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JAMES R. PERRY, ESQ.  
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First American Title

# DOVE VALLEY RANCH

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITUDES,  
LIENS, RESERVATIONS AND EASEMENTS

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EXHIBITS

Exhibit "A" - Dove Valley Ranch Conceptual Site Plan

Exhibit "B" - Legal Description of the Property

Exhibit "C" - Approved Vegetation

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS,  
CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS  
FOR DOVE VALLEY RANCH

THIS DECLARATION of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements (hereinafter collectively termed the "Declaration") is made this 17<sup>th</sup> day of July, 1998, by 44th & Dove Valley, L.L.C., an Arizona limited liability company, and Dove Valley - Cave Creek, L.L.C., an Arizona limited liability company (hereinafter collectively termed "Declarant").

WITNESSETH:

WHEREAS, Declarant is the developer of approximately five hundred five (505) acres of land in Phoenix, Maricopa County, Arizona, known as Dove Valley Ranch; and

WHEREAS, Declarant is the owner in fee of that portion of Dove Valley Ranch legally described on **Exhibit "B"** attached hereto and incorporated herein by this reference (hereinafter referred to as the "**Property**"); and

WHEREAS, Declarant may, without obligation, annex additional property to the Property, to become a part thereof and made subject to this Declaration (hereinafter collectively referred to as the "**Additional Property**"); and

WHEREAS, Declarant desires to develop, in stages, the Property and those portions of the Additional Property which may from time to time be annexed pursuant to this Declaration and become part of the Property, into planned residential, office, commercial and other communities; and

WHEREAS, as part of the various stages of development of the aforesaid lands, Declarant intends, without obligation, to record various subdivision plats; to dedicate portions of Dove Valley Ranch to the public for streets, roadways, drainage, flood control, and general public use; and to record various Tract Declarations covering portions of Dove Valley Ranch, which Tract Declarations may designate the purposes for which such portions of Dove Valley Ranch may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of Dove Valley Ranch; and

WHEREAS, Declarant has formed the Dove Valley Ranch Community Association, an Arizona non-profit corporation, for the social and recreational purposes of benefitting Dove Valley Ranch, the Owners and the Residents (as said terms are defined hereinbelow), which non-profit corporation (hereinafter termed the "**Association**") will (1) acquire, construct, operate, manage and maintain a variety of Common Areas upon Dove Valley Ranch; (2) establish, levy, collect and disburse the Assessments and other charges imposed hereunder;

and (3) as the agent and representative of the Members of the Association and Residents of Dove Valley Ranch, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of Dove Valley Ranch; and

WHEREAS, Declarant and/or the Association may, without obligation, seek approval by the Federal Housing Administration (hereinafter termed "FHA"), the Veterans Administration (hereinafter termed "VA") and by any other governmental agencies or financial institutions whose approval Declarant deems necessary or desirable; and

WHEREAS, the Declarant therefore wishes to subject all of the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens reservations and easements hereinafter set forth; and

WHEREAS, in order to cause the Declaration to run with the Property and to be binding upon the Property and the Owners thereof from and after the date of the recording of this Declaration, Declarant hereby makes all conveyances of the Property, whether or not so provided therein, subject to the Declaration herein set forth, and by accepting deeds, leases, easements or other grants or conveyances to any portion of the Property, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Declaration (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted herefrom.

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

## ARTICLE I DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

1.1 **"Additional Property"** shall mean real property situated in the City of Phoenix, County of Maricopa, State of Arizona, and the Improvements located thereon, which is contiguous to any real property previously subjected to this Declaration. For purposes of this Paragraph, property shall be contiguous if only separated by a public street or road. All or part of the Additional Property may be added to the Property in one or more additional phases by Supplemental Declaration pursuant to the provisions of Article XVII hereof.

1.2 **"Apartment Development"** shall mean a Parcel which is limited by a Tract Declaration to residential use, and contains Rental Apartments and surrounding area which are intended, as shown by the site plan therefor approved by the City and the Design Review Committee or otherwise, as one integrated apartment operation under the same ownership.

1.3 "Architectural and Landscaping Guidelines" shall mean the Dove Valley Ranch Architectural and Landscaping Guidelines.

1.4 "Area of Association Responsibility" shall mean the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the responsibility of the Association.

1.5 "Articles" shall mean the Articles of Incorporation of the Association filed with the Arizona Corporation Commission on February 2, 1998, as the same may from time to time be amended or supplemented.

1.6 "Assessable Property" shall mean any Lot or Parcel, except such part or parts thereof as may from time to time constitute Exempt Property.

1.7 "Assessment" shall mean an Annual Assessment, Special Assessment, Neighborhood Assessment and/or Maintenance Charge.

1.8 "Assessment Lien" shall mean the lien created and imposed by Paragraph 10.1.

1.9 "Assessment Period" shall mean the time period set forth in Paragraph 10.9.

1.10 "Association" shall mean Dove Valley Ranch Community Association, the Arizona non-profit corporation organized by Declarant to administer and enforce this Declaration and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns.

1.11 "Association Land" shall mean such part or parts of the Property, together with the buildings, structures and Improvements thereon, and other real property which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

1.12 "Association Rules" shall mean rules adopted by the Association pursuant to Paragraph 6.3 of this Declaration, as amended from time to time.

1.13 "Base Assessment" shall mean the charge levied and assessed each year against each Lot and Parcel pursuant to Paragraph 10.2 hereof.

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

1.15 "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

1.16 "City" shall mean the City of Phoenix, Arizona.

1.17 **"Class "B" Control Period"** shall mean the period during which the Class "B" Members are entitled to appoint a majority of the Board members as provided in the Bylaws.

1.18 **"Cluster Residential Development"** shall mean Lots with Dwelling Units intended for Single Family occupancy, including, but not limited to, types of residential housing arrangements known as townhomes, patio homes, zero-lot line housing and similar cluster housing arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the Cluster Residential Development.

1.19 **"Commercial Office Development"** shall mean a Parcel limited by a Tract Declaration to be used for office use or related use as approved by the Board and the Design Review Committee and within the restrictions created by this Declaration.

1.20 **"Common Area and Common Areas"** shall mean (i) all Association Land and the Improvements located thereon; (ii) all land within the Property which the Declarant, by this Declaration or other recorded instrument, makes available for use by Members of the Association and evidences its intent to convey to the Association at a later date; (iii) all land within the Property which the Declarant indicates on a recorded subdivision plat or Tract Declaration is to be used for landscaping, water retainage, drainage, and/or flood control for the benefit of Dove Valley Ranch and/or the general public and is to be dedicated to the public or the City of Phoenix upon the expiration of a fixed period of time, but only until such land is so dedicated; and/or (iv) all land within Dove Valley Ranch which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance, and for which the Association benefits by limited use, full use, or aesthetic consistency, for the benefit of the Members or a Neighborhood.

1.21 **"Common Expenses"** shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots and Parcels, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws and Articles.

1.22 **"Community-Wide Standard"** shall mean the standard of conduct, maintenance, or other activity, generally prevailing throughout the Property. Such standard includes standards described in the Development Master Plan, the Ordinance, the Architectural and Landscaping Guidelines and the Construction Standards and Procedures, such as wash preservation, rural street and lighting standards and desert/earth tone colors, as may be more specifically determined by the Board and the Design Review Committee.

1.23 **"Condominium Development"** shall mean a condominium established under the laws of State of Arizona which is limited by the Tract Declaration to residential use.

1.24 **"Condominium Unit"** shall mean a Dwelling Unit, together with any appurtenant interest in all common elements, within a Condominium Development. Such term shall not include a Rental Apartment in an Apartment Development.

1.25 **"Construction Standards and Procedures"** shall mean the Dove Valley Ranch Construction Standards and Procedures.

1.26 **"County"** shall mean and refer to the County of Maricopa, State of Arizona.

1.27 **"Declarant"** shall mean 44th & Dove Valley, L.L.C., an Arizona limited liability company, and Dove Valley - Cave Creek, L.L.C., an Arizona limited liability company, collectively, and the successors and assigns of Declarant's rights and powers hereunder.

1.28 **"Declaration"** shall mean this Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as amended or supplemented from time to time.

1.29 **"Deed"** shall mean a deed conveying the fee simple title in a Lot or Parcel.

1.30 **"Design Guidelines"** shall mean the Architectural and Landscaping Guidelines and additional standards promulgated by the Design Review Committee from time to time as provided in **Paragraph 15.5**.

1.31 **"Design Review Committee"** shall mean the committee of the Association to be created and appointed pursuant to **Paragraph 15.2**.

1.32 **"Developer"** means a Person who is engaged in residential or commercial real estate development and who purchases one or more Lots or Parcels from the Declarant for the purpose of constructing Improvements thereon for sale or lease.

1.33 **"Development Master Plan"** shall mean the plan of development of the Project approved by the City on January 17, 1996 in rezoning case nos. 55-95-2 and 76-95-2 consisting of zoning stipulations and a conceptual land use plan, which land use plan has been amended by the plan of development dated February 20, 1997 attached hereto as **Exhibit "A"**, as said Plan may be further amended or supplemented from time to time by Declarant.

1.34 **"Dove Valley Ranch"** shall mean the Property.

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

1.36 **"Exclusive Common Area"** shall mean any portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all Neighborhoods, as more particularly described in **Article III**.

1.37 **"Exempt Property"** shall mean the following parts of Dove Valley Ranch:

1.37.1 All land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, the County, the City or any political subdivision as the owner thereof for so long as said dedication remains effective;

1.37.2 All Association Land, for as long as the Association is the owner thereof;

1.37.3 All land and improvements owned by a Sub-Association for the common use and enjoyment of its members, or owned by the members of a Sub-Association as tenants-in-common.

1.38 **"General Commercial Development"** shall mean a Parcel limited by a Tract Declaration to be used for various retail or other commercial purposes within the restrictions created by this Declaration.

1.39 **"Golf Course"** shall mean any real property within or adjacent to the Property which is privately owned by persons other than Declarant or the Association and which is operated as a golf course by persons other than the Association, and related and supporting facilities and improvements operated and/or maintained in connection with or incidental to such golf course including, but not limited to, a clubhouse, pro shop, driving range, practice areas, restaurant(s), swimming pool, spa, exercise and workout facility and tennis and racquetball center.

1.40 **"Home Owner"** shall mean an Owner other than Declarant or Developers.

1.41 **"Improvement"** shall mean buildings, roads, driveways, levees, dams, channels, basins, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping of every type and kind (including, without limitation, any sheds, basketball poles/hoops, play structures, patio covers and balconies), except that, as used in this Declaration, "Improvement" shall not include an in-ground swimming pool or any trees, plants, shrubs, grass, plantings, hedges or other landscaping improvements listed as Approved Vegetation on **Exhibit "C"** to this Declaration, or any swing sets without play platforms, or other play structures or apparatus, which swing sets, or other play structures or apparatus are not Visible From Neighboring Property and are place a minimum of ten (10) feet from all neighboring boundaries.

1.42 **"Land Use Classification"** shall mean the classification to be established by the Declarant pursuant to **Paragraph 4.1**, which designates the type of Improvements which may

be constructed on a Lot, Parcel or Association Land and the purposes for which such Improvements and surrounding land may be utilized.

1.43 **"Lease"** shall mean a lease, whether oral or written and regardless of the term thereof, whereby the owner of a Rental Apartment in an Apartment Development lets such Rental Apartment to a Lessee. A Lease (when the term is so capitalized) shall not, for purposes of this Declaration, include any subleases or any leasing arrangements involving property other than a Rental Apartment in an Apartment Development.

1.44 **"Lessee"** shall mean the lessee under a Lease, including an assignee or sub-lessee of a Lessee, but excluding any person who has assigned all of his interest in a Lease.

1.45 **"Lot"** shall mean any (i) area of real property within the Property designated as a Lot on any subdivision plat recorded and approved by the Declarant or Board and (ii) any Condominium Unit within the Property.

1.46 **"Maintenance Charges"** shall mean any and all costs assessed pursuant to Paragraphs 14.7 and 14.8 hereof.

1.47 **"Maximum Lots"** shall mean the number of Dwelling Units approved for development pursuant to the Development Master Plan, as it may be amended or superseded from time to time; provided, however, that nothing in this Declaration shall be construed to require the Declarant or any successor to develop the maximum number of Lots approved.

1.48 **"Member"** shall mean any person or entity holding a Membership in the Association pursuant to this Declaration.

1.49 **"Membership"** shall mean a Membership in the Association and the corresponding rights, privileges and responsibilities of the Owners and Declarant pursuant to Article VII hereof.

1.50 **"Mortgage"** shall mean a mortgage, a deed of trust or any other form of security agreement recorded against a Lot or Parcel to secure repayment of indebtedness or performance of an obligation.

1.51 **"Mortgagee"** shall mean a beneficiary under a deed of trust, holder of a Mortgage or a secured party under a security agreement.

1.52 **"Undisturbed Desert Open Space (UDOS)"** shall mean areas of undisturbed natural desert with no man-made improvements and approved revegetated areas, as designated on a recorded subdivision plat or Tract Declaration as undisturbed desert open space.

1.53 **"Neighborhood"** shall mean each separately designated residential or commercial area within the Property, whether or not governed by a separate Sub-Association. By way of illustration and not limitation, a townhome development, cluster home development or single family detached development might each be designated as a separate Neighborhood, or a Neighborhood may be comprised of more than one type of housing, retail or office use with other features in common. In addition, each parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

1.54 **"Neighborhood Expenses"** shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Lots and Parcels within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs, replacements and Improvements, as the Board may specifically authorize and as may be authorized herein or in a Supplemental Declaration applicable to a Neighborhood.

1.55 **"Ordinance"** shall mean the ordinance to be adopted by the Mayor and Council Members of the City, including the stipulations made condition thereto, describing the zoning on the Property, as such Ordinance may be amended or superseded from time to time.

1.56 **"Owner"** means the record Owner, whether one or more Persons, 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 or Parcel. Owner shall not include (i) Persons having an interest in a Lot or Parcel merely as security for the performance of an obligation, or (ii) a Lessee or Tenant. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of Arizona Revised Statutes, Section §33-741 et seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots or Parcels subject to the lien of a deed of trust pursuant to Arizona Revised Statutes, Section §33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of Lots or Parcels the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.57 **"Parcel"** shall mean an area of real property within the Property which (i) is not included within the boundaries of any subdivision plat or condominium plat; (ii) is subject to a Tract Declaration; and (iii) is not Association Land.

1.58 **"Party Wall"** shall mean a wall or fence constructed on or immediately adjacent to (i) the common boundary of Lots or Parcels; (ii) the common boundary of Common Areas and a Lot or Parcel; or (iii) the common boundary of the Golf Course and a Lot or Parcel.

1.59 **"Person"** shall mean a natural person, a corporation, a partnership, a trustee or any other legal entity.

1.60 **"Private Amenity"** shall mean real property and any Improvements and facilities thereon located adjacent to, in the vicinity of, or within the Property, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis, user fee basis, or otherwise, and shall include, without limitation, the Golf Course, if any.

1.61 **"Property"** or **"Project"** shall mean the real property situated in the City of Phoenix, Maricopa County, Arizona, described on **Exhibit "B"** attached hereto, and the Improvements to be constructed thereon, and any part of the Additional Property added pursuant to **Article XVII** hereof.

1.62 **"Public Report"** shall mean a public report issued by the Arizona Department of Real Estate for the Lots or Parcels within the Property which authorizes the offering and sale of Lots or Parcels.

1.63 **"Recording"** shall mean placing an instrument of public record in the office of the County Recorder, and **"recorded"** shall mean having been so placed of public record.

1.64 **"Rental Apartments"** shall mean four (4) or more attached Dwelling Units within a building under single ownership, each of which is designed and utilized, otherwise than as a hotel or on some other transient basis, for rental or leased residential purposes to non-owners on a non-cooperative basis. This term is intended to include rented or leased apartments in the typically regarded sense as of the date hereof, and it is not intended to include unusual or atypical arrangements or any arrangements whereby the apartment occupant is, directly or indirectly, an owner or beneficiary of ownership in his apartment or whereby he occupies his apartment pursuant to some form of reciprocal use agreement, irrespective of whether any such arrangements may otherwise fall within the aforesaid definition.

1.65 **"Resident"** shall mean each natural person residing in a Dwelling Unit.

1.66 **"Shopping Center Development"** shall mean a Parcel limited by a Tract Declaration to be used as a neighborhood or other shopping center within the restrictions created by this Declaration.

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



**ARTICLE II**  
**PROPERTY SUBJECT TO THE DECLARATION**

2.1 **General Declaration.** Declarant intends to develop the Property and to sell and convey Lots and Parcels. As parts of the Property are developed, Declarant intends, with respect to particular property, to record one (1) or more Tract Declarations covering Lots and Parcels and designating Common Areas. Such Tract Declarations shall incorporate this Declaration and may establish such additional covenants, conditions, and restrictions as may be appropriate for that part of the Property. Declarant hereby declares that all of the real property within the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any recorded Tract Declarations applicable thereto, as amended or modified from time to time; provided, however, real property which is not part of a Lot or Parcel and which is dedicated or conveyed to the public or a governmental entity for public purposes shall not be subject to this Declaration and the covenants herein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Owners and Residents concerning the use and maintenance of such public areas shall at all times apply to the Owners and Residents. This Declaration and the Tract Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with the Property and with all Lots, Parcels and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Development Master Plan as to any portion of the Property owned by the Declarant or from dedicating or conveying portions of the Property owned by the Declarant, including streets or roadways, for uses other than as a Lot, Parcel or Association Land. Tract Declarations may be amended by approval of the Board and Owners of all Lots and Parcels subject to the Tract Declaration. As long as the Declarant owns any Lot or Parcel, Declarant approval is also required for any amendment to a Tract Declaration.

2.2 **Disclaimer of Representations.** *Declarant makes no representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.*

**ARTICLE III  
EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS**

3.1 **Easements of Enjoyment.** Every Owner and Resident shall have a nonexclusive right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot and Parcel, subject to the following provisions:

3.1.1 This Declaration, the Bylaws, the Tract Declarations and any other applicable covenants;

3.1.2 Any restrictions contained in any deed conveying such property to the Association;

3.1.3 The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to Owners and Residents and their guests, and rules limiting the number of Persons who may use the Common Area;

3.1.4 The right of the Board to suspend the right of an Owner or Resident to use recreational facilities within the Common Area (i) for any period during which any charge against an Owner's Lot or Parcel remains delinquent; (ii) for a period not to exceed thirty (30) days for a single violation of this Declaration, a Tract Declaration or the Association Rules; and (iii) for successive suspension periods if any such infraction is not corrected during any prior suspension period.

3.1.5 The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility company pursuant to **Paragraph 16.6** and for such purposes and subject to such conditions as may be agreed to by the Association.

3.1.6 The right of the Board to impose reasonable Membership requirements and charge reasonable Membership, admission, or other fees for the use of any recreational facility situated upon the Common Area;

3.1.7 The right of the Association to mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred, subject to the approval requirements set forth in **Article XIX** and **Paragraph 22.9**.

3.1.8 The rights of certain Owners or Residents to the exclusive use of those portions of the Common Area designated as Exclusive Common Area, as more particularly described in **Paragraph 3.3**; and

3.1.9 The right of the Association to rent or lease any portion of the clubhouse, if any, and other recreational facilities within the Common Area on a short-term basis to any Owner or Resident for the exclusive use of such Owner's or Residents's family members and guests and/or to rent or lease any portion of the clubhouse, if any, and other recreational facilities within the Common Area on a short-term or long-term basis to the owner of the Golf Course for the exclusive use of the owner of the Golf Course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees and authorized users of the Golf Course.

3.2 **Delegation of Use.** Any Owner or Resident may extend his right to use, access and enjoy the Common Area to the members of his family and social invitees, subject to this Declaration, the Bylaws and the Association Rules and the limitations contained therein. An Owner who leases his Lot to a Tenant shall be deemed to have assigned all such rights to the Tenant, unless the Board adopts a resolution permitting Owners to reserve such rights and such Owner provides the Board with written notice of such reservation.

### 3.3 **Exclusive Common Area.**

3.3.1 Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners of Lots within a particular Neighborhood or Neighborhoods ("**Benefitted Neighborhood(s)**"). By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Areas shall be assessed as a Neighborhood Assessment against the Owners of Lots or Parcels in the Benefitted Neighborhood(s) pursuant to **Paragraph 10.6**.

3.3.2 Exclusive Common Area shall be designated and the exclusive use thereof assigned in the deed conveying the Common Area to the Association or Sub-Association, if any, or on the plat of survey relating to such Common Area. No such assignment shall preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Lots, Parcels and/or Neighborhoods, so long as the Declarant has a right to subject Additional Property to this Declaration pursuant to **Article XVII**. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of a majority of the total Class "A" and Class "B" votes in the Association, including a majority of the Class "A" and Class "B" votes within the Neighborhood(s) to which the Exclusive Common Area is assigned, if applicable, and within the Benefitted Neighborhood(s) from which the Exclusive Common Area is to be assigned. As long as the Declarant owns any Property for development and/or sale, any such assignment or reassignment shall also require Declarant's consent.

3.3.3 The Association may, upon approval of a majority of the Class "A" and Class "B" votes within a Benefitted Neighborhood, permit Owners of Lots in other Neighborhoods to use all or a portion of the Benefitted Neighborhood's Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Benefitted Neighborhood's Expenses attributable to such Exclusive Common Areas.

### 3.4 Private Amenities.

3.4.1 Access to and use of the Private Amenities are strictly subject to the rules and procedures of the Private Amenities, and no Person automatically gains any right to enter or to use those facilities by virtue of Membership in the Association, ownership of a Lot, or occupancy of a Dwelling Unit.

3.4.2 No representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of Improvements to, or the continuing ownership or operation of, the Private Amenities. No purported representation or warranty, written or oral, in conflict with this Subparagraph shall be effective without an amendment to this Declaration executed or joined into by the Declarant and the owner(s) of the Private Amenities which are the subject thereof.

3.4.3 The ownership or operational duties of and as to the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (i) the sale to or assumption of operations by an independent entity, (ii) conversion of the membership structure to an "equity" club or similar agreement whereby the members of a Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Private Amenity, or (iii) the conveyance of a Private Amenity to one or more subsidiaries, affiliates, shareholders, employees or independent contractors of the Declarant. No consent of the Association, any Sub-Association, or any Owner shall be required to effectuate such a transfer or conversion.

3.4.4 Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by the respective owners of such Private Amenities. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

## ARTICLE IV LAND USE CLASSIFICATIONS

4.1 **Land Use Classifications.** As portions of the Property are readied for development, the Land Use Classifications, restrictions, easements, rights-of-way, and other matters, including new or different uses and restrictions therefor and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract

Declaration which shall be recorded for that portion of the Property. Any such Tract Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. The Land Use Classifications for Lots, Parcels and Association Land established by a Tract Declaration shall not be changed except by amendment of the Tract Declaration in the manner set forth in **Paragraph 18.4** of this Declaration. Contemplated Land Use Classifications include, but are not limited to, the following Land Use Classifications:

- 4.1.1. Single Family Residential Use.
- 4.1.2 Apartment Development Use, which may be converted to Condominium Development Use upon approval by the Board.
- 4.1.3 Condominium Development Use, which may be converted to Apartment Development Use upon approval by the Board.
- 4.1.4 Commercial Condominium Development Use, which may include Office Condominium Development Use.
- 4.1.5 Commercial Office Use.
- 4.1.6 Business Park Use.
- 4.1.7 General Commercial Use.
- 4.1.8 Research and Development Park Use.
- 4.1.9 Association Use, which may include Common Areas.
- 4.1.10 Resort Use.
- 4.1.11 Cluster Residential Use.
- 4.1.12 Clubhouse Use.
- 4.1.13 School.
- 4.1.14 Church.
- 4.1.15 Shopping Center.
- 4.1.16 Public/Private Recreation.

4.1.17 General Public Use.

4.2 Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such classifications, shall be determined in the Tract Declaration.

**ARTICLE V  
PERMITTED USES AND RESTRICTIONS**

5.1 **Covenants, Conditions, Restrictions and Easements Applicable to Lots and Parcels Within All Land Use Classifications.** The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels, and the Owners and Residents thereof, regardless of Land Use Classifications.

5.1.1 **Animals.** No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot or Parcel and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry, or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, or upon the Board's own initiative, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Subparagraph, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein. The Board shall also have the authority to exempt from the foregoing restrictions, or portions thereof, (i) a pet shop or veterinary office in a General Commercial Land Use Classification; or (ii) horses and horse stables and corrals in areas designated on a recorded subdivision plat, and permitted under a Tract Declaration or in any other recorded instrument signed by the Declarant as being suitable for the maintenance of horses and horse stables and corrals.

5.1.2 **Temporary Occupancy and Temporary Buildings.** No trailer home, mobile home, manufactured home, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a Dwelling Unit or other Improvement on any property shall be removed immediately after the completion of construction.

5.1.3 **Maintenance of Lawns and Plantings.** Each Owner of a Lot or Parcel shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot or Parcel (including setback areas and Common Areas); (ii) planted public right-of way areas

between sidewalks (or bikepaths) and the street curb in front of his property, if any; (iii) any other public right-of-way or easement area which abuts the Owner's Lot or Parcel and which is located between the boundary line of his Lot or Parcel and the paved area of any street, sidewalk, bikepath or similar area; and (iv) any non-street public right-of-way or easement area adjacent to his Lot or Parcel, neatly trimmed, and shall keep all such areas properly cultivated and maintained and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (i) the Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by a recorded instrument as provided in **Paragraph 14.2** of this Declaration; (iii) the City or other public agency assumes responsibility, for so long as the Association or the City or other public agency assumes or has responsibility as provided in (i), (ii) or (iii) above; or (iv) the Association otherwise has responsibility under this Declaration. Notwithstanding any provision to the contrary set forth in this Declaration, each Owner of a Lot or Parcel shall complete all front yard landscaping within forty-five (45) days of acquiring 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 or Parcel.

**5.1.4 Nuisances; Construction Activities.** No rubbish, debris, discarded construction materials, petroleum product or similar product of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel, and no odors shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or injurious to the health and safety of occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior spot lights or security lights, mercury vapor lights, halogen lights, speakers, horns, whistles, firecrackers, bells or other sound devices, except normal and customary security devices, shall be used or placed on any such property without prior approval of the Board. Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Design Review Committee, which may also require screening of the storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance. The display of any banners or flags other than the American flag shall be considered a nuisance. Except for model home sites within the Project, no free-standing flag poles shall be permitted on any Lot or Parcel without the prior written approval of the Design Review Committee, which may be withheld by such committee in its sole and absolute discretion. Except for model home sites within the Project, no American flag shall be Visible From Neighboring Property except from the front yard of such neighboring property. Except for model home sites within the Project, no American flag shall be illuminated by any exterior spot lights, porch lights, security

lights, mercury vapor lights, halogen lights or other similar lights. Except for model home sites within the Project, any American flag displayed by a Lot or Parcel Owner in compliance with this **Section 5.1.4** shall not exceed 4 feet x 6 feet in dimension, nor shall any flag pole to which such American flag shall be attached exceed 8 feet in length. Except for model homes sites within the Project, American flags may be displayed only from the first floor of the front facade of any building, attached to a flag pole complying with the criterion set forth above, which flag pole shall be securely held in place by a bracket or hanger of design, material, color and mounted/placed on a building in a location and at a height approved by the Design Review Committee.

**5.1.5 Diseases and Insects.** No Owner or Resident shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects.

**5.1.6 Repair of Building.** No building or structure on any Lot or Parcel shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by **Article XV**, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

**5.1.7 Antennas.** No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, but not limited to, satellite television or radio discs, antennas or equipment, shall be erected, used or maintained so as to be Visible From Neighboring Property unless approved in writing by the Design Review Committee.

**5.1.8 Mineral Exploration.** No Lot or Parcel shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind, except for grading and excavation work and the removal of fill material including, but without limitation, gravel, rock and sand, in connection with the construction of Dwelling Units or other Improvements which have been approved in writing by the Design Review Committee or which are being constructed by, or on behalf of, the Declarant.

**5.1.9 Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot or Parcel, except in covered containers of a type, size and style which are approved by the Association Rules or in writing by the Design Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to affect such collection or for such time which may be specified in the Association Rules. All rubbish, trash, or garbage shall be removed from the Lots and Parcels and shall not

be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot or Parcel.

**5.1.10 Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Parcel unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed so as not to be Visible From Neighboring Property.

**5.1.11 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon, or adjacent to, any Lot or Parcel except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or other Improvements; (ii) that which the Declarant or the Association may require for the operation and maintenance of the Property; or (iii) that used in connection with any retail, commercial or business use permitted under a Tract Declaration.

**5.1.12 Signs.** No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot or Parcel except: (i) signs required by legal proceedings; (ii) no more than two (2) identification signs for individual residences, each in conformance with the Community-Wide Standard and each with a face area of seventy-two (72) square inches or less; (iii) signs (including "For Sale" and "For Lease" signs) the nature, number, location, size, color, design, message content and type of which have been approved in advance and in writing by the Design Review Committee; (iv) promotional and advertising signs of Developers on any Lot or Parcel approved from time to time by Declarant as to number, size, color, design, message content, location and type; and (v) such other signs (including, but not limited to, construction job identification signs, builder identification signs, and subdivision, shopping center, apartment and business identification signs) which are in conformance with the requirements of the City or other governmental agencies and which have been approved in writing by the Design Review Committee as to size, color, design, message content and location.

**5.1.13 Restriction on Further Subdivision, Property Restrictions and Rezoning.** Unless otherwise provided in the Tract Declaration applicable to such Lot or Parcel, no Lot or Parcel shall be further subdivided or separated into smaller Lots or Parcels by any Owner other than the Declarant, and no portion less than all of any such Lot or Parcel, shall be conveyed or transferred by any Owner other than Declarant, without the prior written approval of the Board. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots or Parcels any property at any time owned by Declarant. No portion of a Lot but for the entire Lot, together with the Improvements thereon, may be rented, and then only to a Single Family. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other Person other than the Declarant against any Lot or Parcel without the provisions thereof having been first approved in writing by the Board and having

been endorsed on such recorded covenants, conditions, restrictions and easements, and any covenants, conditions, restrictions or easements recorded without such approval being endorsed thereon shall be null and void.

5.1.14 **Party Walls.** Except as hereinafter provided, the rights and duties of Owners and Residents with respect to Party Walls between Lots and Parcels shall be as follows:

5.1.14.1 The Owners and Residents of contiguous Lots or Parcels who have a Party Wall shall both equally have the right to use such wall or fence, provided that such use by one Owner or Resident does not interfere with the use and enjoyment of same by the other Owner or Resident;

5.1.14.2 In the event that any Party Wall is damaged or destroyed through the act of an Owner or Resident, or the agents, guests, or family members of any Owner or Resident, (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner or the Owner of the Lot or Parcel occupied by such Resident, to rebuild and repair the Party Wall without cost to the Owner of the adjoining Lot or Parcel. Any dispute over an Owner's or Resident's liability for such damage shall be resolved as provided below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking reimbursement and indemnity therefor from the Persons, including Residents, causing such damage;

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

5.1.14.4 Notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee, and approval in writing by the Design Review Committee;

5.1.14.5 In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

5.1.14.6 Notwithstanding the foregoing, in the case of Party Walls between Common Areas and Lots or Parcels, or between the Golf Course and Lots or Parcels, the Association shall be responsible for all maintenance thereof, subject to the provisions of

**Paragraphs 14.7 and 14.8**, except that each Owner of a Lot or Parcel shall be responsible for painting and maintenance of the portion of the Party Wall facing his Lot or Parcel or the portion thereof which is not a portion of the Common Area.

5.1.14.7 The provisions of this **Subparagraph 5.1.14** shall not apply to any Party Wall which separates the interiors of two (2) Dwelling Units and the rights of the Owners or Residents of such Dwelling Units with respect to such Party Walls shall be governed by plats and covenants, conditions and restrictions to be recorded by the developer of the Dwelling Units or Improvements thereon.

5.1.15 **Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved in writing by the Design Review Committee except for temporary power or telephone structures incident to the construction of buildings or structures approved in writing by the Design Review Committee.

5.1.16 **Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Design Review Committee.

5.1.17 **Trucks, Trailers, Campers and Boats.** No motor vehicle, motor home, recreational vehicle, travel trailer, tent trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked or maintained on any Lot or Parcel or on any street within the Property so as to be Visible From Neighboring Property, the Common Areas, the Golf Course or the streets; provided, however, the provisions of this Paragraph shall not apply to (i) motor vehicles not exceeding seven (7) feet in height measured from ground level and eighteen (18) feet in length which are parked as provided in **Subparagraph 5.1.19** below and are used on a regular and recurring basis for basic transportation and which are not used for commercial purposes and do not display any commercial name, telephone number or message of any kind; or (ii) trucks, trailers and campers parked in areas designated for parking in nonresidential Land Use Classifications in connection with permitted commercial activities conducted in such nonresidential Land Use Classifications.

#### 5.1.18 **Motor Vehicles.**

5.1.18.1 No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street within the Property, and no inoperable vehicle, including but not limited to vehicles with flat tires may be stored or parked on any such Lot, Parcel or street, so as to be Visible From

Neighboring Property or to be visible from Common Areas, the Golf Course or streets; provided, however, that the provisions of this paragraph shall not apply to (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved in writing by the Design Review Committee; (ii) any automobile repair business which may be permitted in any General Commercial Land Use Classification.

5.1.18.2 No motorcycle, motorbike, motorized scooter, all-terrain vehicle, off-road vehicle or any similar vehicle shall be parked or maintained on any portion of the Property except in garages on Lots or Parcels.

5.1.19 **Parking.** Vehicles of all Owners and Residents, and of their employees, guests and invitees, are to be kept in garages, carports or residential driveways of the Owner, designated spaces in commercial areas, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot or Parcel; provided, however, this Subparagraph shall not be construed to permit the parking in the above described areas of any vehicle the parking of which on the Property is otherwise prohibited or the parking of any inoperable vehicle. Notwithstanding the foregoing, vehicles may be parked on roads or streets for a period of not more than forty-eight (48) hours in any seven (7) day period.

5.1.20 **Towing of Vehicles.** The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, motorized scooter, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned, rented or leased by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessments.

5.1.21 **Drainage.** No Dwelling Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Property, or any part thereof, or for any Lot or Parcel as shown on the drainage plans on file with the County or City.

5.1.22 **Garages and Driveways.** The interior of all garages or carports shall be maintained in a neat, clean and sightly condition with sufficient area to park the minimum number of vehicles for which the garage was originally designed. Garages and carports shall