section 1.17	Owner
Section 1.18	Plat
Section 1.19	Property or Project
Section 1.20	Purchaser
Section 1.21	Residence
Section 1.22	Single Family
Section 1.23	Project Documents
Section 1.24	Votes Eligible to be Case

ARTICLE II

EASEMENTS

Section 2.0	Utility Easement
Section 2.1	Easements for Encroachment
Section 2.2	Easements for Ingress and Egress.
Section 2.3	Owner's Easements of Enjoyment
Section 2.4	Limitation on Transfer
Section 2.5	Association's Easement for Performing Maintenance Responsibilities

ARTICLE III DEFINITIONS

Section 3.0	Rules and Regulations
Section 3.1	Single Family Residential Use
Section 3.2	Antennas
Section 3.3	Utility and Service Lanes
Section 3.4	Trash Containers and Collection
Section 3.5	Machinery and Equipment
Section 3.6	Animals
Section 3.7	Temporary Occupancy
Section 3.8	Restriction on Further Subdivision and Time Shares
Section 3.9	Awnings, Patio Covers and Exterior Window Covering
Section 3.10	Barbecues and Grills
Section 3.11	Burning, Incinerators
Section 3.12	Evaporative Coolers, Air Conditioning Units, etc.
Section 3.13	Health and Safety
Section 3.14	Outside Lighting
Section 3.15	Outside Speakers and Amplifiers
Section 3.16	Parking
Section 3.17	Repairs
Section 3.18	Signs; Commercial Activities
Section 3.19	Storage; Vehicles
Section 3.20	Window Coverings
Section 3.21	Fireplaces
Section 3.22	Clothes Drying Facilities
Section 3.23	Mineral Exploration
Section 3.24	Diseases and Insects
Section 3.25	Lawful Use
Section 3.26	Nuisances and Offensive Activity
Section 3.27	Landscaping
Section 3.28	Solar Panes
Section 3.29	Enclosures
Section 3.30	Limitation on Leasing of Units
Section 3.31	Encroachments
Section 3.32	Flagpoles
Section 3.33	Maintenance; Misuse
Section 3.34	Height
Section 3.35	New and Permanent Construction
Section 3.36	No Construction on Easements
Section 3.37	Paint Colors
Section 3.38	Roof Materials
Section 3.39	Prosecution of Construction, Maintenance & Repairs
Section 3.40	Swimming Pools, Spas, Ect

ARTICLE III

(CONT'D)

- Section 3.41 Time of Construction.
- Section 3.42 Rules and Regulations
- Section 3.43 Set Back Control
- Section 3.44 Exemptions
- Section 3.45 Waivers

ARTICLE IV

MAINTENANCE AND REPAIRS

- Section 4.0 Maintenance of Common Area by the Association
- Section 4.1 Maintenance of Lots by Owners
- Section 4.2 Repair or Restoration Necessitated by Owner
- Section 4.3 Nonperformance by Owner
- Section 4.4 Termite and Pest Control
- Section 4.5 Payment of Utility Charges
- Section 4.6 Association Right of Access

ARTICLE V

THE ASSOCIATION

- Section 5.0 Rights, Powers and Duties of the Association
- Section 5.1 Directors and Officers
- Section 5.2 Association Rules
- Section 5.3 Membership and Voting
- Section 5.4 Classes of Membership and Voting
- Section 5.5 Joint Ownership
- Section 5.6 Corporate or Partnership Ownership
- Section 5.7 Suspension of Voting Rights

ARTICLE VI

EXEMPTION FROM RESTRICTIONS FOR RV USE

- Section 6.0 Existence of Nonconforming Use

ARTICLE VII COVENANT FOR ASSESSMENTS

- Section 7.0 Creation of the Lien and Personal Obligation of Assessments
- Section 7.1 Purpose of Assessments
- Section 7.2 Maximum Annual Assessment for Phase I
- Section 7.3 Special Assessments
- Section 7.4 Supplemental Assessments

Section 7.5	Notice and Quorum for any Action Authorized Under Sections 7.2, 7.3 and 7.4
Section 7.6	Rate of Assessment
Section 7.7	Date of Commencement of Annual Assessments
	Due Dates
Section 7.8	Effect of Nonpayment of Assessments; Remedies of the Association
Section 7.9	Subordination of Assessment Lien to Mortgages
Section 7.10	Exemption of Owner
Section 7.11	Tax Assessments
Section 7.12	Certificate of Payment
Section 7.13	Maintenance of Reserve Fund
Section 7.14	No Offsets

ARTICLE VIII CONDEMNATION

Section 8.0	Consequences of Condemnation; Notices
Section 8.1	Proceedings
Section 8.2	Complete Taking
Section 8.3	Partial Taking

ARTICLE IX INSURANCE

Section 9.0	Scope of Coverage
Section 9.1	Certificate of Insurance
Section 9.2	Fidelity Bonds
Section 9.3	Payment of Premiums
Section 9.4	Payment of Insurance Proceeds
Section 9.5	Insurance Trustee
Section 9.6	Insurance Obtained by Owners
Section 9.7	Repair and Replacement of Damages or Destroyed Property

ARTICLE X RIGHTS OF FIRST MORTGAGEES

Section 10.0	Notification to First Mortgagees
Section 10.1	Actions Requiring Approval of Eligible Mortgage Holders
Section 10.2	Approval Required for Amendment to Declaration, Articles or Bylaws
Section 10.3	Prohibition against Right of First Refusal
Section 10.4	First Mortgagee Not Liable for Prior Assessments
Section 10.5	Subordination of Certain Liens to First Mortgagee
Section 10.6	Right of Inspection of Records
Section 10.7	Prior Written Approval of First Mortgagees
Section 10.8	Liens Prior to First Mortgage
Section 10.9	Condemnation or Insurance Proceeds

Section 10.10 Limitation on Partition and Subdivision
Section 10.11 Conflicting Provisions

ARTICLE XI TERMINATION

Section 11.0 Method of Termination

ARTICLE XII GENERAL PROVISIONS

Section 12.0 Enforcement
Section 12.1 Severability
Section 12.2 Duration
Section 12.3 Amendment by Owners
Section 12.4 Remedies Cumulative
Section 12.5 Delivery of Notices and Documents
Section 12.6 Binding Effect
Section 12.7 Gender
Section 12.8 Topic Headings
Section 12.9 Survival of Liability
Section 12.10 Construction
Section 12.11 Joint and Several Liability
Section 12.12 Guests and Tenants
Section 12.13 Attorneys' Fees and Costs
Section 12.14 Management Agreements
Section 12.15 Number of Days
Section 12.16 Rules against Perpetuities
Section 12.17 Arbitration

EXHIBITS

- A.** Description of Phase I of Sunny Lane Estates
- B.** Map of Annexable Property
- C.** COMMON AREA to be conveyed to ASSOCIATION in Phase I

Unofficial

**THIRD AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SUNNY LANE ESTATES**

THIS THIRD AMENDED AND RESTATED DECLARATION (the "DECLARATION") is made on the 15TH day of September 2003, Sunny Lane Estates Homeowner's Association, Inc., an Arizona non-profit Corporation ("The Association").

BACKGROUND

Now, THEREFORE, The BOARD OF DIRECTORS and the MEMBERS of the Sunny Lane Estates Homeowner's Association, Inc. hereby declare, covenant and agree as follows:

WHEREAS, ASSOCIATION consists of certain real property (the "PROPERTY") located in Pinal County, Arizona, which is more particularly described in Exhibit ("A") attached hereto; and

WHEREAS, the BOARD OF DIRECTORS and MEMBERS of the ASSOCIATION hereby amend the following previously recorded Declaration of Covenants, Conditions and Restrictions recorded in Docket 1116, Page 543, in the Office of the County Recorder for Pinal County, Arizona, and has also recorded an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sunny Lane Estates, recorded in Docket 1134, Page 260, in the Office of the County Recorder for Pinal County, Arizona; and

WHEREAS, the BOARD OF DIRECTORS and MEMBERS of the ASSOCIATION wishes to hereby amend and restate in their entirety the Covenants, Conditions and Restrictions, and this Third Amended and Restated Declaration shall in all respects take precedence and prevail over and supercede the original Declarations referred to above; and

NOW, THEREFORE, the MEMBERS hereby declare that the lots described on the plat shall be subject to the following reservations, easements, limitations, restrictions, servitude's, covenants, conditions, charges, duties, obligations and liens (collectively referred to as "covenants, conditions, and restrictions"). The covenants, conditions, and restrictions are for the purpose of protecting the value, attractiveness and desirability of the LOTS and the covenants, conditions, and restrictions will benefit, burden and run with the title to the LOTS and will be binding upon all parties having any right, title or interest in or to the any part of the LOTS and their heirs, successors and assigns. The covenants, conditions, and restrictions will inure to the benefit of each OWNER. The MEMBERS intend that this DECLARATION and the other Project Documents will maintain and facilitate a general plan of the LOTS.

ARTICLE I DEFINITIONS

Section 1.0 "ARTICLES" shall mean the Articles of Incorporation of the ASSOCIATION, as the same may be amended from time to time.

Section 1.1 "ASSOCIATION" shall mean and refer to the Sunny Lane Estates Homeowner's Association, Inc., an Arizona Non-Profit Corporation, its successors and assigns.

Section 1.2 "ASSOCIATION RULES" shall mean the rules and regulations adopted by the ASSOCIATION, as the same may be amended from time to time.

Section 1.3 "BOARD" shall mean the Board of Directors of the ASSOCIATION.

Section 1.4 "RESIDENCE" shall mean and refer to the structures constructed on the PROPERTY and intended for residential use by a SINGLE FAMILY.

Section 1.5 "BYLAWS" shall mean the Bylaws of the ASSOCIATION, as the name may be amended from time to time.

Section 1.6 "COMMON AREA" shall mean all real property and all IMPROVEMENTS located thereon, owned by the ASSOCIATION for the common use and enjoyment of the OWNERS. The COMMON AREA is described in Exhibit C hereof.

Section 1.7 "COMMON EXPENSES" shall mean expenditures made or liabilities incurred by or on behalf of the ASSOCIATION, together with any allocations to reserve.

Section 1.8 "DECLARANT" shall mean Title Insurance Company of Minnesota, as Trustee, as record title holder, and the Smyers Corporation, and Arizona Corporation, dba Smyers Building Systems, Inc., as Beneficiary of Trust No. 2189, its successors and any person or entity to whom it may expressly assign its rights under this DECLARATION.

Section 1.9 "DECLARATION" shall mean this entire document, including the Exhibits attached hereto, as the same may be amended from time to time.

Section 1.10 "ELIGIBLE INSURER OR GUARANTOR" shall mean an insurer or governmental guarantor for a FIRST MORTGAGE who has requested notice of certain matters in accordance with Section 12.0 of this DECLARATION.

Section 1.11 "ELIGIBLE MORTGAGE HOLDER" shall mean a FIRST MORTGAGEE who has requested notice of certain matters from the ASSOCIATION in accordance with Section 12.0 of this DECLARATION.

Section 1.12 "FIRST MORTGAGE" shall mean and refer to any mortgage or deed of trust with first priority over any other mortgage or deed of trust.

Section 1.13 "FIRST MORTGAGEE" shall mean and refer to the holder of any FIRST MORTGAGE.

Section 1.14 "IMPROVEMENT" shall mean all physical structures, including, but not limited to, buildings, private drives, parking areas, fences, walls, and landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

Section 1.15 "LOT" shall mean any parcel of real property designated as a lot on the PLAT.

Section 1.16 "MEMBER" shall mean any person, corporation, partnership, joint venture or other legal entity who is or becomes a member of the ASSOCIATION.

Section 1.17 "OWNER" shall mean the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a LOT. OWNER shall not include (i) the purchaser of a LOT under an executory contract for the sale of real property, (ii) persons or entities having an interest in a LOT merely as security for the performance of an obligation, or (iii) a lessee or tenant of a LOT. In the case of LOTS the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., the Trustor shall be deemed to be the OWNER. In the case of LOTS the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement the beneficiary or any such trust shall be deemed to be the OWNER.

Section 1.18 "PLAT" shall mean the map or plat of survey of SUNNY LANE ESTATES, which plat has been recorded with the County Recorder of Pinal County, Arizona, in Cabinet A, Slide 78, and all amendments thereto, and any plat of survey of all or any portion of the ANNEXABLE PROPERTY which is annexed by the DECLARANT pursuant to Article XI of this DECLARATION.

Section 1.19 "PROPERTY" or "PROJECT" means the real property described on Exhibit A attached to this DECLARATION and all real property subsequently annexed by the DECLARANT pursuant to Article XI of this DECLARATION together with all buildings and other IMPROVEMENTS located thereon, and all easements, rights and appurtenances belonging thereto.

Section 1.20 "PURCHASER" means any person, who by means of a voluntary transfer acquires a legal or equitable interest in a LOT, other than (a) a leasehold interest (including renewable options) of less than five years, or (b) as security for an obligation.

Section 1.21 "RESIDENCE" means any building located on a LOT which is intended and designated for use as a residence by a SINGLE FAMILY, together with any garage, carport, patio or similar structures attached thereto and used in connection therewith.

Section 1.22 "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 four (4) persons not all so related, together with their domestic servants, who maintain common household in a LOT.

Section 1.23 "PROJECT DOCUMENTS" shall mean this DECLARATION, the ARTICLES, BYLAWS and ASSOCIATION RULES and any amendments or supplements thereto.

Section 1.24 "VOTES ELIGIBLE TO BE CAST" shall mean the aggregate number of votes which are then eligible to be cast by all MEMBERS of the ASSOCIATION at a meeting thereof (whether or not present in person or by proxy) unless otherwise specifically stated herein or required by law.

ARTICLE II EASEMENTS

Section 2.0 **Utility Easement.** There is hereby created an easement upon, across, over and under the PROPERTY for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, water, sewers, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the PROPERTY. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility service lines may be installed or relocated on the PROPERTY except as approved by the BOARD. This easement shall in no way affect any other recorded easements on the PROPERTY.

Section 2.1 **Easements for Encroachments.** Each LOT and the COMMON AREA shall be subject to an easement for encroachments, including but not limited to, encroachments of walls, ceilings, ledges, floors, and roofs created by construction, settling and overhangs as originally designed or constructed, or as created by discrepancies between the PLAT and the actual construction. If any portion of the COMMON AREA shall actually encroach upon any portion of any LOT, or if any LOT shall actually encroach upon any portion of the COMMON AREA, or if any LOT shall actually encroach upon another LOT, as the COMMON AREA and the LOTS are shown on the PLAT, a valid easement for any of said encroachments and for the maintenance thereof, so long as they stand, shall and does exist. In the event any LOT or structure is repaired, altered, or constructed, the OWNERS of the LOT agree that similar encroachments shall be permitted and that a valid easement for said encroachments shall be permitted and that a valid easement for said encroachments shall be permitted and that a valid easement for said encroachment and for the maintenance thereof shall exist. The OWNER and any other parties acquiring any interest in any LOT shall acquiesce and agree to the existence of such easements by accepting a deed or otherwise becoming the OWNER of a LOT.

Section 2.2 **Easements for Ingress and Egress.** There is hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist on the PROPERTY. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the OWNERS and occupants of the LOTS and their guests, families, tenants and invitees.

Section 2.3 **Owner's Easements of Enjoyment.** Every OWNER shall have a right and easement of enjoyment in and to the COMMON AREA, which right and easement shall be appurtenant to and shall pass with the title to every LOT, subject to the following provisions:

- (a) the right of the ASSOCIATION or the BOARD to adopt reasonable rules and regulations governing the use of the COMMON AREA;
- (b) the right of the ASSOCIATION after providing notice to an OWNER and an hearing to suspend an OWNER'S right and easement of enjoyment for any period during which any assessment against his LOT remains unpaid; and for a period not to exceed sixty (60) days for any other infraction or violation of the PROJECT DOCUMENTS;

- (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 MEMBERS entitled to cast three-fourths (3/4) of the votes of each class of membership agreeing to such dedication or transfer has been recorded. The requirements of this Section shall not apply in the case of utility easements covered by Section 2.0 of this DECLARATION.

Section 2.4 Limitation on Transfer. An OWNER'S right and easement of enjoyment in and to the COMMON AREA shall not be conveyed, transferred, alienated or encumbered separate and apart from an OWNER'S LOT. Such right and easement of enjoyment in and to the COMMON AREA shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any OWNER'S LOT, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement or to the COMMON AREA.

Section 2.5 Association's Easement for Performing Maintenance Responsibilities. The ASSOCIATION shall have an easement upon, across, over and under the entire PROPERTY for the purpose of repairing, maintaining and replacing those portions of the PROPERTY which the ASSOCIATION is obligated to maintain, or has elected to maintain, under this DECLARATION.

ARTICLE III

USE AND OCCUPANCY RESTRICTIONS

Section 3.0 Rules and Regulations. The use of any portion of the PROPERTY shall be subject to the rules and regulations adopted and amended from time to time by the BOARD. Upon a violation of any such rules and regulations by an OWNER, the ASSOCIATION shall give the OWNER written notice by mail to correct such violation and an opportunity for a hearing. If the OWNER fails to correct same within the time period listed in the notice and does not request a hearing in writing, the ASSOCIATION may take any measures provided by this DECLARATION, including assessment of monetary penalties, application to any court for performance of this DECLARATION, or for an injunction without bond for any other appropriate relief, including damages. An OWNER waives all defenses to the assessed monetary penalties, if the OWNER did not request in writing a hearing. Without limiting the generality of the foregoing, use of any portion of the PROPERTY is hereby limited by the provisions of this Article III.

Section 3.1 Single Family Residential Use. All LOTS shall be used, improved and devoted exclusively to residential use by a SINGLE FAMILY. No occupation, profession, trade, business or other non-residential use shall be conducted on or in any LOT or COMMON AREA.

Section 3.2 Antennas. No antenna, greater than twelve (12) feet above the roof line, or satellite dish greater than thirty-nine (39) inches in diameter 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 portion of the PROPERTY unless first approved by the BOARD. Per the Federal Communications Commission ruling, an OWNER shall submit an architectural review form to the BOARD as outlined in the ASSOCIATION rules before the OWNER installs any satellite dish or antenna.

Section 3.3 Utility and Service Lines. Except for lines, wires and devices existing on the PROPERTY as of the date of this DECLARATION or constructed or added by or approved by DECLARANT and maintenance and replacement of the same, no lines, wires, or other devices for the communication or transmission of electric current, power, or other signal or transmission, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon the PROPERTY unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on RESIDENCES or other structures and shall be approved by the BOARD. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction or any RESIDENCES or structures approved by DECLARANT.

Section 3.4 Trash Containers and Collection. No garbage or trash shall be placed or kept on the PROPERTY except in covered containers of a type, size and style, which are approved by the BOARD. The BOARD shall have the right, but not the obligation to subscribe to a trash service for the use and benefit of the ASSOCIATION and all OWNERS, which may be at the option of the BOARD, a COMMON EXPENSE paid by the ASSOCIATION. After notice and the opportunity to be heard, the BOARD has the right to cease trash pick-up for OWNERS who are in arrears.

Section 3.5 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the PROPERTY except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or structures which are within the permitted uses of such PROPERTY, and except that which the ASSOCIATION may require for the operation and maintenance of the COMMON AREA.

Section 3.6 Animals. No animals, birds, fowl, poultry or livestock, other than a reasonable number of house pets, shall be maintained in or on the PROPERTY and then only if they are kept, bred or raised solely as domestic pets and not for commercial purposes. All dogs shall be kept on a leash not to exceed six (6) feet in length and must be accompanied by an OWNER, lessee or family member when outside. No OWNER or any lessee or guest of an OWNER shall permit any pet being kept on any LOT to relieve itself on any portion of the COMMON AREA or any other LOT. It shall be the responsibility of said OWNER, lessee or other guest to remove immediately any droppings from pets. No structure for the care, housing, confinement or training of any animal or pet shall be maintained so as to be visible from any other LOT or the COMMON AREA. Upon the written request of any OWNER, the BOARD shall determine whether, for the purposes of this Section, a particular animal or bird is a generally recognized house pet, or whether the number of pets on any property is reasonable. The BOARD shall have the authority to promulgate additional RULES with respect to animals and other pets and to impose reasonable monetary penalty for failure to comply with this DECLARATION. Any said OWNER having complaints regarding another OWNER'S pets shall put their complaint in writing to the BOARD. The BOARD shall have the authority to make a decision regarding the complaint. Any complaints dealing with excessive barking shall require physical proof, such as a recording and / or multiple written statements submitted to the BOARD. Any decision rendered by the BOARD shall be enforceable as other restrictions contained herein.

Section 3.7 Temporary Occupancy. No trailer, incomplete improvement, building, tent, shack, garage or barn, and no temporary improvement of any kind shall be used at any time for a residence or any portion of the PROPERTY either temporarily or permanently. No recreational vehicle will be used as a permanent residence or living space on any PROPERTY. Temporary buildings or structures used during the construction of buildings or structures approved by the BOARD shall be permitted but must be removed promptly upon completion of the construction of the building or structure.

Section 3.8 Restriction on Further Subdivision and Time Shares. No LOT shall be further subdivided or separated into smaller LOTS by any OWNER, and no portion less than all of any such LOT shall be conveyed or transferred by any OWNER. Neither the ownership or occupancy of any LOT shall be in time-shares. No OWNER shall transfer, sell, assign or convey any time-share in his LOT and any such transaction shall be void.

"Time Share" as used in this Section shall mean a right to occupy a LOT or any one of several LOTS during five (5) or more separated time periods over a period of at least five (5) years, including renewable options, whether or not coupled with an estate or interest in a LOT or a specified portion of a LOT.

Section 3.9 Awnings, Patio Covers and Exterior Window Covering. No awnings, patio covers, or exterior window treatments shall be installed without the prior written approval and authorization of the BOARD. No window coverings shall be visible from the street. No items such as foil, blankets or reflective material shall be used. Awnings shall be permitted as long as the awning is constructed within the laws of Pinal County and the City of Apache Junction. Before an awning is constructed, the proper documentation from the Planning and Zoning Department must be submitted to the BOARD for review.

Section 3.10 Barbeques and Grills. Barbeques and grills may be used for cooking, in the customary fashion in appropriate areas, so long as they are not stored in front of any LOT, or in any other area which can be seen from the street or any other LOT.

Section 3.11 Burning, Incinerators. No open fires or burning shall be permitted at any time and no incinerators or like equipment shall be placed, allowed or maintained, except as provided for barbeques and grills above.

Section 3.12 Evaporative Coolers, Air Conditioning Units, Etc. No evaporative coolers, air conditioning units, fans, water softeners, or other similar equipment shall be installed on any LOT where visible from any street, any other LOT, or the COMMON AREA, without prior written approval and authorization of the BOARD.

Section 3.13 Health and Safety. No thing or condition shall exist upon any portion of the PROPERTY, which shall induce, breed or harbor infectious plant or other disease or noxious odors, or increase other pests, or which shall pose a health or safety hazard of any kind.

Section 3.14 Outside Lighting. No lighting shall be placed, allowed or maintained on the outside of any RESIDENCE shall be directed toward any other RESIDENCE.

Section 3.15 Outside Speakers and Amplifiers. No radio, stereo or other broadcast units of any kind and no amplifiers or loudspeakers of any kind shall be placed, allowed or maintained outside of any RESIDENCE, or to be directed to the outside of any RESIDENCE without prior written approval and authorization of the BOARD.

Section 3.16 Parking. Parking shall be allowed only in designated areas designed for parking on any LOT. No on-street parking shall be allowed except for emergency vehicles or reasonable deliveries to a LOT. No parking of tractor-trailers (cab or trailer), motor homes, recreational vehicles, trucks larger than ¾ ton pick-ups, or commercial vehicles shall be allowed on any street. The BOARD expressly reserves the right to tow away or otherwise impound any vehicle parked within the PROPERTY in violation of the ASSOCIATION RULES or this DECLARATION. Any cost, fee or expense related to such towing or impounding shall be an expense of the owner of the vehicle, and if the owner of the vehicle is an OWNER, such expense shall be a lien against such OWNER'S LOT until paid.

Section 3.17 Repairs. No repairs or maintenance, other than emergency repairs, of any machinery, equipment or other personal property fixtures (including without limitation motor vehicles) shall be made on the street within the PROPERTY, or on any portion of the COMMON AREA, or on any LOT within view of the street. Normal maintenance of vehicles may be permitted on PROPERTY as long as maintenance is completed within a twenty-four (24) hour period.

Section 3.18 Signs. No signs or advertisements of any kind may be placed, allowed or maintained without prior written approval and authorization of the BOARD, except that residential nameplates and "for sale" and signs may be placed and maintained in conformity with the ASSOCIATION RULES, including without limitation, any restrictions contained therein as to number, size, location, materials, color, design and appearance, which may include alarm and security signs.

Section 3.19 Storage; Vehicles.

- (a) No exterior storage of any items of any kind shall be permitted, except in areas expressly designated by the BOARD.
- (b) Boats and boat trailers cannot be any longer than the width of the house or wider than the vehicle approved parking area on any LOT and must be parked on the side of house or in carport or garage, kept under cover.
- (c) This provision shall apply without limitation to camping trailers, race cars, classic cars, dune buggies, A.T.C.s, motor homes, and unmounted pick-up camper units that are visible from the street.
- (d) Any vehicle (including those with expired tags) which is found to be neglected, abandoned or otherwise not in frequent use cannot be stored regardless of ownership, age, condition or appearance.
- (e) No buses, vans, or trucks having a carrying capacity in excess of ¾ tons, or trucks that are designated for commercial purposes shall be parked, allowed or maintained on any portion of the PROPERTY.

Notwithstanding the foregoing, any OWNER shall be entitled to park a recreational vehicle which otherwise complies with the ASSOCIATION RULES on his LOT in the area designated for the parking of a recreational vehicle.

Section 3.20 Window Coverings. No aluminum foil, sheets, newspaper or other materials shall be used for window coverings which are not customarily made for such use. No reflective material shall be used on any window without prior written approval and authorization of the BOARD.

Section 3.21 Fireplaces. No fireplace shall be built or installed without the prior written approval and authorization of the BOARD.

Section 3.22 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying and airing clothes shall not be erected, placed or maintained on LOT where visible from the street, any other LOT, or the COMMON AREA.

Section 3.23 Mineral Exploration. No portion of the PROPERTY shall be used in any matter to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any substance of any kind.

Section 3.24 Diseases and Insects. No OWNER shall permit any thing or condition to exist upon the PROPERTY, which could induce, breed or harbor infectious plant disease or noxious insects (i.e., woodpiles).

Section 3.25 Lawful Use. No immoral, improper, offensive, or unlawful use shall be made on any part of the PROPERTY. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the PROPERTY shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this DECLARATION.

Section 3.26 Nuisances and Offensive Activity. No nuisance or offensive activity shall be permitted to exist or operate upon the PROPERTY and no activity shall be conducted upon the PROPERTY that is offensive or detrimental to any portion of the PROPERTY or any OWNER or occupants of the PROPERTY. In its sole discretion, the BOARD shall determine what constitutes a nuisance or offensive activity.

Section 3.27 Landscaping. Landscaping of any LOT shall be completely installed by the OWNER of such LOT within one hundred twenty (120) days from the close of escrow by the OWNER on such LOT.

Section 3.28 Solar Panels. No solar panels shall be installed on the PROPERTY without the prior written approval and authorization of the BOARD.

Section 3.29 Enclosures. No carport, porch or similar ancillary improvement or structure used in connection with a LOT shall be enclosed or otherwise converted for use as part of a residence without the prior written approval and authorization of the BOARD.

Section 3.30 Limitation on Leasing of Units. No OWNER may lease less than his entire LOT. No LOT may be leased for a period of less than thirty (30) days. All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the PROJECT DOCUMENTS and any failure by any lessee to comply with the terms of such documents shall be a default under the lease. A copy of any lease on any LOT shall be sent to the ASSOCIATION. If any lease shall fail to comply with any provision of the PROJECT DOCUMENTS, the ASSOCIATION, or any OWNER may proceed against said lessee and/or the OWNER to enforce such provisions, and the lessee and the OWNER shall be jointly and severally liable therefore.

Section 3.31 Encroachments. No tree, shrub, or plant of any kind or any other improvement or thing shall be allowed to overhang or otherwise encroach upon any roadway, sidewalk, neighboring LOT, the COMMON AREA, or any other way without the prior written approval and authorization of the BOARD.

Section 3.32 Flagpoles. No more than one standard twelve (12) foot flagpole, securely anchored in the ground may be installed on any LOT.

Section 3.33 Maintenance; Misuse. All LOTS and any improvements thereon (including without limitation all building exteriors, lawns and landscaping and the visible interior of all carports and other improvements) shall at all times be maintained by the OWNERS thereof in a neat, clean and sightly condition. All damage to a LOT or IMPROVEMENTS thereof shall be promptly repaired by the OWNER. No LOT shall be maintained or utilized in such a manner as to present an unsightly appearance (including but not limited to the presence of weeds or other unsightly growth or clothes drying within public view), or as to unreasonably offend the morals of or as to constitute an unreasonable annoyance to, or as to endanger the health or safety of any OWNER or resident; and no noxious or otherwise offensive condition or activity shall be allowed to exist or be conducted thereon.

Section 3.34 Height. No structure shall be erected, altered, placed or permitted to remain on any of the LOTS other than one single family dwelling unit not to exceed one (1) story in height.

Section 3.35 New and Permanent Construction. Any RESIDENCES or other IMPROVEMENTS on the PROPERTY shall be of new and permanent construction; provided, however, that temporary buildings may be placed and maintained on the PROPERTY in connection with the construction of RESIDENCES or IMPROVEMENTS thereon if previously approved and authorized in writing by the BOARD. Any such temporary structure shall be promptly removed upon completion of the construction to which it relates. This provision shall not apply to one (1) recreational vehicle which shall be allowed to be maintained on each LOT, in the area designated for the parking of a recreational vehicle, and in conformance with all other ASSOCIATION RULES.

Section 3.36 No Construction on Easements. No structure of any kind shall be erected, permitted or maintained on the easements for utilities, as shown on the plat; except fences and structures specifically required for the installation and operation of utilities.

Section 3.37 Paint Colors. Any painting or re-painting of the exterior of any RESIDENCE or any other IMPROVEMENTS upon any LOT shall be the same color, texture and material as the original construction, unless otherwise approved and authorized in writing by the BOARD.

Section 3.38 Roof Materials. Any repair or replacement of any roof on any RESIDENCE or other IMPROVEMENT shall be of the same color and material as originally constructed unless otherwise approved and authorized in writing by the BOARD.

Section 3.39 Prosecution of Construction, Maintenance and Repairs. All construction, maintenance and repair work of any kind shall be prosecuted diligently from commencement until completed and shall be conducted in such a manner as to minimize the interference with the use and enjoyment of other portions of the PROPERTY.

Section 3.40 Swimming Pools, Spas, Etc... No swimming pool, spa or similar IMPROVEMENT or equipment shall be installed or constructed on any LOT, and no building or other permit shall be applied for or obtained for the installation or construction thereof, without the prior written approval of the BOARD of the plans for such pool, spa or other equipment. The BOARD may require the posting of a security deposit by the OWNER, sufficient to pay for any damage to COMMON AREA, streets, sidewalks, walls or other IMPROVEMENTS which may be caused during the installation or construction. The security deposit shall be refundable, less a reasonable processing fee, upon completion of the installation or construction and restoration of all COMMON AREAS, streets, sidewalks, walls and other IMPROVEMENTS to their original condition. No swimming pool, spa or similar equipment shall be located on any LOT where it will be visible from the street, COMMON AREA, or neighboring property. The BOARD may adopt, and amend from time to time, other reasonable restrictions and requirements related to the installation or construction of swimming pools, spas and similar IMPROVEMENTS or equipment on any LOT.

Section 3.41 Time of Construction. The BOARD reserves the right to require that any construction activity on any LOT shall commence and be completed within a specified time period and any approval or authorization by the BOARD may be expressly conditioned on compliance with such time limit.

Section 3.42 Rules and Regulations. The BOARD reserves the right to promulgate reasonable rules and regulations concerning the PROPERTY, including reasonable limitations on use and development of any LOT and the COMMON AREA; provided, however, that no such adoption, amendment or revocation shall be effective if it shall be specifically disapproved by two-thirds (2/3) of the VOTES ELIGIBLE TO BE CAST at a meeting of the ASSOCIATION held for that purpose. Copies of applicable rules and regulations and amendments thereto shall be furnished by the ASSOCIATION to all OWNERS and MORTGAGEES upon written request.

Section 3.43 **Setback Control.** Setbacks for all building shall conform with the "typical lot layout" approved as part of the subdivision development, and as required by applicable ordinances of the City of Apache Junction, Arizona.

Section 3.44 **Exemptions.** The BOARD shall have the right, in its sole discretion, to grant exemptions from these restrictions upon demonstration satisfactory to the BOARD by the requesting OWNER that such waiver shall not, by the nature of the exemption sought or its duration, materially interfere with the use or enjoyment of other portions of the PROPERTY, to the aesthetic characteristics of the PROPERTY. Any such exemptions shall be granted only upon specific written request, detailing the exemption requested, the location thereof, the need therefor and the anticipated duration thereof. No exemption granted shall be broader in terms of activity, location or time than is reasonably required. Any exemption, approval or authorization granted by the BOARD may be made expressly subject to conditions or limitations imposed by the BOARD, which shall be an integral part and a condition of such exemption. The granting of any exemption shall not require the same exemption to be granted or extended at any other time. Any determination by the BOARD shall be final and binding.

Section 3.45 **Waivers.** Failure to enforce any of the use or other restrictions or limitations contained herein shall not be construed or be held to a waiver thereof, or consent to any further or succeeding breach or violation thereof.

ARTICLE IV MAINTENANCE AND REPAIRS

Section 4.0 **Maintenance of COMMON AREA by the ASSOCIATION.** The ASSOCIATION shall be responsible for the maintenance, repair and replacement of the COMMON AREA and may, without any approval of the OWNERS being required, take such actions as the BOARD deems necessary in order to maintain, repair, replace, preserve, and protect the COMMON AREA including, without limitation, any of the following:

- (a) Reconstruct, repair, replace or refinish any IMPROVEMENT or portion thereof upon the COMMON AREA (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and repair of such area);
- (b) Construct, reconstruct, repair, replace or refinish any portion of the COMMON AREA used as a road, street, walk, driveway and parking area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and repair of such area);
- (c) Replace injured and diseased trees or other vegetation in the COMMON AREA, to the extent that the BOARD deems necessary for the conservation of water and soil and for aesthetic purposes;
- (d) Place and maintain upon the COMMON AREA such signs as the BOARD may deem appropriate for the proper identification, use and regulation hereof.

Section 4.1 **Maintenance of LOTS by OWNERS.** Each OWNER shall be solely responsible for the maintenance, repair and replacement of all IMPROVEMENTS located on his LOT, including, without limitation, the following:

- (a) The interior and exterior of his RESIDENCE including the roof, all exterior and interior walls and surfaces, any air conditioning unit, heating unit, hot water heater and other fixtures and equipment which service his LOT.
- (b) Any fixtures and any utility lines or pipes from the LOT line to his RESIDENCE.
- (c) All landscaping located within his LOT.

All maintenance, repairs and replacements performed by any OWNER shall conform in all respects to the PROJECT DOCUMENTS, and shall be of the same appearance and quality as the original construction on the LOT. No OWNER of a LOT shall do any work which will repair the structural integrity of his RESIDENCE or which will adversely affect any other LOT or the COMMON AREA.

Section 4.2 Repair or Restoration Necessitated by OWNER. Notwithstanding any other provision in this DECLARATION, each OWNER shall be liable for any damage to the COMMON AREA or the IMPROVEMENTS, or any other LOT, including landscaping, or any equipment on the PROPERTY which results from the conduct or negligence of the OWNER, or his tenant, or their respective family, guests, invitees, or animals. The cost to the ASSOCIATION of any such repair, maintenance or replacements shall be levied against such OWNER, and his LOT, by the ASSOCIATION as a Special Assessment pursuant to Section 7.3 of this DECLARATION.

Section 4.3 Nonperformance by OWNERS. If any OWNER fails to maintain, repair or replace any portion of his LOT, and the IMPROVEMENTS and landscaping located thereon, which he is obligated to maintain under the provisions of the PROJECT DOCUMENTS, the ASSOCIATION shall have the right, but not the obligation, to enter upon such OWNER'S LOT to perform the maintenance, repairs or replacements not performed by the OWNER, and the cost of any such work performed by or at the request of the ASSOCIATION shall be levied against such OWNER and his LOT by the ASSOCIATION as a Special Assessment pursuant to Section 7.3 of this DECLARATION.

Section 4.4 Termite and Pest Control. The ASSOCIATION shall have the right, but not the obligation, to perform, or contract to have performed on behalf of the ASSOCIATION, termite and pest control service for the LOTS, and the IMPROVEMENTS located thereon, except for the interior of the RESIDENCE located thereon. In the event the ASSOCIATION exercises its right under this Section to provide termite and pest control service to the LOTS, the cost of such service shall be a COMMON EXPENSE of the ASSOCIATION and shall be assessed to the OWNERS as part of the annual assessment levied by the ASSOCIATION. If the ASSOCIATION does not exercise its right under this Section to provide termite and pest control service to the LOTS, then each OWNER shall be responsible for performing, or contracting to have performed, such termite and pest control service for his LOT as is necessary to keep his LOT, and the IMPROVEMENTS located thereon, free from termite and pest infestation.

Section 4.5 Payment of Utility Charges. Each RESIDENCE shall be separately metered for water, sewer and electrical service, and all charges for such service to the RESIDENCE shall be the sole obligation and responsibility of the OWNER of each LOT. All bills for water, sewer and electrical service to the COMMON AREA shall be billed to the ASSOCIATION, and the ASSOCIATION shall be responsible for the payment of such charges. The cost of water, sewer and electrical service to the COMMON AREA shall be a common expense of the ASSOCIATION and shall be included in the budget of the ASSOCIATION.

Section 4.6 Association Right of Access. During reasonable hours and after two (2) notices from the BOARD, each OWNER hereby grants to the ASSOCIATION a right of access to each OWNER'S LOT and to the COMMON AREA for the purpose of enabling any member or authorized representative of the BOARD, to exercise and discharge their respective powers, duties and responsibilities under the PROJECT DOCUMENTS. This right

of access shall include, but not be limited to, the right to enter upon such LOT or the COMMON AREA for the purpose of determining whether the provisions of the PROJECT DOCUMENTS are being complied with by the OWNERS, their guests, invitees, tenants and licensees. The ASSOCIATION shall have the right to enter a RESIDENCE without notice in case of emergency.

ARTICLE V THE ASSOCIATION

Section 5.0 Rights, Powers and Duties of the Association. The ASSOCIATION shall be a Non-Profit Arizona Corporation, and shall have such rights, powers and duties as are prescribed by law and as are set forth in the PROJECT DOCUMENTS together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the ASSOCIATION as set forth in this DECLARATION.

Section 5.1 Directors and Officers. The affairs of the ASSOCIATION shall be conducted by the BOARD and such officers and committees as the directors may elect and appoint, in accordance with the ARTICLES and the BYLAWS.

Section 5.2 Association Rules. Subject to the provisions of Section 3.44 hereof, by a majority vote of the BOARD, the ASSOCIATION may, from time to time, adopt, amend, and repeal rules and regulations. The ASSOCIATION RULES may, among other things restrict and govern the use of any area by any OWNER, by the family of such OWNER, or by any guest, invitee, licensee or tenant of such OWNER; provided, however, that the ASSOCIATION RULES may not unreasonably discriminate among OWNERS and shall not be inconsistent with this DECLARATION, the ARTICLES, or BYLAWS. The ASSOCIATION shall provide a copy of the ASSOCIATION Rules to all OWNERS when the BOARD adopts, amends or repeals the ASSOCIATION Rules.

Section 5.3 Membership and Voting. Each OWNER of a LOT shall be a MEMBER of the ASSOCIATION.

Section 5.4 Classes of Membership and Voting. The ASSOCIATION shall have one class of voting membership:

Class A. Class A membership shall be all OWNERS. Each Class A member shall be entitled to one (1) vote for each LOT owned.

Section 5.5 Joint Ownership. When more than one person is the OWNER of a LOT, all such persons shall be MEMBERS. The vote for such LOT shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any LOT. 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. If any OWNER casts a ballot representing a certain LOT, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other OWNERS of the same LOT. In the event more than one (1) ballot is cast for a particular LOT, none of said votes shall be counted and said votes shall be deemed void.

Section 5.6 Corporate or Partnership Ownership. In the event a LOT is owned by a corporation, partnership or association, the corporation, partnership or association shall be a MEMBER and shall designate in writing to the ASSOCIATION at the time of its acquisition of the LOT, the name and title of the person who shall have the power to vote the membership of the corporation, partnership or association in the ASSOCIATION. The

person so designated shall be the only person who shall be entitled to cast the vote for the LOTS owned by such corporation, partnership or association. If the corporation, partnership or association fails to designate a person who shall have the right to vote the membership of the corporation, partnership or association, then such corporation, partnership or association shall lose its right to vote and it shall not be considered a MEMBER for the purpose of determining the requirement for a quorum or any other purpose requiring the approval of a person entitled to cast the vote for the LOT owned by such corporation, partnership or association.

Section 5.7 **Suspension of Voting Rights.** In the event any OWNER of a LOT is in arrears in the payment of any assessment or other amounts due under the terms of the PROJECT DOCUMENTS for a period of fifteen (15) days, said OWNER'S right to vote as a MEMBER of the ASSOCIATION shall be suspended after written notice at least fifteen (15) days before the suspension and an opportunity to be heard either orally or in writing. The OWNER shall remain suspended until all payments, including accrued interest, costs and attorneys' fees, are brought current, and for a period not to exceed sixty (60) days for any other infraction of the PROJECT DOCUMENTS.

ARTICLE VI

EXEMPTION FROM RESTRICTIONS FOR RV USE

Section 6.0 **Existence of Nonconforming Use.** LOTS 60 and 61 designated on the PLAT are currently owned and used as "RV Lots" and have constructed upon them RV Homes as those terms were defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sunny Lane Estates, recorded as Docket 1134, Page 260, Pinal County, Arizona Recorder's Office. Notwithstanding any contrary provision in this DECLARATION, such LOTS may continue to be used as such by their current OWNERS.

ARTICLE VII

COVENANT FOR ASSESSMENTS

Section 7.0 **Creation of the Lien and Personal Obligation of Assessments.** Each OWNER of a LOT, by recording of a deed therefor or otherwise becoming the OWNER thereof, is deemed to covenant and agree to pay to the ASSOCIATION; (1) annual assessments (2) special assessments, and (3) supplemental assessments. Such assessments shall be levied and collected as provided for in this DECLARATION. The annual, special supplemental, together with late fees, interest, costs and attorney's fees, shall be a lien on the LOT against which each such assessment is made, and shall remain a lien until paid in full. The ASSOCIATION'S lien is superior to a seller's interest in a contract for sale. Each such assessment, together with late fees, interest, costs and attorneys' fees, shall also be the personal obligation of each OWNER of such LOT at the time when the assessment was levied. The personal obligation for the delinquent assessments shall not pass to an OWNER'S successors in title unless expressly assumed by them.

Section 7.1 **Purpose of Assessments.** The assessments levied by the ASSOCIATION shall be used exclusively to promote the recreation, health, safety and welfare of the OWNERS, for the improvement and maintenance of the PROPERTY, and for all purposes set forth in the PROJECT DOCUMENTS, including but not limited to, insurance premiums, expenses for maintenance repairs and replacements of COMMON AREA and reserves for depreciation and contingencies.

Section 7.2 Maximum Annual Assessment for Phase I. Until December 31 of the year immediately following the conveyance of the first LOT in Phase I to a PURCHASER, the maximum Annual Assessment shall be Three Hundred Sixty Dollars (\$360) per year for each LOT.

- (a) From and after January 1 of the year immediately following the conveyance of the first LOT to a PURCHASER, the BOARD may, without a vote of the membership of the ASSOCIATION, increase the maximum Annual Assessment during each fiscal year of

the ASSOCIATION by an amount proportional to the amount which is the lesser of: (i) the direct proportion of the increase in actual costs borne by the ASSOCIATION during the prior assessment period or completed portion thereof, or (ii) Ten percent (10%) above the previous year's maximum annual assessment.

- (b) From and after January 1 of the year immediately following the conveyance of the first LOT to a PURCHASER, the maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to Section 7.2(a) above, only with the approval of OWNERS representing two-thirds (2/3) of the votes by the membership who are voting in person or by proxy at a meeting duly called for such purpose.
- (c) The BOARD may fix the Annual Assessment at any amount not in excess of the maximum.

Section 7.3 Special Assessments. In addition to annual assessments, the ASSOCIATION may levy, in any fiscal year of the ASSOCIATION, a Special Assessment applicable to that fiscal year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an IMPROVEMENT located on the PROPERTY, which the ASSOCIATION is required or allowed to maintain or repair, including fixtures and personal property related thereto, or for any other lawful ASSOCIATION purpose, provided that any such assessment shall have first been approved by OWNERS representing two-thirds (2/3) of the votes entitled to be cast by the membership who are voting in person or by proxy at a meeting duly called for such purpose. Special Assessments shall be paid on such dates and in such installments as may be determined by the BOARD.

A damage, charge, cost or expense (including attorneys' fees and all costs of collection and enforcement) incurred by the ASSOCIATION as the direct or indirect result of the actions or failure to act of any OWNER or his tenant, and their respective family, guests, invitees or animals or any other person for whom such OWNER is responsible may be specially assessed against such OWNER as a Special Assessment and shall be fully enforceable to the same extent as any other assessment hereunder.

Section 7.4 Supplemental Assessments. In the event the BOARD shall determine that its funds budgeted or available in any fiscal year are, or will become, inadequate to meet all expenses of the ASSOCIATION, for any reason, including non-payment of assessments, it shall immediately determine the approximate amount of such inadequacies for such fiscal year and issue a supplemental budget and levy a Supplemental Assessment against the OWNERS of each LOT for the amount required to pay all such expenses; provided, however, that any such Supplemental Assessment must first be approved by OWNERS representing at least two-thirds (2/3) of the votes entitled to be cast by the membership who are voting in person or by proxy at a meeting duly called for such purposes.

Section 7.5 Notice and Quorum for any Action Authorized Under Sections 7.2, 7.3 and 7.4. Written notice of any meeting called for the purpose of taking action authorized under Sections 7.2, 7.3 or 7.4 shall be sent to all MEMBERS not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of MEMBERS or of the proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If a quorum is not present or presented at the meeting, the members entitled to vote at such meeting shall have the power to adjourn the meeting and, without notice other than to announce at the meeting, that the meeting will be convened. At the subsequent meeting, a quorum shall only require the presence at the meeting of members entitled to cast, or proxies entitled to cast, one-tenth (1/10) of the votes of the membership except as otherwise provided in the Articles of Incorporation, the Declaration or Bylaws. The subsequent meeting may be commenced immediately following the originally noticed meeting, or held within sixty (60) days following the originally noticed meeting. At each subsequent meeting thereafter, a quorum shall only require one-half (1/2) of the presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-half (1/2) of the votes of each class of membership constituting the previous quorum requirement, except as otherwise provided in the Articles of Incorporation, the Declaration or Bylaws. The subsequent meeting(s) shall be held within sixty (60) days following the originally noticed meeting.

Section 7.6 Rate of Assessment. The Annual Assessment for each LOT for each fiscal year of the ASSOCIATION shall be the sum equal to the total of (i) the estimated COMMON EXPENSES of the ASSOCIATION for the fiscal year. (ii) the amount determined by the BOARD to be required during the fiscal year for the establishment and maintenance of a reserve fund pursuant to Section 7.15 of this DECLARATION, and (iii) the amount determined by the BOARD to be necessary for the ASSOCIATION to perform all of its duties and obligations under the terms of the PROJECT DOCUMENTS for the fiscal year, divided by the total number of LOTS then included in the PROJECT. Each LOT shall be assessed its proportionate share of any Supplemental or Special Assessments levied pursuant to Sections 7.3 or 7.4 of this DECLARATION.

Section 7.7 Date of Commencement of Annual Assessments; Due Dates. The Annual Assessments provided for herein shall commence as to all LOTS in any Phase of the PROJECT on the first day of the month following the conveyance of the first LOT in such Phase to a PURCHASER. The BOARD shall fix the amount of the Annual Assessment against each LOT at least thirty (30) days in advance of each fiscal year. If the Annual Assessment is not fixed by the BOARD at least thirty (30) days in advance of the fiscal year, then the Annual Assessment for the prior fiscal year shall remain in effect until the thirtieth day after the BOARD fixed the Annual Assessment for the then current fiscal year. Written notice of the Annual Assessment shall be sent to every OWNER subject thereto prior to the commencement of the fiscal year; provided, however, that failure to give such notice shall not affect the validity or enforceability of the assessments as fixed by the BOARD. The BOARD may require that the annual, supplemental, special or utility assessments be paid in installments. Unless otherwise specified by the BOARD, special and supplemental assessments shall be due thirty (30) days after they are levied by the ASSOCIATION and notice of the assessment is given to the OWNERS. Assessments shall be due upon the date specified by the BOARD, or if no date is specified, immediately upon notice to the OWNERS.

Section 7.8 Effect of Nonpayment of Assessments; Remedies of the ASSOCIATION. Any assessment, or any installment of an assessment, which is not paid when due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum or the prevailing VA interest rate for new home loans, whichever is higher. There shall be a late fee of fifteen dollars (\$15.00) or ten percent (10%) of any assessment not paid within fifteen days of the assessment's due date.

Any assessment, or any installment of an assessment, which is delinquent shall become a continuing lien on the LOT against which such assessment was made. The lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (1) the name of the delinquent OWNER, (2) the legal description or street address of the LOT against which the claim of lien is made, (3) the amount claimed as of the date of the recording of the notice including late fees, interest, collection costs, lien recording fees, and reasonable attorneys' fees, (4) the

name of the OWNER of the LOT as shown in the records of the ASSOCIATION, and (5) the name and address of the ASSOCIATION. Except as otherwise provided by law, the ASSOCIATION'S lien shall have priority over all liens or claims created subsequent to the recordation of the Notice of Claim of Lien.

Before recording a lien against any LOT the ASSOCIATION shall make a written demand to the defaulting OWNER for payment, at his last address on the ASSOCIATION records. Each OWNER shall provide written notice to the ASSOCIATION of his address. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included with in a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, to the last address, the ASSOCIATION may proceed with recording a Notice of Claim of Lien against the LOT of the defaulting OWNER.

The ASSOCIATION shall have the right, at its option, to enforce collection of any delinquent assessment in any manner allowed by law including, but not limited to, (a) bringing an action at law against the OWNER personally obligated to pay the delinquent assessments, and such action may be brought without waiving any lien securing any such delinquent assessments, (b) bringing an action to foreclose its lien against the LOT in the manner provided by law for the foreclosure of a realty mortgage, or (c) exercising a power of sale in the manner provided by law for a sale under a deed of trust. The ASSOCIATION shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all LOTS purchased at such sale. The ASSOCIATION shall receive payment of its reasonable attorneys' fees and costs in excess proceeds collection cases.

Section 7.9 Subordination of Assessment Lien to Mortgages. The lien of the assessments provided in this DECLARATION shall be subordinate to the lien of any FIRST MORTGAGE. Sale or transfer of any LOT shall not affect the assessment lien. However, the sale or transfer of any LOT pursuant to judicial or non-judicial 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.

Section 7.10 Exemption of Owner. No OWNER of a LOT may exempt himself from liability for payment of assessments and other charges levied pursuant to the PROJECT DOCUMENTS by waiver and non-use of any of the COMMON AREA and facilities or by the abandonment of his LOT.

Section 7.11 Tax Assessments. In the event that any taxes are assessed against the real or personal property owned by the ASSOCIATION, said taxes shall be included in the assessments made under the provisions of this Article, and, if necessary, a Supplemental or Special Assessment may be levied against the LOTS in an amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment. All property and other taxes assessed against any LOT shall be the obligation of the OWNER of such LOT.

Section 7.12 Certificate of Payment. The ASSOCIATION shall, within a reasonable time after demand of an OWNER, furnish to such OWNER a certificate in writing signed by an officer of the ASSOCIATION setting forth whether the assessments on a particular LOT have or have not been paid and the amount of any unpaid assessments. The ASSOCIATION may charge the OWNER requesting the certificate a reasonable fee in an amount established by the BOARD for each such certificate. Such certificate shall be conclusive evidence of payment of any assessment described in the certificate as having been paid.

Section 7.13 Maintenance of Reserve Fund. Out of the annual assessments, the ASSOCIATION shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the COMMON AREA which the ASSOCIATION is obligated to maintain.

Section 7.14 No Offsets. All Annual, Special and Supplemental shall be payable in accordance with the provisions of this DECLARATION, and no offsets against such assessments shall be permitted for any reason, including, without limitation, a claim that the ASSOCIATION is not properly exercising its duties and powers as provided in the PROJECT DOCUMENTS.

ARTICLE VIII CONDEMNATION

Section 8.0 Consequences of Condemnation; Notices. If at any time all or part of the COMMON AREA shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Article shall apply. Upon any such act, each OWNER or lien holder who has requested a special notice shall be provided with timely written notice of any proceeding or proposed acquisition or sale. The ASSOCIATION shall represent the OWNERS in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for acquisition of the COMMON AREA or any part thereof.

Section 8.1 Proceeds. All compensation, damages or other proceeds from the condemnation of any portion of the COMMON AREA, such sum of which is hereinafter called the "CONDEMNATION AWARD," shall be payable to the BOARD, in trust, for the OWNERS and all holders of liens and encumbrances on the PROPERTY or any part thereof, as their interests may appear.

Section 8.2 Complete Taking. In the event that the entire COMMON AREA is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the CONDEMNATION AWARD, after payment of all related costs and expenses, including all attorneys' fees, shall be apportioned among the OWNERS equally. Out of the respective share of each OWNER, the BOARD shall pay, to the extent such funds are sufficient for such purpose, all encumbrances and liens on the interest of such OWNER in the order of their priority, and the balance, if any, of the OWNER'S share shall then be distributed to the OWNER.

Section 8.3 Partial Taking. In the event that less than the entire COMMON AREA is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the CONDEMNATION AWARD therefrom (after payment of related costs and expenses) shall be paid to the BOARD, which shall first disburse such proceeds to the replacement of any improvements affected and/or generally for the benefit of the COMMON AREA, and any excess shall be held by the ASSOCIATION to be applied to future COMMON EXPENSES. In no event will the OWNER of a LOT have a priority to receive to receive unapplied proceeds over his MORTGAGEE. Each holder of any interest in the PROPERTY, by becoming such, expressly consents to and agrees to be bound by the provisions of this Section as it concerns their interest in the PROPERTY (including without limitation the COMMON AREA) and the proceeds and irrevocably appoints the ASSOCIATION (or such individual as the President of the ASSOCIATION shall designate) as his attorney-in-fact to effect the purposes referred to in this Section.

**ARTICLE IX
INSURANCE**

Section 9.0 Scope of Coverage. The ASSOCIATION shall maintain, to the extent reasonable available, the following insurance coverage:

- (a) Property insurance on the COMMON AREA, and all IMPROVEMENTS and betterments thereon, insuring against loss or damage by fire and other hazards and risks customarily covered by a standard extended coverage endorsement, in an amount equal to the maximum insurable replacement value of the COMMON AREA and improvements, as determined by the BOARD, or if such amount is impracticable, such lesser amount as is deemed appropriate by the BOARD in order to fund its obligations under this DECLARATION.
- (b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the BOARD, but not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per person, ONE MILLION DOLLARS (\$1,000,000.00) per occurrence and ONE HUNDRED THOUSAND DOLLARS (\$100,000) for property damage. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the COMMON AREA and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the OWNERS as a group to an OWNER.
- (c) Workman's Compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.
- (d) Such other insurances as the ASSOCIATION shall determine from time to time to be appropriate to protect the ASSOCIATION OR THE OWNERS.
- (e) The insurance policies purchased by the ASSOCIATION shall, to the extent reasonable available, contain the following provisions:

- (1) Each OWNER shall be an insured under the policy with respect to Liability arising out of his membership in the ASSOCIATION.
 - (2) There shall be no subrogation with respect to the ASSOCIATION, its agents, servants, and employees with respect to OWNERS and members of their household.
 - (3) No act or omission by any OWNER, unless acting within the scope of his authority on behalf of the ASSOCIATION, shall void the policy or be a condition to recovery on the policy.
 - (4) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by OWNERS or their mortgagees or beneficiaries under deeds of trust.
 - (5) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an OWNER because of the negligent acts of the ASSOCIATION or other OWNERS.
 - (6) Statement of the name of the insured as "Sunny Lane Estates Homeowner's Association, Inc." for use and benefit of the individual OWNERS.
 - (7) For policies of hazard insurance a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any reduction or cancellation of the policy.
- (f) If there is a steam boiler in connection with the PROPERTY, there must be a force boiler explosion insurance evidenced by the standard form of boiler machinery insurance policy and providing coverage in the minimum amount of \$50,000.00 per accident per location.
- (g) If the COMMON AREA is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the COMMON AREA must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered on the required form of policy or the maximum limit of coverage available under the National Insurance act of 1968, as amended.

Section 9.1 **Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue certificates or memorandum of insurance to the ASSOCIATION, and, upon request, to any OWNER, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the ASSOCIATION, each OWNER and each FIRST MORTGAGEE who is listed as a scheduled holder of a FIRST MORTGAGE in the insurance policy.

Section 9.2 **Fidelity Bonds.** The ASSOCIATION shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the ASSOCIATION and all other persons handling or responsible for funds of or administered by the ASSOCIATION. Where the ASSOCIATION has delegated some or all of the responsibility for the handling of funds to a management agent, the ASSOCIATION shall maintain a fidelity bond for such management agent, and shall requirement management agent to provide fidelity bonds for its officers,

employees and agents handling or responsible for the funds of, or administered on behalf of the ASSOCIATION. The total amount of fidelity bond coverage shall be based upon the best business judgment of the BOARD, and shall not be less than the greater of (i) the estimated maximum of funds, including reserve funds, in the custody of the ASSOCIATION or the management agent, as the case may be, at any given time during the term of each bond or (ii) the sum equal to three months aggregate assessments on all LOTS plus reserve funds. Fidelity bonds obtained by the ASSOCIATION must also meet the following requirements:

- (a) The fidelity bonds shall name the ASSOCIATION as an obligee;
- (b) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.
- (c) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the ASSOCIATION and each FIRST MORTGAGEE.

Section 9.3 Payment of Premiums. Premiums for all insurance obtained by the ASSOCIATION pursuant to this Article shall be COMMON EXPENSES and shall be paid for by the ASSOCIATION.

Section 9.4 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the ASSOCIATION in accordance with this Article shall be adjusted with the ASSOCIATION and the insurance proceeds shall be payable to the ASSOCIATION and not to any mortgagee or beneficiary under a deed of trust. The ASSOCIATION shall hold any insurance proceeds in trust for OWNERS and lien holders as their interest may appear. The proceeds shall be disbursed for the repair or restoration of the damage to the COMMON AREA, and OWNERS and lien holders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the COMMON AREA and LOTS have been completely repaired or restored.

Section 9.5 Insurance Trustee. Notwithstanding any other provisions of this Article, there may be named as an insured on behalf of the ASSOCIATION, the ASSOCIATION'S authorized representative, including any trustee with whom such ASSOCIATION may enter into any Insurance Trust Agreement or any successor to such trustee ("Insurance Trustee"), who shall have the exclusive authority to negotiate losses under any policy providing such property or liability insurance to the ASSOCIATION. Each OWNER, by accepting a deed to, or otherwise becoming the OWNER of a LOT, appoints the ASSOCIATION or any Insurance Trustee or substitute Insurance Trustee designated by the ASSOCIATION, as attorney-in-fact for the purpose of purchasing such insurance, including, but without limitation, the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases or liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The ASSOCIATION or any Insurance Trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for OWNERS ns their FIRST MORTGAGES, as their interests may appear.

Section 9.6 Insurance Obtained by Owners. Each OWNER shall be responsible for obtaining insurance for his own benefit and at his own expense covering his LOT, his RESIDENCE and any other IMPROVEMENTS located thereon, and his personal property and fixtures on his LOT and providing personal liability coverage.

Section 9.7 Repair and Replacement of Damaged or Destroyed Property. Any portion of the COMMON AREA which is damaged or destroyed shall be repaired or replaced promptly by the ASSOCIATION

unless (a) repair or replacement would be illegal under any state or local health or safety statutes or ordinance, or (b) Owners owning at least eight percent (80%) of the LOTS vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the ASSOCIATION, and may be assessed against the OWNERS as a Special Assessment pursuant to Section 7.3 hereof. If the entire COMMON AREA is not repaired or replaced, insurance proceeds attributable to the damages COMMON AREA shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statutes or ordinance and the remainder of the proceeds shall be held by the ASSOCIATION to be applied to future COMMON EXPENSES.

ARTICLE X

RIGHTS OF FIRST MORTGAGEES

Section 10.0 Notification to First Mortgagees. Upon receipt by the ASSOCIATION of a written request from a FIRST MORTGAGEE or insurer or governmental guarantor of a FIRST MORTGAGE informing the ASSOCIATION of its correct name and mailing address and number of address of the LOT to which the request relates, the ASSOCIATION shall provide such ELIGIBLE MORTGAGE HOLDER or ELIGIBLE INSURER or GUARANTOR with timely written notice of the following:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the COMMON AREA.
- (b) Any delinquency in the payment of assessments or charges owed by an OWNER of a LOT subject to a FIRST MORTGAGE held, insured or guaranteed by such ELIGIBLE MORTGAGE HOLDER or ELIGIBLE INSURER or GUARANTOR or any other default in the performance by the OWNER of any obligation under the PROJECT DOCUMENTS, which delinquency or default remains uncured for the period of sixty (60) days.
- (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the ASSOCIATION.
- (d) any proposed action which requires the consent of a specified percentage of ELIGIBLE MORTGAGE HOLDERS as set forth in Sections 12.1 or 12.2 of this DECLARATION.

Section 10.1 Actions Requiring Approval of Eligible Mortgage Holders. To the extent permitted by applicable law, ELIGIBLE MORTGAGE HOLDERS shall have the following rights:

- (a) Any restoration or repair of the PROPERTY, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the DECLARATION and the original plans and specifications, unless other action is approved by ELIGIBLE MORTGAGE HOLDERS holding FIRST MORTGAGES on LOTS the OWNERS of which have at least fifty-one percent (51%) of the votes in the ASSOCIATION allocated to OWNERS of all LOTS subject to FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS.

- (b) Any election to terminate the legal status of the PROPERTY after substantial destruction or a substantial taking condemnation of the PROPERTY shall not be effective unless approved by ELIGIBLE MORTGAGE HOLDERS holding FIRST MORTGAGES on LOTS the OWNERS of which have at least fifty-one percent (51%) of the votes in the ASSOCIATION allocated to OWNERS of all LOTS subject to FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS.
- (c) When professional management of the ASSOCIATION has been previously required by any ELIGIBLE INSURER or GUARANTOR, whether such entity became an ELIGIBLE MORTGAGE HOLDER or ELIGIBLE INSURER or GUARANTOR at the time or later, any decision to establish self management by the ASSOCIATION shall require the prior consent of OWNERS having at least sixty-seven percent (67%) of the votes in the ASSOCIATION and the approval of ELIGIBLE MORTGAGE HOLDERS holding FIRST MORTGAGES on LOTS the OWNERS of which have at least fifty-one percent (51%) of the votes in the ASSOCIATION allocated to OWNERS of all LOTS subject to FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS.

Section 10.2 Approval Required for Amendment to Declaration, Articles or Bylaws. The following provisions shall apply to all amendments to the DECLARATION, ARTICLES and BYLAWS, except for those amendments made as a result of destruction, damage or condemnation pursuant to Section 12.1 of this DECLARATION,

- (a) The approval of ELIGIBLE MORTGAGE HOLDERS holding FIRST MORTGAGES on LOTS the OWNERS of which have at least sixty-seven percent (67%) of the votes in the ASSOCIATION allocated to OWNERS of all LOTS subject to FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS, shall be required to terminate the legal status of the PROPERTY.
- (b) The consent of ELIGIBLE MORTGAGE HOLDERS holding FIRST MORTGAGES on LOTS the OWNERS of which have at least fifty-one percent (51%) of the votes in the ASSOCIATION allocated to OWNERS of all LOTS subject to FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS, shall be required to add or amend any material provisions of the DECLARATION, ARTICLES or BYLAWS which establish, provide for, govern or regulate any of the following:
1. Voting
 2. Assessments, assessment liens or subordination of such liens;
 3. Reserves for maintenance, repair and replacement of COMMON AREA (or LOTS, if applicable);
 4. Insurance or fidelity bonds;

5. Rights to the use of the COMMON AREA;
6. Responsibility for maintenance and repair of the several portions of the PROPERTY;
7. Boundaries of any LOT;
8. Convertability of LOTS into COMMON AREA or of COMMON AREA into LOTS;
9. Imposition of any right of first refusal or similar restriction on the right of any OWNER to sell, transfer or otherwise convey his LOT;
10. Any provisions which are for the express benefit of FIRST MORTGAGES, ELIGIBLE MORTGAGE HOLDERS or ELIGIBLE INSURERS or GUARANTORS.

- (c) Any addition or amendment to the DECLARATION, ARTICLES or BYLAWS shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. Any FIRST MORTGAGEE who receives a written request to approve additions or amendments to the DECLARATION, ARTICLES or BYLAWS who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 10.3 Prohibition Against Right of First Refusal. The right of an OWNER to sell, transfer or otherwise convey his LOT shall not be subject to any right of first refusal or similar restriction.

Section 10.4 First Mortgagee Not Liable for Prior Assessments. Any FIRST MORTGAGEE or any other party acquiring title or coming into possession of a LOT through foreclosure of the FIRST MORTGAGE, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claim for unpaid assessments and charges against the LOT which became payable prior to such sale or transfer. Any such delinquent assessments which are extinguished pursuant to this Section may be reallocated and assessed to all LOTS as this Section may be reallocated and assessed to all LOTS as a COMMON EXPENSE. Any assessments and charges against the LOT which accrue prior to such sale or transfer shall remain the obligation of the defaulting OWNER of the LOT.

Section 10.5 Subordination of Certain Liens to First Mortgage. Any lien which the ASSOCIATION say have on a LOT for the payment of assessments or other charges becoming payable on or after the date of the recording of the FIRST MORTGAGE on the LOT shall be subordinate to the FIRST MORTGAGE.

Section 10.6 Right of Inspection of Records. Any OWNER, FIRST MORTGAGE or ELIGIBLE INSURER or GUARANTOR will, upon written request, be entitled to (a) inspect the current copies of the PROJECT DOCUMENTS and the books, records and financial statements of the ASSOCIATION during normal business hours, pursuant to Arizona law, (b) receive within ninety (90) days following the end of any fiscal year of the ASSOCIATION, a financial statement of the ASSOCIATION for the immediately preceding fiscal year of the ASSOCIATION, free of charge to the requesting party, and (c) receive written notice of all meetings of the MEMBERS of the ASSOCIATION and be permitted to designate a representative to attend all such meetings.

Section 10.7 Prior Written Approval of First Mortgagees. Except as provided by statute in case of consideration or substantial loss to the LOTS and/or the COMMON AREA, unless at least two-thirds (2/3) of all FIRST MORTGAGEES (based upon one vote for each FIRST MORTGAGE owner) or OWNERS of the LOTS have given the prior written approval, the ASSOCIATION shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate this DECLARATION;
- (b) Change the pro rata interest or obligations of any individual LOT for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (c) Partition or subdivide any LOT;
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the COMMON AREA. The granting of easements for public utilities or for other public purposes consistent with the intended use of the COMMON AREA shall not be deemed a transfer within the meaning of this paragraph;
- (e) Use hazard insurance proceeds for losses to the COMMON AREA for any purpose other than the repair, replacement or reconstruction of the COMMON AREA.

Nothing contained in this Section 10.7 or any other provisions of this DECLARATION shall be deemed to grant the ASSOCIATION the right to partition any LOT without the consent of the OWNERS thereof subject to such limitations and prohibitions as may be set forth elsewhere in this DECLARATION or as provided for under Arizona law.

Section 10.8 Liens Prior to First Mortgage. All taxes, assessments and charges which may become liens prior to the FIRST MORTGAGE under local law shall relate only to the individual LOT and not to the PROPERTY as a whole.

Section 10.9 Condemnation or Insurance Proceeds. No OWNER of a LOT, or any other party, shall have priority over any rights of any FIRST MORTGAGEE of the LOT pursuant to its mortgage in the case of a distribution to such LOW OWNER of insurance proceeds of condemnation awards for losses to or a taking of LOTS and/or COMMON AREA.

Section 10.10 Limitation on Partition and Subdivision. No LOT shall be partitioned or subdivided without the prior written approval of the holder of any FIRST MORTGAGE on such LOT.

Section 10.11 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the PROJECT DOCUMENTS, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of

this Article or between the provisions of this Article and any other provision of the PROJECT DOCUMENTS with respect to the number of percentage of OWNER, FIRST MORTGAGEES, ELIGIBLE MORTGAGE HOLDERS or ELIGIBLE INSURERS or GUARANTORS that must consent, then the greatest number percentage set forth in such provisions shall prevail.

ARTICLE XI

TERMINATION

Section 11.0 Method of Termination. Notwithstanding any contrary provision of the PROJECT DOCUMENTS, this DECLARATION may only be terminated one hundred percent (100%) of the OWNERS of LOTS. Any such termination shall be evidenced by a Declaration of Termination which shall be executed and acknowledged by the consenting OWNERS and recorded with the County Recorder of Pinal County, Arizona. If at the time of such termination there are any encumbrances or liens against any of the LOTS, the Declaration of Termination will be effective only when the creditors holding such encumbrances or liens execute and acknowledge such Declaration of Termination or their encumbrances or liens are satisfied other than by foreclosure against the LOTS or expire by operation of law. Any termination of the DECLARATION must also comply with the requirements of Article XI of this DECLARATION.

ARTICLE XII

GENERAL PROVISIONS

Section 12.0 Enforcement. The ASSOCIATION 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 the PROJECT DOCUMENTS. If the ASSOCIATION or the BOARD shall fail to prosecute or enforce any provision or violation of the PROJECT DOCUMENTS within a reasonable time (not less than thirty (30) days after receipt of written notice thereof). Any OWNER shall have the right to seek enforcement. The ASSOCIATION, BOARD or enforcing OWNER shall have the right to seek any remedy available at law or in equity, including injunctive relief and specific performance. In addition to any other remedies provided by the PROJECT DOCUMENTS, the OWNER of any LOT who shall be in violations of any provision of the PROJECT DOCUMENTS shall be liable for the payment of all court costs, attorneys' fees, collection expenses, and other costs reasonable incurred in the enforcement of the provisions of the PROJECT DOCUMENTS. Failure by the ASSOCIATION or by any OWNER to enforce any covenant or restriction contained in the PROJECT DOCUMENTS shall in no event be deemed a waiver of the right to do so thereafter.

Section 12.1 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

Section 12.2 Duration. The covenants and restrictions of this DECLARATION shall run with and bind the PROPERTY, 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.

Section 12.3 Amendment by Owners. Except as otherwise provided by this DECLARATION, this DECLARATION may be amended at any time by an affirmative vote by OWNERS representing not less than sixty-seven percent (67%) of the entire membership. The President and Secretary of the ASSOCIATION must sign a document affirming that an amendment received the required sixty-seven percent (67%) vote for approval. Any Amendment must be recorded. Any amendment must also comply with the requirements of Article XI of this DECLARATION.

Section 12.4 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

Section 12.5 Delivery of Notices and Documents. Except as otherwise provided in this Section 14.6, 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 forty-eight hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: if to an OWNER, to the address of his LOT within the PROPERTY owned, in whole or in part, by him or to any other address last furnished by an OWNER to the ASSOCIATION. Any notice required to be sent to the ASSOCIATION shall be sent by certified mail, return receipt requested, to P.O. Box 1117 Apache Junction, Arizona 85278. 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 12.6 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the PROPERTY, 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 the PROJECT DOCUMENTS and any amendments thereof. In addition, each such person by so doing thereby acknowledges that the PROJECT DOCUMENTS set 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 in the PROJECT DOCUMENTS 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 the PROJECT DOCUMENTS shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future OWNERS.

Section 12.7 Gender. The singular, wherever used in this DECLARATION, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this DECLARATION apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 12.8 Topic Headings. The marginal or topical headings of the sections contained in this DECLARATION are for convenience only and do not define, limit or construe the contents of the sections or of this DECLARATION.

Section 12.9 Survival of Liability. The termination of membership in the ASSOCIATION shall not relieve or release any such former OWNER or MEMBER from any liability or obligation incurred under, or in any way connected with, the ASSOCIATION during the period of such ownership or membership, or impair any rights or remedies which the ASSOCIATION may have against such former OWNER or MEMBER arising out of, or in any way connected with such ownership or membership and the covenants and obligations incident thereto.

Section 12.10 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this DECLARATION and the ARTICLES, BYLAWS or ASSOCIATION RULES, the provisions of this DECLARATION shall prevail.

Section 12.11 Joint and Several Liabilities. In the case of joint ownership of a LOT, the liabilities and obligations of each of the joint OWNERS set forth herein, or imposed by the PROJECT DOCUMENTS, shall be joint and several.

Section 12.12 Guest and Tenants. Each OWNER shall, to the extent required by Arizona law, be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents and employees with the provisions of the PROJECT DOCUMENTS. An OWNER'S failure to insure compliance by such persons shall be grounds for the same action available to the ASSOCIATION or any other OWNER by reason of such OWNER'S own non-compliance.

Section 12.13 Attorney's Fees and Costs. In the event the ASSOCIATION, the BOARD or any OWNER employs an attorney or attorneys to enforce a lien or to collect any amounts due from an OWNER or to enforce compliance with or recover damages for any violation or non-compliance with the PROJECT DOCUMENTS, the prevailing party in any such action shall be entitled to recover from the other party their attorneys' fees, court costs, collection fees, and other costs reasonably incurred in the action.

Section 12.14 Management Agreements. Any agreement for professional management of the ASSOCIATION or the PROPERTY shall not exceed one (1) year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice.

Section 12.15 Number of Days. In computing the number of days for purposes of any provision of the PROJECT DOCUMENTS all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

Section 12.16 Rules Against Perpetuities. In the event any provision or provisions of this instrument would be but for this provision violative of the Rule Against Perpetuities, such provision or provisions shall be construed as terminated as of the date twenty-one (21) years after the death of the last surviving of LUCIA FAROKAS-HOWARD, R.G. SMYERS and KEITH D. BULLOCK, and their respective spouses and issue who shall be living at the time this instrument is executed.

Section 12.17 Arbitration Agreement. As used in this section, "Bound Party" means ASSOCIATION, the BOARD, its directors, officers, and committee members and all OWNER and other persons subject to the DECLARATION. The term "Claim" means any claim, controversy, disagreement or dispute, whether based on contract, tort or other legal or equitable theories or upon statute, arising out of or related to the DECLARATION or the operation or management of the ASSOCIATION against an OWNER to enforce the payment of assessments, fines, or other amounts due to the ASSOCIATION, or (ii) any suit by the ASSOCIATION to obtain a temporary restraining order, preliminary injunction, permanent injunction or other relief to enforce the Project Documents. The Bound Parties have agreed to employ the Dispute Resolution Center of the National Institute for Community Association Practices and Standards (hereinafter "CADRC") to arbitrate their claims upon the terms and conditions set forth in the CADRC's Arbitration Rules ("Rules") which are incorporated by this reference into this Agreement, and are included in the terms of this Agreement. Subject to the terms of the Arizona Arbitration Act, A.R.S. 12-1501, et seq. and as amended or testified (the "Act"), any decision and award of the Arbitrator shall be final, binding and conclusive upon the parties. Fees and costs of the Arbitration shall be borne by the parties in accordance with

the Rules. All other aspects of this binding arbitration shall be governed by the Act. The award shall be conformable pursuant to the Act. This section 14.20 shall be constructed and interpreted in accordance with the laws of the State of Arizona. In the event of an action arising out of or related to this section 14.206, or a proceeding concerning the validity or enforceability of the Arbitrator's decision, the prevailing party shall recover reasonable attorney's fees and expenses incurred in connection with such action from the losing party.

Unofficial Copy

EXHIBIT "A"

All the land described as SUNNY LANE ESTATES, a subdivision forming a part of LOT 9, DAVIS TRACT, Book 5, Page 26, Pinal County Recorder, which subdivision was recorded as document number 706590 in Cabinet A, Slide 78, records of Pinal County, being a part of the Southeast $\frac{1}{4}$ Section 19, Township 1 North, Range 8 east, Gila and Salt River Base and Meridian.

Unofficial Copy

EXHIBIT "B"

No annexable property at this time.

Unofficial

EXHIBIT "C"

All of the land described as Sunny Lane Estates, a subdivision forming a part of Lot 9, Davis Tract, Book 5, Page 26, Pinal County Recorder, which subdivision was recorded as document number 706590 in Cabinet A, Slide 78, records of Pinal County on May 17, 1982.

EXCEPT that portion of the property described as Lots One (1) thru Sixty-one (61) in subdivision.