

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

TABLE OF CONTENTS

ARTICLE I	
DEFINITIONS	5
ARTICLE II	
PROPERTY SUBJECT TO OCOTILLO DECLARATION	11
Section 1. General Declaration Creating Ocotillo.	11
Section 2. Association Bound.	12
ARTICLE III	
EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS	12
Section 1. Easements of Enjoyment.	12
Section 2. Delegation of Use.	13
ARTICLE IV	
LAND USE CLASSIFICATOINS, PERMITTED USES & RESTRICTIONS	13
Section 1. Land Use Classifications.	13
Section 2. Covenants, Conditions Restricts and Easements Applicable to Lots and Parcels Within All Land Use Classifications.	14
Section 3. Covenants, Conditions, Restrictions and Easements Applicable to Lots Within Single Family Residential Land Use Classification.	23
Section 4. Covenants, Conditions, Restrictions and Easements Applicable to Lakes Areas Land Use Classification.	23
Section 5. Covenants, Conditions, Restrictions and Easements Applicable to Golf Course Land Use Classification; Possible Transfer to the Association.	26
Section 6. Variances.	27
ARTICLE V	
ORGANIZATION OF ASSOCIATION	27
Section 1. Formation of Association.	27
Section 2. Board of Directors and Officers.	27
Section 3. The Ocotillo Rules.	27
Section 4. Personal Liability.	27
Section 5. Ancillary Associations.	27
ARTICLE VI	
MEMBERSHIP AND VOTING	28
Section 1. Owners of Lots and Parcels.	28
Section 2. Lessees.	29
Section 3. Declarant.	29
Section 4. Voting.	29
Section 5. Right to Vote.	30
Section 6. Cumulative Voting for Board Members.	30
Section 7. Membership Rights.	30
Section 8. Transfer of Class A Membership.	30
Section 9. Use of Membership; Designees.	30
Section 10. Adjustment in Votes of Class B Member.	31
Section 11. Suspension of Voting Rights.	31
ARTICLE VII	
COVENANT FOR ASSESSMENTS AND CREATION OF LIEN	31
Section 1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges.	31
Section 2. Annual Assessments.	32
Section 3. Uniform Rate of Assessment.	32
Section 4. Maximum Annual Assessment.	33
Section 5. Special Assessments for Capital Improvements and Extraordinary Expenses.	34

Section 6.	<i>Effluent Assessment.</i>	34
Section 7.	<i>Notice and Quorum for Any Action Authorized Under Sections 4 and 5.</i>	34
Section 8.	<i>Establishment of Annual Assessment Period.</i>	35
Section 9.	<i>Rules Regarding Billing and Collection Procedures.</i>	35
Section 10.	<i>Collection for Rental Apartments.</i>	35
Section 11.	<i>Collection Costs and Interest on Delinquent Assessments.</i>	35
Section 12.	<i>Evidence of Payment of Annual and Special Assessments and Maintenance Charges.</i>	36
Section 13.	<i>Property Exempted from the Annual and Special Assessments and Assessment Lien.</i>	36
ARTICLE VIII		
ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN 36		
Section 1.	<i>Association as Enforcing Body.</i>	36
Section 2.	<i>Association's Remedies to Enforce Payment of Annual and Special Assessments, Effluent Assessments and Maintenance Charges.</i>	36
Section 3.	<i>Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien.</i>	37
ARTICLE IX		
USE OF FUNDS; BORROWING POWER 37		
Section 1.	<i>Purposes for Which Association's Funds May be Used.</i>	37
Section 2.	<i>Borrowing Power.</i>	37
Section 3.	<i>Association's Rights in Spending Funds From Year to Year.</i>	37
Section 4.	<i>Administration of Special Use Fees.</i>	38
Section 5.	<i>Insurance</i>	38
ARTICLE X		
MAINTENANCE 38		
Section 1.	<i>Common Areas and Public Right of Way.</i>	38
Section 2.	<i>Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas.</i>	39
Section 3.	<i>Improper Maintenance and Use of Lots and Parcels.</i>	40
ARTICLE XI		
DESIGN REVIEW BOARD 40		
Section 1.	<i>Establishment.</i>	40
Section 2.	<i>Appeal.</i>	40
Section 3.	<i>Fee.</i>	41
Section 4.	<i>Appointment of Design Review Board Members.</i>	41
Section 5.	<i>Non-Liability for Approval of Plans.</i>	41
ARTICLE XII		
RIGHTS AND POWERS OF ASSOCIATION 41		
Section 1.	<i>Association's Rights and Powers as Set Forth in Articles and Bylaws.</i>	41
Section 2.	<i>Association's Rights of Enforcement of Provisions of this and Other Instruments.</i>	41
Section 3.	<i>Contracts with Others for Performance of Association's Duties.</i>	42
Section 4.	<i>Change of Use of Association Land and Procedure Therefor.</i>	42
ARTICLE XIII		
TERM; AMENDMENTS; TERMINATION 42		
Section 1.	<i>Term; Method of Termination.</i>	42
Section 2.	<i>Amendments.</i>	43
Section 3.	<i>Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions.</i>	43
ARTICLE XIV		
ANNEXATION OF LAND 44		
Section 1.	<i>Annexation Without Approval and Pursuant to General Plan.</i>	44
Section 2.	<i>Supplementary Declarations.</i>	44
ARTICLE XV		
USE OF WATER RIGHTS 44		
Section 1A.	<i>Association Use.</i>	44
Section 1B.	<i>Water Management Agreement.</i>	45
ARTICLE XVI		
MISCELLANEOUS 45		
Section 1.	<i>Interpretation of the Covenants.</i>	45
Section 2.	<i>Severability.</i>	45
Section 3.	<i>Rule Against Perpetuities.</i>	45
Section 4.	<i>Change of Circumstances.</i>	46

Section 5. Rules and Regulations. 46
Section 6. Declarant's Disclaimer of Representations. 46
Section 7. References to the Covenants in Deeds. 46
Section 8. Successors and Assigns of Declarant. 46
Section 9. Gender and Number. 46
Section 10. Captions and Titles. 46
Section 11. Notices. 46
Section 12. FHA/VA Approval. 47

Exhibit "A" 51
Exhibit "B" 52

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WHEN RECORDED RETURN TO:
Stephen W. Baum, Esq.
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3003 N. Central Avenue PROP RSTR (RS)
Phoenix, AZ 85212

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA			
APR - 7 1986 4 00			
KEITH POLETIS, County Recorder			
FEE 70 ⁰⁰	PGS 19	P.L.	
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**DECLARATON OF COVENANTS, CONDITIONS, RESTRICTIONS,
ASSESSMENTS, CHARGES, SERVITUDES, LIENS,
RESERVATIONS AND EASEMENTS
FOR
OCOTILLO**

THIS DECLARATION of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (hereinafter termed the "Declaration") is made this seventh day of October, 1985, by OCOTILLO WEST JOINT VENTURE, and Arizona Joint Venture Partnership (hereinafter sometimes termed "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the developer of approximately two thousand seven hundred (2,700) acres of land in Chandler, Maricopa County, Arizona, known as Ocotillo, and

WHEREAS, Declarant is the owner in fee of that portion of Ocotillo legally described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Covered Property"); and

WHEREAS, Declarant has options to purchase those portions of Ocotillo legally described on Exhibit "B" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Option Property"); and

WHEREAS, Declarant may, without obligation, annex additional property (including, without limitation, all or any portion of the Option Property) to the Covered Property, to become a part thereof and subject to this Declaration (hereinafter collectively referred to as the "Annexable Property"); and

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

WHEREAS, at full development it is intended, without obligation, that such communities will collectively have one or more shopping centres, office parks, lakes, parks, golf courses, commercial buildings, recreational areas, open spaces, walkways, paths, drives and other social, civic and cultural building and facilities; 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 Ocotillo to the public for streets, roadways, drainage, flood control, and general public use; and to Record various Tract Declarations covering portions of Ocotillo, which Tract Declarations will designate the purposes for which such portions of Ocotillo may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of Ocotillo; and

WHEREAS, Declarant desires to form a non-profit corporation for the social and recreational purposes of benefiting Ocotillo, the Owners and the Residents (as said terms are defined herein below), which non-profit corporation (hereinafter termed the "Association" will (1) acquire, construct, operate, manage and maintain a variety of Common Areas upon Ocotillo; (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 Ocotillo, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of Ocotillo; and

WHEREAS, Declarant is preparing the necessary documents for the incorporation and organization of the Association and may, without obligation, seek approval thereof by the Federal Housing Administration (hereinafter termed "FHA"), the Veterans Administration (hereinafter termed "VA") and by and other governmental agencies or financial institutions whose approval Declarant deems necessary or desirable; and

WHEREAS, the Declarant therefore wishes to subject all of the Covered Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements (hereinafter collectively called "Covenants") hereinafter set forth; and

WHEREAS, in order to cause the Covenants to run with the Covered Property and to be binding upon the Covered Property and the Owners thereof from and after the date of the Recording of this Declaration, Declarant hereby makes all conveyances of the Covered Property, whether or not so provided therein, subject to the Covenants herein set forth; and by accepting Deeds, leases, easements, or other grants or conveyances to any portion of the Covered Property, the Owners and other transferees for themselves and their heirs, executors, administrations, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Covenants (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:

A. "Annexable Property" shall mean any real property situated in Maricopa County, Arizona, including without limitation, all or any portion of the Option Property, legally described on Exhibit "B" attached hereto, which may be added to the Covered Property in one or more additional phases by Supplemental Declaration pursuant to the provisions of Article XIV.

B. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot, Parcel, or Owner pursuant to Article VII, Section 2 hereof.

C. "Apartment Development" shall mean a Parcel or portion thereof which is described in 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 of Chandler and the Design Review Board or otherwise, as one integrated apartment operation under the same ownership.

D. "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

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

F. "Assessment" shall mean an Annual Assessment, Special Assessment, Effluent Assessment and/or Maintenance Charge.

G. "Assessment Lien" shall mean the lien created and imposed by Article VII.

H. "Assessment Period" shall mean the term set forth in Article VII, Section 7.

I. "Association" shall mean the Arizona non-profit corporation to be organized by Declarant

to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the Association "The Ocotillo Community Association", and hereby reserves the right to use any similar name, if, for any legal or other reason, "The Ocotillo Community Association" cannot or should not be used.

J. "Association Land" shall mean such part or parts of the Covered Property, together with the buildings, structures and improvements thereon, and other real property, including the Lakes, 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.

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

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

M. "City" shall mean the City of Chandler, Arizona.

N. "Clubhouse Parcel" shall mean the Clubhouse Parcel as shown on the Master Development Plan for Ocotillo and/or described in a recorded Tract Declaration. The Clubhouse parcel shall be privately owned and may be operated in conjunction with the Golf Course. The Clubhouse Parcel shall not be transferable to the Association pursuant to Article IV, Section 5. The number of Memberships attributable to the Clubhouse Parcel shall be determined by the applicable Tract Declaration.

O. "Cluster Residential Development" shall mean a Parcel subdivided into Lots with dwelling units intended for Single Family occupancy and may include those types of residential housing arrangements known as townhouses, clustered housing, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the Cluster Development.

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

Q. "Common Area and Common Areas" shall mean (a) all Association Land and the improvements thereon; (b) all land within the Covered 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; (c) all land within the covered 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 Ocotillo and/or the general public and is to be dedicated to the public or the City of Chandler upon the expiration of a fixed period of time, but only until such land is so dedicated; (d) all lands on the Lakefront Lots and Lakefront Parcels, over which the Association or its Members has an easement pursuant to a Recorded subdivision plat, Tract Declaration or this Declaration for the enjoyment, maintenance and operation of the Lakes, and (e) areas on a Lot, Parcel or Golf Course within easements granted to the Association or its Members for the location, construction, maintenance, repair and replacement of a wall, fence, sidewalk, landscaping, utility access or other uses, which easement may be granted or created on a Recorded subdivision plat or Tract Declaration or by a Deed or other conveyance accepted by the Association, and all land within Ocotillo 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.

R. "Condominium Development" shall mean a horizontal property regime established under the laws of the State of Arizona which is limited by the Tract Declaration therefore to residential use.

S. “Condominium Unit” shall mean an apartment unit, together with any appurtenant interest in all general and common elements, which is created by a horizontal property regime established under Arizona law. Such term shall not include a Rental Apartment in an Apartment Development.

T. “Covenants” shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

U. “Covered Property” shall mean the real property situated in the City of Chandler, Maricopa County, Arizona, described on Exhibit “A” attached hereto, and the development to be completed thereon, and any part of the Annexable Property added pursuant to Article XIV hereof.

V. “Declarant” shall mean Ocotillo West Joint Venture, an Arizona joint venture partnership, and the successors and assigns of Declarant’s rights and powers hereunder.

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

X. “Deed” shall mean a deed or other instrument conveying the fee simple title in a “Lot” or “Parcel”.

Y. “Design Review Board” shall mean the committee of the Association to be created pursuant to Article XI below.

Z. “Designee” shall mean a person designated by a Member pursuant to Article VI, Section 9, to exercise certain of the rights of a Member.

Aa. “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, but shall exclude any model home until such model home has been sold or leased as a residence of a Single Family.

Bb. “Effluent Assessment” shall mean the billing for effluent or water described in Article VII, Section C.

Cc. “Exempt Property” shall mean the following parts of Ocotillo:

(1) All land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, Maricopa County, the city of Chandler, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective;

(2) All Association Land, for as long as the Association is the owner thereof:

Dd. “General Commercial Development” shall mean a Parcel limited by a Tract Declaration to be used for various commercial purposes within the restrictions created by the Covenants.

Ee. “Golf Course” and “Golf Course Land” shall mean the Golf Course real property and all improvements thereon (excluding the clubhouse and associated recreational and other facilities located on the Clubhouse parcel) as shown on the Master Development Plan for Ocotillo. The Golf Course Land shall be subject to the Association’s possible future interest as provided in Article IV, Section 5 hereof.

Ff. “Golf Course Lot” shall mean a Lot which has a portion of its boundary immediately adjacent to the Golf Course, or a Condominium Development which has a portion of its common elements immediately adjacent to the Golf Course.

Gg. “Golf Course Parcel” shall mean a Parcel which has a portion of its boundary immediately adjacent to the Golf course.

Hh. “Lake Water Distribution System” shall mean the system whereby users of water from within the Lakes, as authorized by the Ocotillo Management Group, remove such water from the Lakes; or the distribution by the Association or Ocotillo Management Group of water within the lakes to insure proper balance between Lakes; or any other actions required to distribute water within the intent of the Water Management Agreement.

Ii. “Lakefront Easement” shall mean an easement benefiting the Association over, on, and adjacent to the Lakefront Lots, Lakefront Parcels, and certain Exempt Property described in Article IV, Section 4(j).

Jj. “Lakefront Lot” shall mean a Lot which has a portion of its boundary on or in a Lake or, in the case of a Condominium Unit, a Condominium Unit which has a portion of its common elements adjacent to or in a Lake.

Kk. “Lakefront Parcel” shall mean a parcel which has a portion of its boundary on or in a Lake.

Ll. “Lakes” shall mean the Lakes installed by the Declarant shown on the Master Development Plan for Ocotillo, including the land underlying such Lakes; except for the portions of land which are parts of Lots or Parcels and which boundaries extend into the Lakes. The Lakes shall be a part of the Common Area. Portions of the Lakes will be on Lots and Parcels and rights and responsibilities for such will be included in the applicable Plat, in the applicable Tract Declaration, or hereinafter within this Declaration but the Association shall at all times have certain rights to the surface areas of the Lakes, the shoreline and the Lakefront Easement Area as herein described. The Declarant intends to convey fee title to the portions of the Lakes which are not located on Lots and Parcels to the Association at a later date, at which time such portions of the Lakes will become Association Land. The Lakes are subject to an agreement between the Ocotillo Management Group and the Association which gives the Association the right to recreational use of water within the Lakes in return for the use by the Ocotillo Management Group of the Lakes for distribution, storage and logical management of water placed in the Lakes from the Water Treatment Facility by the Water Management Group.

Mm. “Land Use Classification” shall mean the classification to be established by the Declarant pursuant to Article IV, Section 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.

Nn. “Landscape Easement Area” shall mean the approximate ten (10) foot portion of land adjacent to the public rights of way in the Covered Property and the entryways to sidewalks, perimeter walls and utility access as described in Article IV, Section 2 below.

Oo. “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.

Pp. “Lessee” shall mean the Lessee under a Lease, including an assignee of a Lease but excluding any person who has assigned all of his interest in a Lease.

Qq. “Lot” shall mean any (a) area of real property within the Covered Property designated as a Lot on any subdivision plat Recorded or approved by Declarant and limited by a Tract Declaration to either Single Family Residential Use or Cluster Residential Use and (b) any Condominium Unit within the Covered Property which is limited to residential use by a Tract Declaration.

Rr. “Maintenance Charges” shall mean any and all costs assessed pursuant to Article X, Sections 2 or 3.

Ss. “Master Development Plan” shall mean the Ocotillo Development Plan approved by the City of Chandler, as the same may be from time to time amended, a copy of which shall be on file at all times in the office of the Association.

Tt. “Member” shall mean any person holding a Membership in the Association pursuant to this Declaration.

Uu. “Membership” shall mean a Membership in the Association and the rights granted to the Owners and Declarant pursuant to Article VI to participate in the Association.

Vv. “Ocotillo” shall mean the real property described on Exhibits “A” and “B” attached to this Declaration, together with any additional real property, which may from time to time become subject to and covered by this Declaration, and the development to be completed thereon.

Ww. “Ocotillo Rules” shall mean the rules for Ocotillo adopted by the Board pursuant to Article V, Section 3.

Xx. “Ocotillo Management Group” shall mean an Arizona general partnership which by agreement with the City manages and distributes for a fee all reclaimed water from the Water Treatment Plant. The Association will enter into agreements with the Ocotillo Management Group to expedite logical and efficient use of that portion of the water from the Water Treatment Plant allocated for use at Ocotillo.

Yy. “Owner” shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot or Parcel including contract sellers, but excluding others who hold such title merely as security. In the case of Lots or Parcels the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot or a Parcel in joint ownership with any other person or holds an undivided fee interest in any Lot or Parcel.

Zz. “Parcel” shall mean an area of real property within the Covered Property limited by a Tract Declaration to one of the following Land Use Classifications: Apartment Development, Condominium Development (but only until the horizontal property regime therefore is Recorded), Shopping Center, Commercial Office, General Commercial, Telecommunication Site, Industrial Park, Resort Hotel, School, Church, Library, Substation, Well-Site, or other use determined to be suitable by Declarant in accordance with Article IV, Section 1 herein. The term Parcel shall also include an area of land within Ocotillo as to which a tract Declaration has been Recorded designating the area for Single Family Residential use or Cluster Residential use but which has not yet been subdivided into Lots and related amenities and rights-of-way, but any such area shall cease to be a Parcel upon the Recording of a subdivision plat or other amenities. A Parcel shall not include a Lot, any Exempt Property or any Association Land but, in the case of staged developments, shall include areas not yet included in a subdivision plat, horizontal property regime or other Recorded instrument creating Lots and related amenities. A Parcel with a Land Use Classification of Apartment Development shall cease to be a Parcel if the Apartment Development is converted to a Condominium Development.

AA. “Party Fence” shall mean a fence constructed on or immediately adjacent to the common boundary of Lots or Parcels or the common boundary of Common Areas and a Lot or Parcel.

BB. “Party Wall” shall mean any wall placed on or near the property line between adjacent Lots and Parcels. The cost of a Party Wall shall be borne by the Owner which places the wall on the property line and no other Owner shall be required to pay any cost of the initial construction of the Party

Wall unless an agreement between the owners of adjacent properties on which a Party Wall is to be placed agree in writing in advance to share the cost.

CC. “Private Waterfront Area” shall mean the portion of a Lakefront Lot or Lakefront Parcel which lies within the Lake and within the Lakefront Easement.

DD. “Recording” shall mean placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and “Recorded” shall mean having been so placed of public record.

EE. “Rental Apartments” shall mean Dwelling Units within a permanent improvement consisting of four (4) or more commercially, integrated Dwelling Units under single ownership upon one or more contiguous Parcels, 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.

FF. “Resident” shall mean:

(1) Each buyer under a contract of sale covering any part of the Assessable Property, regardless of whether the contract is Recorded, and each tenant actually residing or conducting a business on any part of the Assessable Property; and

(2) Members of the immediate family of each Owner and of each buyer and Tenant referred to in subparagraph (1) actually living in the same household with such Owner or such buyer or Tenant.

Subject to such rules and regulations as the Association may hereafter specify (including the imposition of special non-resident fees for the use of the Association Land if the Association shall so direct), the term “Resident” also shall include the guests or invitees or any such Owner, buyer or Tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

GG. “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 the Covenants.

HH. “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.

II. “Single Family Residential Development” shall mean a Parcel limited by a Tract Declaration for use as a development of Single Family detached housing, each intended for use by a Single Family, and subject to restrictions contained in the Tract Declaration Recorded for any such specific development, and which shall be subject to the restrictions defined in Article IV, and the entire Covenants as applicable.

JJ. “Special Assessment” shall mean any assessment levied and assessed pursuant to Article VII, Section 5.

KK. “Special Use Fees” shall mean special fees authorized by this Declaration which an Owner, Resident or any other person is obligated to pay to the Association over, above and in addition to any Annual or Special Assessments or Maintenance Charges imposed or payable hereunder.

LL. “Supplemental Declaration” shall mean a written instrument Recorded in the Records of the County Recorder of Maricopa County, Arizona, which refers to this Declaration and which amends,

modifies or supplements this Declaration in accordance with its terms, including, without limitation, the extension of the coverage of this Declaration to all or any portion of the Annexable Property in accordance with Article XIV hereof.

MM. “Tenant” shall mean any person who occupies property located on the covered Property under any type of rental or letting arrangement but is not included in the definition of a Lessee.

NN. “Tract Declaration” shall mean a declaration recorded pursuant to Article IV, Section 1 of this Declaration.

OO. “Visible from Neighboring Property” shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property

PP. “Water Distribution System” shall mean that system designed to distribute effluent or water from the Lakes. The Lakes have been designed to provide a vestibule for storing effluent or water provided by the Ocotillo Management Group. The Ocotillo Management Group is hereby given the right to withdraw effluent or other water from the Lakes, provided that the locations and facilities for such withdrawal are approved by the Design Review Board. The Design Review Board will not unreasonably withhold its approval of any request for such withdrawal facilities.

QQ. “Water Management Agreement” shall mean the agreement between the Ocotillo Management Group and the Declarant/Association pertaining to the use of water from the Lakes by the Association and the role of the Association in managing the water and using the water within the Lakes for recreational purposes. The Association may act as an agent for the Ocotillo Management Group for distributing effluent or water from the Lakes to users within or outside of Ocotillo.

RR. “Water Treatment Plant” shall mean the water treatment facility located on the western boundary of Ocotillo approximately one quarter mile south of Queen Creek Road, which is owned by the City.

SS. “Waterfront Facilities” shall mean docks, wharves, floats, slips, ramps, piers, landings and other structures or equipment designed for use with and access to the Lakes.

ARTICLE II PROPERTY SUBJECT TO OCOTILLO DECLARATION

Section 1. General Declaration Creating Ocotillo.

Declarant intends to develop Ocotillo by subdivision into various Lots and Parcels and to sell and convey such Lots and Parcels. As Declarant acquires fee simple title to the Annexable Property whether pursuant to its purchase options or otherwise, it shall have the right and option to add such portions to the covered Property and subject same to the provisions of this Declaration by Recording a Supplemental Declaration. As portions of the Covered Property are developed, Declarant intends, with respect to particular property, to Record one or more Tract Declarations covering Lots and parcels and designating Common Areas which will incorporate this Declaration and which will establish such additional covenants, conditions, and restrictions as may be appropriate for that property. Declarant hereby declares that all of the Covered 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, property which is not part of a Lot or Parcel and which is dedicated or sold 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; provided, however the provisions of Article IV hereof shall apply

to such publicly owned property, and, provided further, the 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 Ocotillo and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Ocotillo and every part thereof. All of this Declaration shall run 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, Lessees and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Master Development Plan or any portions thereof as to which a Tract Declaration has not been Recorded or from dedicating or conveying portions of Ocotillo, including streets or roadways, for uses other than as a Lot, parcel or Association Land.

Section 2. Association Bound.

Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

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

Section 1. Easements of Enjoyment.

Every Owner and Lessee and other Member of the Association shall have a 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:

(a) The right of the Association to charge reasonable admission and other Special Use Fees for the use of any recreational or other facility situated upon the Common Areas. Fees shall be uniform among Members.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities and other Common Areas by any Member (i) for any period during which any Assessment against his Lot or Parcel remains delinquent; (ii) for a period not to exceed 60 days for any infraction of this Declaration, a Tract Declaration or the Ocotillo Rules, and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period.

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or agreements with the City of Chandler effective prior to the date hereof or specified on a Recorded subdivision plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners of two-thirds (2/3) of the Memberships in each class of Members agreeing to such dedication or transfer has been Recorded, except that the Board shall have authority (without such approval of two-thirds (2/3) of the memberships in each class of Members) to transfer to such public agencies, authorities or utilities easements and rights-of-way which are intended to benefit Ocotillo and which do not have any substantial adverse affect on the enjoyment of the Common Areas by the Members.

(d) The right of the Association to regulate the use of the Common Areas through the Ocotillo Rules and to prohibit access to those Common Areas, such as landscaped right-of-way, not intended for use by the Members. The Ocotillo Rules shall be intended, in the absolute discretion

of the Board, to enhance the preservation of the common Areas or the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents.

Section 2. Delegation of Use.

Any Member may, in accordance with the Ocotillo Rules and the limitations therein contained and this Declaration (a) delegate his right of enjoyment in the Common Areas and facilities to the members of his family, his Tenants, or his guests or invitees; or (b) designate another person to exercise all of his rights (but not liabilities or voting rights), which other person shall, during the period of such designation, have the sole right to delegate rights of enjoyment pursuant to subsection (a) of this Section.

ARTICLE IV

LAND USE CLASSIFICATIONS, PERMITTED USES & RESTRICTIONS

Section 1. Land Use Classifications.

As portions of Ocotillo are readied for development, the Land Use Classifications, restrictions, easements, rights of way, and other matters, including new or different uses and restrictions therefore and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration which may be Recorded for that portion of the Covered 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. In exercising its authority to record Tract Declarations, Declarant shall not impose any new land use classifications or new restrictions which are not generally in conformance with then-existing uses and restrictions applicable to Ocotillo or with the scheme of development contemplated by the Master Development Plan and this Declaration. Notwithstanding the foregoing, Declarant may, at its option, include any land use within Ocotillo which may be also approved by the City, but is under no obligation to approve a land use not specifically described herein even if such approval should be given by the City. The Land Use Classifications for Lots, Parcels and Association Land established by a Tract Declaration shall not be changed except as specifically permitted by this Declaration.

Contemplated Land Use Classifications are as follows:

- (a) Single Family Residential Use.
- (b) Apartment Development Use, which may be converted to Condominium Development Use upon approval by the Board.
- (c) Condominium Development Use, which may be converted to Apartment Development Use upon approval of the Board.
- (d) Commercial Office Use.
- (e) Shopping Center Use.
- (f) Industrial Park Use.
- (g) General Commercial Use.
- (h) Association Use, which may include Common Areas and may include well-sites owned by the Association and used for the withdrawal of groundwaters.
- (i) Lake Area Use.
- (j) Well-Site Use, which shall be used only for the withdrawal of groundwaters.
- (k) General Public Use.

(l) Cluster Residential Use, which shall consist of Lots with Dwelling Units intended for Single Family occupancy and may include those types of residential housing arrangements known as townhouses, clustered housing, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the cluster development.

(m) Golf Course Use, to include facilities normally associated with Golf Courses, such as clubhouses, maintenance facilities, driving ranges, etc.

(n) Baseball Training Facility Use.

(o) Public or Private Recreational Use.

(p) Resort Hotel.

(q) School.

(r) Library.

(s) Fire Station.

(t) Commercial Recreational Use.

(u) Clubhouse Use, including a restaurant, tennis courts, swimming pools, parking and other recreational and related uses.

(v) Power Substation.

(w) Telecommunications Site.

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. All Tract Declarations shall be subject to applicable zoning laws.

Section 2. Covenants, Conditions Restricts 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, the Owners thereof, and all Residents, regardless of Land Use Classifications.

(a) Architectural Control. No improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any property within Ocotillo, or the improvements located thereon, from its natural or improved state existing on the date a Tract Declaration for such property was first Recorded shall be made or done without prior approval of the Design Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Design Review Board. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots or Parcels, shall be subject to the prior written approval of the Design Review Board. No changes or deviations in or from the plans and specifications once approved by the Design Review Board shall be made without prior written approval of the Design Review Board. the Design Review Board shall have the right to adopt from time to time written architectural guidelines and standards for Ocotillo in accordance with the provisions of Article XI, Section 1 below. It is intended that the Design Review Board shall have the authority to approve or reject any proposed construction, modification or alteration

on Ocotillo on the basis of engineering as well as architectural and/or aesthetic considerations, subject, however, to the provisions of Article XI, Section 5.

(b) 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 or poultry, or livestock shall be maintained so as to be Visible from Neighbouring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, 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, a pet shop in a General Commercial or shopping Center Land Use Classifications.

(c) Temporary Occupancy and Temporary Buildings. No trailer, 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 or to enhance the sale of such dwelling on any property shall be removed immediately after the completion of construction or sales.

(d) 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 set back 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 free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area which is included in a Landscape Easement Area or over which (1) the Association assumes the responsibility in writing; (2) the Association has been given such responsibility by a Recorded instrument as provided in Article X, Section 1 of this Declaration; or (3) the City of Chandler assumes responsibility, for so long as the Association or the City of Chandler assumes or has responsibility as provided in Subsections (ii), (iii) and (iv) on each Lot or Parcel designated for Single Family Residential Use shall be completed within six (6) months after the Dwelling Unit on such Lot or Parcel is first occupied. No landscaping shall be erected, placed or maintained anywhere in or upon a Lot or Parcel unless the plans for such landscaping have been approved by the Design Review Board. All such landscaping shall be completed in accordance with the Ocotillo Rules.

(e) Nuisances: Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or parcel, and no odors or loud

noises 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 to the 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 foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. 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 and trash and debris shall not be permitted to accumulate. Supplies of brick, block, lumber and other building materials will be placed only in such areas as may be approved by the Design Review Board, and construction vehicles of contractors, agents and suppliers shall not use any routes within Ocotillo which Declarant or the Board designates as off-limits to such vehicles. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of improvements may be kept only in areas approved by the Design Review Board, 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.

(f) Diseases and Insects. No Owner 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.

(g) 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 Subsection (a) above, such building or structure shall be immediately repaired or rebuilt or shall be demolished and all debris resulting therefrom promptly removed.

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

(i) Mineral Exploration. No Lot or Parcel (other than a Parcel designated as a Well-Site) 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.

(j) 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 Design Review Board. 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 effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

(k) 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 and shall not be Visible From Neighboring Property.

(l) 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 Declarant or the Association may require for the operation and maintenance of Ocotillo; or (iii) that used in connection with the business permitted under a Tract Declaration.

(m) 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) Not more than two (2) identification signs for individual residences, each with a face area of seventy-two square inches or less.

(iii) Signs (including “for sale” and “for lease” signs) the nature, number, and location of which have been approved in advance by the Design Review Board.

(iv) Signs of builders on any Lot or Parcel approved from time to time by Declarant or the Board as to number, size, colors, design, message content, location and type.

(v) Such other signs (including but not limited to construction job identification signs, builder signs, and subdivision, shopping center, apartment and business identification signs) which are in conformance with the requirements of the City of Chandler and which have been approved in writing by the Design Review Board as to size, colors, design, message content and location.

(vi) Signs used by Declarant for the purposes described in this Section 2 (Aa) below.

(n) Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot or Parcel shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot or Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the plat or other instrument creating the subdivision, easement or other interest. 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 and which has not previously been platted or subdivided into Lots. 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 against any Lot or parcel without the provisions thereof having been first approved in writing by the Board and Recorded any covenants, conditions, restrictions, or easements Recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot or Parcel, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot or Parcel has been approved by Declarant or, if Declarant no longer owns any portion of the Covered Property, by the Board and the proposed use otherwise complies with this Declaration and any applicable Tract Declaration. Notwithstanding anything contained herein to the contrary, Declarant shall have the right to change the location, size or configuration of the Common Areas after a subdivision plat affecting such Common Areas has been recorded so long as such change does not adversely affect any Owners of Lots or Parcels in the reasonable judgment of Declarant.

(o) Utility Easements. There is hereby created a blanket easement upon, across over and under each Lot and Parcel for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc., as such development of the lot or Parcel and the construction of the first Dwelling Unit or other building thereon. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on the Lots and Parcels. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot or Parcel except as initially programmed and approved by the Declarant or the Design Review Board, or, if installed after the Recording of the Tract Declaration, approved by the Owner of such Lots or Parcel and the Design Review Board.

(p) Landscaping Easement. There is hereby created an easement for ingress, egress, installation, replacement, repair and maintenance of landscaping, sidewalks, perimeter walls, and utility access upon, over and across the Landscape Easement Area in favor of Declarant and its successors and assigns. The exact location of the Landscape Easement Area over portions of the Covered Property will be designated from time to time on a Recorded subdivision plat or Tract Declaration or by Deed or other conveyance. Declarant shall have full power and authority to transfer and convey said easement to the City of Chandler or to the Association under such terms and conditions as may be deemed appropriate by Declarant. If the reasonable use of the Landscape Easement Area so requires, any person, any person or entity having a right to ingress and egress upon, over, under and across that portion of each Lot or Parcel which is immediately adjacent to the Landscape Easement Area for the purpose of exercising the rights and obligations contained in this Subsection.

(q) Party Walls. All perimeter walls to be installed by builders or Lot Owners must be of a design approved in advance by the Design Review Board. The cost of installation of such walls will be borne by the builder or Lot Owner. However, upon completion, the wall will become a party wall and all applicable rules shall apply. Except as hereinafter provided, the rights and duties of Owners with respect to Party Walls between Lots and Parcels or Party Fences between Lots and Parcels shall be as follows:

(i) The Owners of contiguous Lots or parcels who have a Party Wall or Party Fence shall both equally have the right to use such Wall or Fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner and each such Owner shall be responsible for normal and recurring maintenance of the portion of the Party Wall or Party Fence affecting his property line and which is exposed to his property.

(ii) In the event that any Party Wall or Party Fence is damaged or destroyed through the act of an Owner or any of this tenants, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall or Party Fence without cost to the Owner of the adjoining Lot or Parcel. Any dispute over an Owner's liability for such damage shall be resolved as provided in subsection (v) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(iii) In the event any Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the

act of an adjoining Owner, his Tenants, agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin such Party Wall or Party Fence, or, in the event of a Party Wall or Party Fence between Common Areas and Lots or Parcels, it shall be the obligation of the Association and Owners whose Lots or Parcels adjoin such Party Wall or Party Fence, to rebuild and repair such Wall or Fence at their joint expense, such expense to be allocated among the Owners and, if applicable, the Association, in accordance with the frontage of their Lots or Parcels on the Party Wall or Party Fence.

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

(v) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Anything in the foregoing to the contrary notwithstanding:

(vi) In the case of Party Fences (1) between Common Areas and Lots or Parcels, or (2) constructed by the Declarant or the Association on Common Areas within a Lot or Parcel, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, Sections 2 and 3, except that each Owner of a Lot or Parcel shall be responsible for painting the portion of the Party Fence facing his Lot or Parcel or the portion thereof which is not a portion of the Common Area, and

(vii) The provisions of this Subsection (q) shall not apply to any Party Wall which separates the interiors of two Dwelling Units and the rights of the owners of such Dwelling Units with respect to Party Walls shall be governed by plats to be Recorded by the developer of the Dwelling Units.

(r) 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, pedestals, or other structures approved by the Design Review Board. No provisions hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Board.

(s) 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 approval of the Design Review Board.

(t) Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Parcel or on any Street in Ocotillo so as to be Visible From Neighboring Property, the Common Areas or the streets; provided, however, the provisions of this Section shall not apply to (i) pickup trucks of less than 3/4-ton capacity with camper shells not exceeding 7 feet in height measured from ground level and mini-motor homes not exceeding 7 feet in height and 18 feet in length which are parked as provided in Subsection (u) below and are used on a regular and recurring basis for basic transportation, (ii) boats permitted to be stored or moored on Lots, Parcels, or Lake Areas pursuant to Article IV, Section 4 below, or

(iii) trucks, trailers and campers parked in areas designated for parking in non-residential Land Use Classifications in connection with permitted commercial activities conducted in such non-residential Land Use Classifications.

(u) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or Street in Ocotillo, and no inoperable or unlicensed vehicle 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 or streets; provided, however, that the provisions of this Section 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 by the Design Review Board; (ii) any automobile repair business which may be permitted in any General Commercial, Industrial Park, or Shopping Center Land Use Classification; (iii) the parking of such vehicles during normal business in areas designated for parking in a non-residential Land Use Classification; (iv) vehicles parked in garages on Lots or Parcels so long as such vehicles are in good operating condition and appearance and are not under repair, and/or (v) the storage of such vehicles in an area designated for such purposes on a Tract Declaration or on a site plan approved by the Design Review Board.

(v) Parking. It is the intent of the Declarant to restrict on-street parking as much as possible. Vehicles of all Owners, Lessees and Residents, and of their employees, guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, 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 Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking on Ocotillo is otherwise prohibited or the parking of an inoperable or unlicensed vehicle.

(w) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot or Parcel, any member of the Design Review Board, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot or Parcel, and the improvements thereon, except for the interior portions of commercial buildings, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

(x) Roofs. No Solar panel, air conditioning unit, evaporative cooler or other apparatus, structure or object shall be placed on the roof of a Dwelling Unit, commercial building, or other improvement without the prior written consent of the Design Review Board. Such approval will generally be given only when such equipment can be placed on flat portions of roofs completely surrounded by and concealed by a parapet or other aesthetically suitable screening. The intent of the Declarant is to minimize the adverse aesthetic impact of roof mounted mechanical or other equipment and to prevent street level views of such equipment from the streets in front of houses and from playing areas of the Golf Course and the Lakes. Notwithstanding anything else stated herein, the Design Review Board may approve roof mounted equipment when, in the opinion of the Design Review Board, such approval is not adverse to the overall aesthetic impact of Ocotillo. However, approval for roof mounted equipment on a given Lot or Parcel does not prevent disapproval of similar roof mounted equipment on other Lots or Parcels. Subject to such further restrictions as are applicable with respect to Golf Course Lots or Parcels, any approved solar panel, air conditioning unit, commercial building, or other improvement shall be mounted on the rear of the roof so that such apparatus or object is below the highest ridge on the roof and is not visible to a person six (6) feet tall standing anywhere on the curb or street in front of the Dwelling Unit.

(y) Arterial Fencing and Walls. All perimeter walls and fencing along arterials must be constructed and maintained in accordance with the specifications and regulations established by the Declarant or the Design Review Board. the fencing and walls on all Lots or Parcels whose primary buildings back onto an arterial street shall be six (6) feet high. Such fencing and walls shall extend along the arterial street and, if that Lot or Parcel is a corner Lot or Parcel, such fencing and walls shall extend along the side street intersecting the arterial for the lesser of the following: (1) the distance from the arterial to the front setback line as established by applicable zoning or the Tract Declaration on the Lot or Parcel, or (2) one hundred (100) feet. The fencing and walls on all Lots or Parcels whose primary buildings side onto an arterial shall be six (6) feet in height along the arterial and if that Lot or Parcel is a corner Lot or Parcel, the walls or fencing shall be six (6) feet in height to the corner of the intersection of the side street and the arterial street or to a point where it enters the visibility triangle as established by the City ordinances and then said fencing or walls will be reduced to a height of three (3) feet or less as approved by the Design Review Board or continue to the front property line rounding the corner along the front property line for a distance of ten (10) feet. All such fencing shall be placed on the front, side or rear property line, as applicable, or at a position within the Landscape Easement Area as agreed to or specified by the Declarant or the Design Review Board. Notwithstanding the foregoing, no fencing or walls shall be higher than as permitted by applicable zoning regulations, and pilasters may extend beyond six (6) feet only as approved by Declarant or the Design Review Boards.

(z) Golf Course Lots or Parcels. The following additional restrictions shall apply to all Golf Course Lots or Parcels:

(i) Golf Course Parcels or Lots may be required to have fences or walls along the Golf Course boundaries. If required by the Design Review Board or in a Tract Declaration, all fencing on Golf Course Lots or Parcels along the boundaries adjacent to the Golf Course shall be located, constructed and maintained in accordance with specifications established by the Declarant or the Design Review Board for the purpose of preserving and protecting the views of adjoining land from the Golf Course. Such fences shall be a combination of masonry fencing topped with wrought iron fencing as approved by the Design Review Board. Owners of Golf Course Lots or Parcels, prior to installing fences or walls, or prior to modifying a fence or wall existing on a Golf Course Lot or Parcel, shall obtain written approval regarding the location thereof and any such construction or modification from the Design Review Board.

(ii) No solar panels, TV antennas, TV dish antennas, air conditioning units, evaporative coolers or other similar devices or objects shall be placed on the roofs of Dwelling Units located on Golf Course Lots or Parcels nor shall such objects be placed anywhere else on the Golf Course Lots or Parcels so as to be Visible From Neighboring Property; provided, however, that an air conditioning unit may be mounted on the roof of a Dwelling Unit if such unit has been architecturally screened pursuant to the prior written approval of the Design Review Board. If a wall or any other structure is constructed or landscaping is planted to screen any solar panels, TV antennas, TV dish antennas, air conditioning units, evaporative coolers or any other similar devices or objects from view, the design of such wall, structure or landscaping must be approved in advance by the Design Review Board.

(iii) Any portion of a Golf Course Lot or Parcel which is Visible from Neighboring Property shall be kept neat, clean and free of weeds and residue. All Golf Course Lots or Parcels shall be landscaped and maintained in accordance with the rules

and regulations established by the Declarant or the Design Review Board. Such landscaping shall not be modified without prior approval of the Design Review Board, which Board shall determine that such modification will not interfere with the view from Neighboring Property of that Lot or parcel thus landscaped or other Golf Course Lots or Parcels.

(iv) No temporary storage facilities, storage sheds or any other temporary or permanent structures may be placed on any Golf Course Lots or parcels so as to be Visible From Neighboring Property without the prior consent of the Design Review Board.

(v) The roofs of all buildings on Golf Course Lots or Parcels shall be either a flat roof structure with raised parapet walls on all sides of the building to a height sufficient to insure the flat area of the roof is not Visible From Neighboring Property or must be constructed of concrete tile, clay tile, shake shingles, asphalt shaded or fiberglass shaded shingles, bermuda roofing material or some other material approved by, and with roof design approved by, the Design Review Board prior to installation.

(vi) Within (30) days of occupancy each Owner of a Golf Course Lot or Parcel shall install permanent draperies or suitable window treatments on all exterior windows. In no event shall windows be covered with paper, aluminum foil, bed sheets or any other materials or temporary coverings not specifically intended for such purpose. No interior or exterior reflective material shall be used as a window covering unless such material has been approved by the Design Review Board.

(Aa) Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development or sale of property within Ocotillo.

(Bb) Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners and Residents, the Board may make rules restricting or regulating their presence on Ocotillo as part of the Ocotillo Rules or may direct the Design Review Board to make rules governing their presence on Lots or Parcels as part of the architectural guidelines.

(Cc) Model Homes. The provisions of this Declaration and of Tract Declarations which prohibit non-residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of residential dwelling on Ocotillo and parking incidental to the visiting of such model homes so long as the location of such model homes are approved by the Design Review Board, the opening and closing hours are approved by the Board, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Design Review Board may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the City of Chandler and any rules of the Design Review Board. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or builder thereof is not actively engaged in the construction and sale of Single Family residences on Ocotillo and no home shall be used as a model home for the sale of homes not located on Ocotillo.

(Dd) Incidental Uses. The Board may approve uses of property with a Land Use Classification which are incidental to the full enjoyment by the Owners of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Board may wish to impose, in its sole discretion, for the benefit of Ocotillo as a whole. By way of example and not of limitation, the uses which

the Board may permit are private roadways and streets within an area having a Land Use Classification of Cluster Residential Use or Condominium Development Use, tennis clubs and/or swimming clubs intended primarily for the benefit of all or certain Owners and Residents within areas having a Land Use Classification of Cluster Residential Use or Condominium Development Use, a business office for the Association within an area having Land Use Classification or Association Use, tennis courts, swimming pools, and other recreational facilities intended for usage by the Residents or Owners of more than a single Lot or Parcel within any area classified for Residential Use, and a sales, information and marketing center operated by Declarant within an area having a Land Use Classification or Association Use. The Declarant intends to utilize a portion of the Association recreation facilities for information and marketing related activities and reserves the right for such use until Declarant no longer owns Parcels or Lots for initial sale to purchasers. Such activity will be accomplished in areas designated by agreement between the Board and Declarant and will not be done in a manner which will substantially distract from the enjoyment by Residents or Members of the recreation facilities. When Declarant has conveyed title to substantially all of the Lots and Parcels, or when the Declarant notifies the Board in writing that all or part of the areas so used are then available to the Association for its use, such areas shall be relinquished to the control of the Association in a condition consistent with the condition and state of repair of the remainder of the recreation facilities. The Association shall not be entitled to compensation for the use of such facilities.

Section 3. Covenants, Conditions, Restrictions and Easements Applicable to Lots Within Single Family Residential Land Use Classification.

The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots and the Owners and Residents thereof lying within a Single Family Land Use Classification:

(a) General. Property classified as “Single Family Residential” under a Tract Declaration may be used only for the construction and occupancy of Single Family detached dwellings and typical residential activities incidental thereto, such as the construction and use of a family swimming pool. All property within such Land Use Classification shall be used, improved, and devoted exclusively to Single Family Residential use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any such property and no person shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage. No structure whatever, other than one private, single family residence, together with a private garage for not more than three (3) cars, a guest house or servant quarters, shall be erected, placed or permitted to remain on any Lot and no facilities for the preparation of food shall be provided or permitted in any guest or servants’ quarters erected on said Lot unless expressly approved by the Design Review Board within the scope of applicable zoning regulations. In no case shall the guest or servants quarters to be leased as a separate Dwelling Unit.

(b) Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family Tenant from time-to-time by the Owner, subject to the provisions of this Declaration and the Ocotillo Rules.

Section 4. Covenants, Conditions, Restrictions and Easements Applicable to Lakes Areas Land Use Classification.

(a) General. Lakes Areas may include portions of Lots, parcels and Common Areas, and Lakes Areas shall be designated as such in a recorded plat of dedication, in a Tract Declaration, in a Subdivision Plat Recorded by the Declarant, or in a Deed from Declarant to the transferee of a Parcel. The inclusion of small ponds or water features for decorative or landscape purposes and

which are not designed for common Lake uses such as boating and fishing shall not constitute Lakes Areas. Lakes Areas shall consist of the following:

- (i) Water Access Areas, which shall be Common Areas where permitted users of the Lakes may have access to the Lakes for boating and other permitted recreational uses;
 - (ii) The Private Waterfront Areas, which shall be the portions of Lots and Parcels which are subject to easements, as shown on or created by a Recorded plat of dedication, Subdivision Plat, Deed, Tract Declaration, or subparagraph (j) of Article IV, Section 4 for access to and the creation, use, maintenance and operation of the Lakes;
 - (iii) The common Area Lakes to be owned by the Association; and
 - (iv) All streams, pipes, or other methods for interconnecting the Lakes including the Water Distribution System.
- (b) Lake Rules. The Ocotillo Rules shall contain specific rules regulating the use and operation of the Lakes Areas, which rules shall be in addition to the provisions of this Section 4. Such rules shall include, but shall not be limited to, rules covering the following items: the landscaping and construction of fences, retaining walls, docks, ramadas, etc. in Private Waterfront Areas or elsewhere on Lake Lots or Lake Parcels; the storage of boats and other watercraft; the launching, recovery, mooring, storage, maintenance, and operation of boats and other watercraft; the painting, repairing, and overhauling of all or any part of a boat or other watercraft or any equipment in, on, or used in connection therewith; fishing and other aquatic activity; the storage of equipment and personal property of every kind and character; and the discharge, collection or disposal of sanitary sewage, garbage, and other waste substances. All Owners, Lessees and Residents shall abide by the Lake rules and shall be responsible for all acts of their family, guests, invitees, and Designees. The Board shall have the right to make, supplement, amend, change or revoke the Lake rules without advance notice to Owners.
- (c) Swimming. There shall be no swimming in the Lakes except in case of an emergency.
- (d) Right-of-Way. The Association reserves the right to enter upon and use the portion of any Lot or parcel within the Private Waterfront Area for any lawful purpose in connection with the creation, use, operation and maintenance of the applicable Lake which does not unreasonably interfere with the Owner's use of the Lot or Parcel.
- (e) Waterfront Facilities. No Owner of any Private Waterfront Area shall locate, construct, maintain, or operate any Waterfront Facility except within the limits of the Private Waterfront Area of the Owner's Lot or Parcel. Each conveyance or transfer of a Lot or parcel containing a Private Waterfront Area shall include all right, title, interest and estate of the Owner in the Private Waterfront Area and the Waterfront Facilities thereon. No Waterfront Facilities shall be constructed, erected, installed, placed, altered, or maintained without the prior written consent of the Design Review Board. Each Owner of any Private Waterfront Area shall, at his sole cost and expense, keep and maintain all Waterfront Facilities located thereon in good and clean appearance and in good and safe condition and repair, including the periodic repair, painting, and refurbishing thereof. Without the prior written consent of the Board, no such Waterfront Facilities shall be used except by the Owner of the Lot or Parcel, or Lessees of a Rental Apartment on the Parcel, to which the Waterfront Facilities are appurtenant and said Owner's and Lessee's family, guests visitors or tenants. No structures, facilities, or other improvements shall be located,

constructed, maintained or operated in, upon or under any Private Waterfront Area or in the Lakes except for Waterfront Facilities and other structures and improvements approved by the Design Review Board. No such construction will be allowed in such a manner that any portion of the structure rests on or penetrates the Lake bottom or side.

(f) Boats and Watercraft. Unless otherwise approved in writing by the Board, only the following types of boats and watercraft shall be allowed in any Lakes area: power boats operated by the Association for maintenance, safety, or other community purposes or by the Declarant; sailboats; canoes; paddle boats; and electrical or battery operated boats. Except for power boats operated by the Association, no gasoline or other combustible powered boats shall be permitted on any Lakes area. The size of all boats and watercraft shall be subject to restriction by the Board. All boats and watercraft must be registered with the Association and must bear identification numbers as assigned by the Association.

(g) Lakes Patrol. One or more persons may be named by the Association to constitute the Lakes Patrol, which person(s) shall have authority to restrict the usage of any Lakes areas or any portion thereof by any persons, including an Owner, Lessee or Resident, or their family, guests, Tenants or Designees, and of any boat or watercraft due to negligence in the operation of any boat or watercraft, violation of any safety regulation, or violation of any of the Lakes rules. Any person whose use of the Lakes area is restricted by the Lakes Patrol may request review of such restriction by the Board, the decision of which shall be binding. The Board may also restrict the usage of the Lakes areas by any person on account of any such negligence or violation, as well as for reasons elsewhere set forth in this Declaration.

(h) Use of Private Waterfront Area. The Private Waterfront Area shall be used only for the permitted construction and operation thereon of Waterfront Facilities for the accommodation of private boats or other watercraft owned by the Owner or Residents of a Lot or Parcel, or by the Lessee or Residents of a Rental Apartment in an Apartment Development, containing the Private Waterfront Area. Parcels designated for Resort Hotel Use or other similar use may use the Private Waterfront Area for logical commercial purposes included in Tract Declarations for such uses or in accordance with reasonable rules made by the Board. Notwithstanding the foregoing, the Association may approve the use of pumps and meters, installed according to published rules, for the removal of water or effluent from the Lakes for designated uses as provided in the Water Management Agreement. No houseboat may be used or stored in the Private Waterfront Area and no boat or watercraft shall be used as a residence or shall be lived in while in the Lakes area. Nothing shall be done or kept in the Private Waterfront Area or on the Lakes which would be a violation of any provision of this Declaration, any Tract Declaration, or the Ocotillo or Lake Rules.

(i) Waterfront Access Areas. The Board shall have the sole authority to regulate the use of the waterfront access areas, the Waterfront Facilities to be erected thereon, and the storage of boats and watercraft thereon.

(j) Lake Easement. There is hereby created an easement, the area of which includes all portions of any Lakefront Lot, Lakefront Parcel or any Exempt Property which is covered in whole or in part by portions of any area of the Lakes; the shoreline of the Lakes; and a land area consisting of a strip of land eight feet wide parallel to the shoreline of each Lake and any appurtenant canals, ditches, or other areas used in conjunction with the Lakes. The Lake easement also includes an area four feet wide on either side, over, and under any pipe or other device used to transport water from any well site or canal to or from any of the Lakes or from any one Lake to the other or away from any of the above areas to any drainage (a) to allow access on, over, or under any Lot, Parcel or Exempt Property to reasonably perform maintenance and cleaning on the Lakes,

Lake shore, or Lake Water Distribution system, and (b) to allow access over any portion of the surface of the Lakes by any Member of the Association for boating or other water activity when otherwise allowed by this Declaration, Board rules or Board actions.

(k) Lakes Configuration. Neither Declarant nor the Association shall be obligated to maintain the Lakes in the size, level or formation as originally shown on the plat of Ocotillo where forces of nature or governmental restrictions prohibit or otherwise render such maintenance of the Lakes unreasonable for environmental, economic and other reasons.

Section 5. Covenants, Conditions, Restrictions and Easements Applicable to Golf Course Land Use Classification; Possible Transfer to the Association.

(a) General. The Golf Course Land shall be designated as such in a plat and/or a Tract Declaration recorded by the Declarant. The Golf Course Land and the clubhouse and associated recreational facilities shall be privately owned (subject to the provisions of Subsection (b) below), Association Membership rights, responsibilities and Assessments attributable or charged to the Golf Course Land, and/or the Clubhouse Parcel shall be determined by Declarant and included in the applicable Tract Declaration.

(b) Greenbelt Restriction—Transfer to the Association. The Golf Course Land shall be used solely as a golf course, park, or for greenbelt or desert landscaping purposes. In the event that for more than thirty (30) consecutive days the Golf Course is not substantially maintained for one or more of those purposes with landscaping in “reasonable condition,” the Association may maintain the landscaping and shall be entitled to reimbursement from the Owner of the Golf Course Land for the cost of that maintenance. If the Golf Course Land is not substantially maintained by its Owner in “reasonable condition” for one or more of the above described purposes for a period in excess of five (5) consecutive years then upon application by the Association to the Superior Court of Maricopa County and a determination by that Court that the Golf Course Land has not been substantially maintained in “reasonable condition” for one or more of the above described purposes by the owner thereof for a period in excess of five (5) consecutive years, fee title to the Golf Course Land (but not the Clubhouse Parcel) shall be transferred to the Association. “Reasonable condition” as used in this Subsection (b) shall mean weed control and landscaping area and maintenance which is consistent with the standard of landscaping maintenance employed by the City with respect to its public parks.

(c) Operation of Golf Course. The Golf Course and the clubhouse and other facilities located on the Clubhouse Parcel shall be operated in such a manner so as not to create a nuisance for the Owners and Residents of Ocotillo. However, this paragraph shall not be construed to in any way prevent activities normally associated with the operation and maintenance of a golf course, including but not limited to the conduct of tournaments including spectators, television, radio and other media coverage, and various related activities.

(d) Right to Restrict Use of Lakes. The Owner of the Golf Course shall have the right to restrict the use of the Lakes which are located within the Golf Course or Golf Course Land where the use of those portions of the Lakes may interfere with the playing of golf or create a hazard to golfers or those using the Lakes. The restriction does not eliminate the Lakefront Easement as it applies to the use by the Association for maintenance of the Lakes but the Association shall use reasonable care when performing such maintenance to minimize the impact of such maintenance on the playing of golf.

Section 6. Variances.

The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in Article IV of this Declaration or in any Tract Declaration if the Board determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner or Lessee, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees, and Residents of Ocotillo and is consistent with the high quality of life intended for Residents of Ocotillo.

**ARTICLE V
ORGANIZATION OF ASSOCIATION****Section 1. Formation of Association.**

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

Section 2. Board of Directors and Officers.

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws as the same may be amended from time to time. The initial Board shall be composed of five (5) members. The Board may also appoint various committees and appoint a manager or management company who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager, management company, or any other employee of the Association.

Section 3. The Ocotillo Rules.

By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Ocotillo Rules. The Ocotillo Rules may restrict and cover the use of any area by any Member, Resident or Lessee, by the family of such Member or by an invitee, licensee, tenant or Designees of such Member; provided, however, that the Ocotillo Rules shall not be discriminated among Members and shall not be consistent with the Declaration, the Articles or Bylaws. Upon adoption, the Ocotillo Rules shall have the same force and effect as they were set forth in and were a part of this Declaration.

Section 4. Personal Liability.

No member of the Board or any committee of the Association, no officer of the Association, and no manager, management company and its employees, or other employee of the Association shall be personally liable for any Member, or to any person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, the management company and its employees, any representative or employee of the Association, or any committee, committee member or officer to the Association; provided, however, the limitations set forth in this Section 4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 5. Ancillary Associations.

In the event any homeowners or similar association is to be formed by the developer (other than the Declarant) of a Parcel or subdivision on Ocotillo, the articles of incorporation, bylaws or other governing

documents for such association shall not be effective unless the contents thereof have been approved by the Board and the governing documents specify that such association and the rights of its members are subject and subordinate to the provisions of this Declaration, the provisions of the Articles and Bylaws of the Association, and the provisions of the Ocotillo Rules.

ARTICLE VI MEMBERSHIP AND VOTING

Section 1. Owners of Lots and Parcels.

Every Owner of a Lot or Parcel which is subject to assessment shall be a Member of the Association. Each such Owner shall have the following number of Memberships:

- (a) One Membership for each Lot owned by the Member;
- (b) One Membership for each four completed Rental Apartments owned by a Member;
- (c) In the case of (i) the Owner of a Parcel designated for use as an Apartment Development but as to which construction has not been completed, one Membership for each four Rental Apartments permitted under the current zoning or approved by the Master Development Plan then in effect for Ocotillo, or (ii) the Owner of a Parcel designated for Condominium Development but as to which a horizontal property regime has not been Recorded, one Membership for each Dwelling Unit permitted upon the Parcel under the Master Development Plan then in effect for Ocotillo, the number of such Dwelling Units to be determined on the assumption that the number of Dwelling Units within a Density Classification on the Master Development Plan will be spread evenly over all land within the Density Classification. If a site plan for a Parcel is subsequently approved by the Design Review Board and the City of Chandler for a number of Dwelling Units or Rental Apartments assumed pursuant to the Master Development Plan, the number of Memberships shall be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual number of Dwelling Units or Rental Apartments authorized by the site plan; and
- (d) In the case of the Owner of a Parcel with a Land Use Classification of Single Family Residential or Cluster Residential, one membership for each Dwelling Unit permitted upon the Parcel under the Master Development Plan then in effect for Ocotillo. If a subdivision plat or other instrument created Lots is Recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of Memberships held by the Owner, as Owner of the Parcel, shall be reduced by a number equal to the number of Lots in the Recorded subdivision plat. All Memberships attributable to the Parcel shall cease when the land area ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public and no unplatted Single Family Residential or Cluster Residential area remains within the Parcel.
- (e) In the case of a Parcel designated for other than Single Family Residential, Cluster Residential, Apartment Development or Condominium Development Use (including, without limitation, the Clubhouse Parcel and/or the Golf Course Land), the number of Memberships and Assessments shall be determined by Declarant and included in the applicable Tract Declaration. If a parcel shall be developed as an office or commercial Condominium, then each Condominium Unit would carry one Membership. If a Parcel is subdivided, the total Assessment on the subdivided parts must at least equal the Assessment on the original Parcel.

Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable. There shall be only one Membership for each Lot,

for each Dwelling Unit, and for each four Rental Apartments, and there shall only be such number of Memberships for other uses of a Parcel as are established by a Tract Declaration as described above. Memberships shall be shared by any joint Owners of, or Owners of undivided interests in, a Lot, Parcel, Rental Apartment or Dwelling Unit.

Section 2. Lessees.

Lessees of Rental Apartments are not Members of the Association, and the Owner of such Rental Apartments shall hold the Memberships attributable thereto. Each Lessee of a Rental Apartment during the period of the Lease shall have the right to the use of the Lakes to include boating and fishing privileges within limits established by the Board. The Board or the Lakes Patrol shall have the right to restrict such use of any Lessee for infraction of the rules for a period not to exceed sixty (60) days for each such infraction. Such Lessees shall have the right to the use of other recreation amenities unless such right is restricted in accordance with the Ocotillo Rules.

Section 3. Declarant.

The Declarant shall be a Member of the Association for so long as it holds a Class B Membership pursuant to Section 4 below or owns any Lot or Parcel in Ocotillo.

Section 4. Voting.

The Association shall have two classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships, except the Class B Membership held by the Declarant, and each Owner shall be entitled to one vote for each Class A Membership held by the Owner and for which such Owner is paying a full Assessment, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof.

Class B. There shall be one Class B Membership which shall be held by Declarant and the Class B membership shall be entitled to three (3) votes for each Lot, Dwelling Unit, Rental Apartment, Condominium Unit, or acre or portion of an acre in a Parcel owned by Declarant (herein collectively referred to as "Property Interests") which would otherwise qualify for one (1) Membership in accordance with Section 1 of this Article VI if owned by persons other than the Declarant. Subject to adjustment upon the addition of Annexable Property, for purposes of this Section only and in order to pursue the development of Ocotillo contemplated by the Master Development Plan, the Class B Member shall at any time be deemed to be the owner of three thousand (3000) Property Interests, less the number of then outstanding Class A Memberships required to pay a full Assessment. The Class B Membership shall cease and be converted to Class A Memberships, on the basis of the number of Lots, Dwelling Units, Rental Apartments, Condominium Units, acres or portions of acres and Parcels actually owned by the Declarant, on the happening of the first of the following events:

- (a) Within ninety (90) days after the total votes outstanding in the Class A Memberships required to pay a full Assessment equal the total votes outstanding in the Class B Membership, or
- (b) The first day of January, 1999; or
- (c) At any time by written notice to the Association that Declarant wishes to convert all Class B Memberships to Class A.

In determining the point at which Class B votes convert to Class A votes, those Class A votes which qualify for the reduced Assessment in Article VII shall not be counted as Class A votes.

Section 5. Right to Vote.

No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such 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 Member casts a vote representing a certain Membership, 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 Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

Section 6. Cumulative Voting for Board Members.

In any election of the members of the Board, every owner of a Membership entitled to vote at such an election shall have the number of votes for each Membership equal to the number of directors to be elected, except that the Class B member shall have the number of votes designated in Section 4 above times the number of directors to be elected. Each Member shall have the right to cumulate his votes for one candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

Section 7. Membership Rights.

Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

Section 8. Transfer of Class A Membership.

Except as provided in Section 9 of this Article VI, the rights and obligations of the owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot or Parcel, as applicable, and then only to the transferee of ownership to the Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof.

Section 9. Use of Membership: Designees.

Subject to the Ocotillo Rules, all of the owners of a Membership may designate one or more non-Members (herein referred to as a "Designee") to exercise all of the rights of the Member under this Declaration except the Member's voting rights, but such designation shall not relieve the Member of any liabilities or obligations as an Owner or with respect to the Membership. So long as such designation is in effect, the Member shall be permitted to exercise only his voting rights and the Board may, among other things, in its discretion, set maximum or minimum periods for which such designation may be in effect and limit number of persons who may be so designated by any Member at any one time. The Designee need not be a Resident and need not live on Ocotillo unless the Board adopts rules requiring such residence.

Section 10. Adjustment in Votes of Class B Member.

(a) In the event the general plan of development contemplated by the Master Development Plan (or modification thereof) is not pursued to completion and an affirmative statement of abandonment of any or all parts of the general plan previously approved by the City of Chandler is Recorded in the office of the County Recorder of Maricopa County, Arizona, then, in such event the number of Property Interests deemed owned by the Declarant pursuant to Section 4 above shall be reduced by the number of Class A Memberships which would otherwise be attributable to the area so abandoned if such area were owned by persons other than the Declarant. In the event the Declarant shall make a “constructive abandonment” of the general plan of development, then, and in such event, the number of Property Interests deemed owned by the Declarant pursuant to Section 4 above shall be reduced by the number of Class A Memberships which would otherwise be attributable to the area so abandoned if such area were owned by persons other than Declarant. For the purposes of this Section, a “constructive abandonment” shall be deemed to have occurred when the Declarant (i) shall fail to record a Tract Declaration with respect to any Parcel in Ocotillo for a period of one (1) year, (ii) shall have ceased all on-site and off-site construction activities at Ocotillo for a period of one (1) year, and (iii) shall have made no substantial progress towards planning or preparation for continuation of the general plan of development for a period of one (1) year. A constructive abandonment shall not occur if the lack of Recording and planning or preparation shall be due to strikes, acts of God, war, riot, insurrection, or other acts which are beyond the control of the Declarant.

(b) As all or any portion of the Annexable Property is added to the Covered Property by Supplemental Declaration pursuant to the provisions of Article XIV hereof, an appropriate adjustment to the votes entitled to be cast by the Class B Membership will be made based upon the additional Property Interests thereby acquired by Declarant.

Section 11. Suspension of Voting Rights.

Any Member who fails to pay the Annual Assessments, Special Assessments or Maintenance Charges provided herein within sixty (60) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interest and/or penalties are paid in full.

ARTICLE VII COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges.

The Declarant, for each Lot and Parcel established within Ocotillo, hereby covenants and agrees, and each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article VII, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII, (3) Effluent Assessments established by this Article VII, and (4) Maintenance Charges established by this Article X, Sections 2 and 3, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, Effluent Assessments, Maintenance Charges, together with interest, costs, and reasonable attorney’s fees, shall be a charge on the Lot or Parcel and shall be a continuing servitude and lien upon the Lot or Parcel against which each Assessment is made. The Annual and Special Assessments against each Lot or parcel shall be based on the number of Memberships appurtenant to the Lot or Parcel (including, without limitation, Memberships attributable to Dwelling Units, Condominium Units and/or Rental Apartments located on such Lot or Parcel). Each such Annual and Special Assessment, Effluent Assessment

and Maintenance Charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot or Parcel at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

Section 2. Annual Assessments.

In order to provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which the first Tract Declaration is recorded, shall assess against each Lot and Parcel an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of Section 4 hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article IX.

Section 3. Uniform Rate of Assessment.

The amount of any Annual or Special Assessment against each Lot and Parcel shall be fixed at a uniform rate per Membership, except that the following Owners shall pay during the periods specified below, only a portion of the Annual Assessment otherwise attributable to their Memberships, as follows:

(a) The Owner of a Lot shall pay only 25% of the Annual Assessment attributable to his Membership until the earlier of (i) the completion of the first Dwelling Unit on the Lot or (ii) six months from the commencement of construction of the first Dwelling Unit on the Lot.

(b) The Owner of a Parcel restricted under a Tract Declaration to uses other than residential shall pay only 25% of the Annual Assessment otherwise attributable to his Membership until the earlier of (i) the completion of the first building on the Parcel, or (ii) six months from the commencement of construction of the first building on the Parcel.

(c) The Owner of a Parcel which, under a Tract Declaration, is to be used as an Apartment Development (and which has not been converted to Condominiums) or a Condominium Development (and for which the horizontal property regime has not been Recorded) shall pay only 25% of the Annual Assessment otherwise attributable to each of his Memberships until a site plan has been approved by the Design Review Board and the City of Chandler for any portion of the Parcel and an Apartment Development or Condominium Development has either been completed on the Parcel or six months have elapsed since construction of the Development was commenced.

(d) The Owner of a Parcel which, under a Tract Declaration, has been classified as Single Family Residential or Cluster Residential (and which remains a Parcel because it has not yet been subdivided) shall pay only 25% of the Annual Assessment otherwise attributable to each of his Memberships.

(e) Reduced Assessments referred to in this Article VII, Section 3(b) through 3(d) above, upon approval by the Board, may be continued for unimproved portions of Parcels which improvements are to be phased. The portions of the Assessments affected by the phasing shall be determined by the Board.

(f) Assessments do not apply to land owned by Declarant which has not yet been subdivided or annexed, or for which a Tract Declaration has not yet been Recorded. The Declarant shall not be required to pay assessments on account of the Class B Membership but shall be required to pay to the Association the difference between the cost of operating and administering the Association and the income from Assessments to Class A Members so long as Declarant holds the Class B Membership. When the Class B Membership ceases in accordance with Article VI, Section

4, Declarant shall not longer be required to subsidize the cost of operating and administering the Association but shall be subject to payment of Assessments for all remaining undeveloped Parcels and Lots owned by Declarant, and shall be eligible for the reduced Assessment, in the same way as any other Class A Member.

For purposes hereof, a Dwelling Unit or other building shall be deemed completed when, in the opinion of the Board, the building is ready for occupancy, or, in the case of a commercial rental building, ready for the making of interior Tenant improvements. If the Owner of a Parcel or Lot ceases to qualify for the reduced 25% rate during the period to which an Annual Assessment is attributable or the Parcel ceases to be a Parcel because it has been subdivided for Single Family Residential or Cluster Residential usage, the Assessment attributable to a Membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly, quarterly or annual basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

Section 4. Maximum Annual Assessment.

The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the “Maximum Annual Assessment”, which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until January 1 of the year following the recordation of the first Tract Declaration, the Maximum Annual Assessment against each Owner shall be three hundred dollars (\$300) per each Membership.

(b) Commencing with the year immediately following recordation of the first Tract Declaration, and continuing each succeeding year thereafter, the Maximum Annual Assessment shall be increased effective January 1 of each such year without a vote of the Membership by the greater of five percent (5%) or the percentage increase, if any, of the Consumer Price Index as hereinafter defined. Any increase in the Maximum Annual Assessment based on the Consumer Price Index shall be computed by reference to the statistics published in the Monthly Labor Review by the United States Department of Labor, Bureau of Labor Statistics, designated “Consumer Price Index—U.S. City Average for All Urban Consumers, 1967 Equals 100, All Items”, hereinafter called the “Consumer Price Index”. For purposes of identification the Consumer Price Index for June, 1985 was 322.3. An adjustment in the Maximum Annual Assessment based on an increase in the Consumer Price Index shall be computed by the following formula:

X = Consumer Price Index for September of the year immediately preceding the year of the first Annual Assessment.

Y = Consumer Price Index for September of the year immediately preceding the calendar year for which the Maximum Annual Assessment is to be determined.

$(\frac{Y}{X})$ multiplied by \$300 = Maximum Annual Assessment for the year in question.

If the Bureau of Labor Statistics shall change the method of determining the Consumer Price Index, the formula for determining the Maximum Annual Assessment shall be altered or amended, if possible, so as to continue the base period and base figure, but in the event it shall be impossible to do so, or in the event the Bureau of Labor Statistics shall cease to publish the said statistical information and such information is not available from any other source, public or private, then and in any such event a new formula for determining the Maximum Annual Assessment shall be adopted by the Board.

(c) From and after January 1 of the year immediately following the recordation of the first Tract Declaration, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under subsection (b) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5. Special Assessments for Capital Improvements and Extraordinary Expenses.

In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Lane, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose. In connection with any such Special Assessment, Owners qualifying for paying only 25% of the Annual Assessment attributable to their Memberships pursuant to Section 3 above shall also be required to pay only twenty-five percent (25%) of the Special Assessment otherwise attributable to each such Membership unless such Owner is determined by the Board to be directly benefited by the capital improvement financed in whole or in part by such Special Assessment, in which event the Owner shall pay the full amount of the Special Assessment attributable to his Membership. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

Section 6. Effluent Assessment.

The Association has agreed to the purchase of a minimum amount of effluent or water from the Ocotillo Management Group and intends to use a significant portion of such effluent or water for Common Area landscaping irrigation and other uses. The Association and Declarant agree that each purchaser of Parcels for development within Ocotillo will agree, through the initial sales contract, to use and pay for a proportionate share of the effluent or water allocated to the Association. It is intended that the Association shall, as a part of the Water Management Agreement and on behalf of the Ocotillo Management Group, bill and collect for such effluent and water withdrawn from the Lakes. The Association may meter on a bulk basis and bill sub-associations, developers, and commercial users for the use of such effluent or water. In the event a Parcel is subdivided into Lots for individual Ownership and no sub-association is formed, the Association may meter on a bulk basis all such effluent and water to that Parcel and charge on the basis of the greater of the minimum amount of effluent or water designated in the initial sales contract (or the Tract Declaration) to the Parcel or the actual bulk amount used, and charge the Owners of each single Lot equally for a share of the resulting charge by dividing the total charge by the total number of Lots to determine the per Lot charge. Individual metering of Lots is not anticipated. The charge for such effluent or water to each Owner (including any individual Lot Owner as described above) shall be called an Effluent Assessment and shall be subject to the Assessment Lien. The Effluent Assessment shall be the actual cost of the effluent or water to the Association and no additional charges for the effluent or water may be added.

Section 7. Notice and Quorum for Any Action Authorized Under Sections 4 and 5.

Written notice of any meeting called for the purpose to taking any action authorized under Sections 4 or 5 of this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting at the addresses of such Members on the records of the Association. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement,

and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Establishment of Annual Assessment Period.

The period for which the Annual Assessment is to be levied (the "Assessment period") shall be the calendar year, except that the first Assessment Period shall commence upon filing of the first Tract Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Maricopa County, Arizona, an instrument specifying the new Assessment Period.

Section 9. Rules Regarding Billing and Collection Procedures.

The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual and Special Assessment, the Effluent Assessment and the Maintenance Charges imposed pursuant to Article X, Section 2 and 3, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the member on the records of the Association, that the Assessment or any instalment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership becomes liable for payment of an increased sum pursuant to Section 3 of this Article during the Assessment Period, he shall notify the Association but his failure to notify the Association shall not relieve him of the liability for such amounts. The amount of the Annual Assessment against Members who become such during an Assessment Period upon the Recording of a Tract Declaration shall be prorated and such new Members shall be liable for a proportionate share of any previously levied Special Assessment if such Assessments are paid in installments.

Section 10. Collection for Rental Apartments.

The periodic billing for Rental Apartments shall be made to each Owner of a parcel developed for Rental Apartments by a Tract Declaration for the sum of all assessable Rental Apartment units whether or not they are currently leased. Each such Owner is responsible for and shall pay one Assessment for each four Rental Apartments. Each Owner of a Parcel designated for Rental Apartment Use shall provide the Association with a current list of Lessees for identification purposes at least monthly and will update the list as changes occur.

Section 11. Collection Costs and Interest on Delinquent Assessments.

Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a rate equal to the greater of (a) twelve percent (12%) per annum or (b) the then prevailing interest rate on loans insured by the Federal Housing Association, or (c) the then prevailing interest rate on loans guaranteed by the Veterans Administration, and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The applicable interest rate on such delinquent amounts shall be determined on a daily basis. The Board may also record a Notice of Delinquent Assessment against any Lot or Parcel as to which any such amount is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's costs in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 12. Evidence of Payment of Annual and Special Assessments and Maintenance Charges.

Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all Annual and Special Assessments, Effluent Assessments and Maintenance Charges (including interest, costs and attorney's fees, if any, as provided in Section 10 above) have been paid with respect to any specified Lot or Parcel as of the date of such certificate, or (b) if all Annual and Special Assessments, Effluent Assessments and Maintenance Charges have not been paid, the amount of such Annual and Special Assessments, Effluent Assessments and Maintenance Charges (including interest, costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Parcel in question.

Section 13. Property Exempted from the Annual and Special Assessments and Assessment Lien.

Exempt Property shall be exempted from the assessment of the Annual and Special Assessments and, except as provided in Article X, Section 3, from Maintenance Charges and the Assessment Lien; provided, however, that in the event any change of ownership of Exempt property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual and Special Assessments and, if theretofore exempt therefrom, Maintenance Charges (prorates as of the date such Exempt Property became Assessable Property) and the Assessment Lien..

ARTICLE VIII

ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

Section 1. Association as Enforcing Body.

This Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce the provisions of this Declaration on behalf of the Association by any appropriate action, whether at law or in equity.

Section 2. Association's Remedies to Enforce Payment of Annual and Special Assessments, Effluent Assessments and Maintenance Charges.

If any Member fails to pay the Annual for Special Assessments or installments when due, the Effluent Assessments and/or Maintenance Charges assessed pursuant to Article X, Sections 2 and 3, the Association may enforce the payment of the Annual for Special Assessments, Effluent Assessments and/or Maintenance Charges by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

- (a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual or Special Assessments, Effluent Assessments or Maintenance Charges;
- (b) Foreclose the Assessment Lien against the Lot or Parcel in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover for deficiency) and the Lot or Parcel may be redeemed after foreclosure sale as provided by law.

Section 3. Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien.

The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot or Parcel as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to Liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot or Parcel. Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot or Parcel free of the Assessment Lien for all Annual and Special Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual and Special Assessments, Maintenance Charges and the Assessment Lien therefore accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

**ARTICLE IX
USE OF FUNDS; BORROWING POWER**

Section 1. Purposes for Which Association's Funds May be Used.

The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Ocotillo and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without Ocotillo, which may be necessary, desirable or beneficial to the general common interests of Ocotillo, the Members and the Residents. The Association shall not expend funds directly or indirectly to support, endorse, or contribute to any political candidate or issue. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Areas and public rights of way and drainage areas within Ocotillo, recreation (including operation and maintenance of the Lakes and Waterfront Facilities in Common Areas) liability insurance, communications, ownership and operation of vehicle storage areas, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association also may expend its funds for any purposes for which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

Section 2. Borrowing Power.

The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate.

Section 3. Association's Rights in Spending Funds From Year to Year.

The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus

any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 4. Administration of Special Use Fees.

The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvement to which they pertain.

Section 5. Insurance

The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas. The Association shall also cause the Owners of Private Waterfront Areas to be named as additional insureds on liability policies covering the Private Waterfront Areas in amounts not less than \$1,000,000.00 for injuries or death in one occurrence and \$1,000,000.00 for damage to property, insuring the Owners against liabilities to the public arising out of use of the Lakes.

**ARTICLE X
MAINTENANCE**

Section 1. Common Areas and Public Right of Way.

The Association, or its duly delegated representatives, shall maintain and otherwise manage all Common Areas, including, but not limited to, the landscaping, walkways, paths, parking areas, drives, recreational facilities and the roofs, interiors and exteriors of the buildings and structures located upon said properties; provided however the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas which are part of Lots or Parcels unless (i) such landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of Ocotillo and (ii) the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth in a Recorded instrument as hereinafter provided. The Association shall also maintain any landscaping and other improvements not on Lots and parcels which are within the exterior boundaries of the Covered Property, which are within areas shown on a subdivision plat or other plat of dedication for the Covered Property or covered by a Tract Declaration, and which are intended for the general benefit of the Owners, Lessees and Residents of the Covered Property, except the Association shall not maintain areas which (i) the City of Chandler or other governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot or Parcel pursuant to Article IV, Section 2(d) of this Declaration unless the Association elects to maintain such areas and as to which the Association has not previously made such an election to maintain. Specific areas to be maintained by the Association may be identified on subdivision plats Recorded or approved by the Declarant, in Tract Declarations and in Deeds from the Declarant to a transferee of a Lot or Parcel, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such Common Areas and other areas intended for the general benefit of Ocotillo. The Board may require Owners of Commercial property to maintain developed areas including adjacent rights-of-way and areas outside a perimeter fence when logical and/or practical.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so that the Ocotillo development will reflect a high pride of ownership.

In this connection the Association may, subject to any applicable provisions on Special Assessments for capital improvements, in the discretion of the Board:

- (a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon Association land;
- (b) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of the Common Area used as a road, street, walk, driveway, parking area, or Lake area, except that no permanent improvements (other than portions of the Lakes) shall be made by the Association on any Common Area that is not Association Land and the Association shall provide only maintenance on Common Areas which are not Association land;
- (c) Replace injured and diseased trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (d) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event any subdivision plat, Tract Declaration, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots or Parcels will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners, Lessees, and Residents of Ocotillo for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of this maintenance and other obligations of the Association under this Article X and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots and Parcels having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 2. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas.

In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests, invitees or Designees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot, Parcel or Rental Apartment is subject and shall be secured by the Assessment Lien. The decision of the Board shall be final and binding as to whether any need for repair is caused by any willful or negligent act of any of the persons described in the preceding sentence. Any charges or fees to be paid by the Owner of a Lot or Parcel pursuant to Section 1 of this Article X in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 3. Improper Maintenance and Use of Lots and Parcels.

In the event any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots and Parcels or other areas of Ocotillo which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner which violates this Declaration or any Tract Declaration applicable thereto, or in the event the Owner or Lessee of any of any Lot, Parcel or Rental Apartment is failing to perform any of its obligations under this Declaration, any Tract Declaration, or the architectural guidelines and standards of the Design Review Board, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof together with any fines assessed against said Owner or his family, guests, invitees, licensees, employees or Designees shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien.

**ARTICLE XI
DESIGN REVIEW BOARD****Section 1. Establishment.**

The Declarant shall establish a Design Review Board to perform the functions of the Design Review Board set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the Design Review Board, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration or any Tract Declaration. The Design Review Board shall consist of such number of regular members and alternate member as the Declarant may designate and such members shall be appointed by the Declarant. The appointees need not be architects, Owners, or Residents and do not need to possess any special qualifications of any type except such as the Declarant may, in its discretion, require. The Design Review Board shall hold regular meetings, a quorum for which shall consist of a majority of the regular members, and the concurrence of a majority of the regular members shall be necessary for any decision of the Design Review Board. An alternate member, approved by the Declarant, may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Design Review Board shall promulgate architectural guidelines and standards to be used in rendering its decisions, which guidelines and standards must be approved by the Declarant prior to their implementation. Subject to the provisions of Section 2 of this Article, the decision of the Design Review Board shall be final on all matters submitted to it pursuant to this Declaration.

Section 2. Appeal.

Any Owner or other Resident aggrieved by a decision of the Design Review Board may appeal the decision to the Declarant in accordance with procedures to be established by the Declarant. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the Declarant's opinion warrant a reconsideration. If the Declarant fails to allow an appeal or if the Declarant, after appeal, again rules in a manner aggrieving the appellant, the decision of the Declarant is final. In the event the decision of the Design Review Board is overruled by the Declarant on any issue or question, the prior decision of the Design Review Board shall be deemed modified to the extent specified by the Declarant and, for the purposes of this Declaration such decision, as so modified, shall

thereafter be deemed the decision of the Design Review Board. In this regard, the Declarant shall have the authority to modify or overrule the decision of the Design Review Board on any matter presented to it.

Section 3. Fee.

The Design Review Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

Section 4. Appointment of Design Review Board Members.

Design Review Board members are appointed by the Declarant and may be replaced at the discretion of the Declarant. Declarant's right to appoint Design Review Board members shall cease and the Board shall be vested with that right and all other rights of the Declarant pertaining to the Design Review Board as stated in Article XI, five (5) years after the date on which the Class B Membership is extinguished, at such time Declarant no longer owns any property at Ocotillo, or when such right is expressly relinquished by Declarant to the Board in writing, whichever condition occurs first.

Section 5. Non-Liability for Approval of Plans.

Plans and specifications shall be approved by the Design Review Board as to style, exterior design, appearance and location, but the Design Review Board takes no responsibility for engineering design or for compliance with zoning and building ordinances, and by approving any such plan and specifications neither the Design Review Board, any member thereof, the Association, any Member, the Board, nor the Declarant assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Board, any member thereof, the Association, the Board nor the Declarant shall be liable to any Owner or other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (c) the development, or manner of development, of any property within Ocotillo. Approval of plans and specifications by the Design Review Board is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, without limitation, zoning ordinances and building codes.

**ARTICLE XII
RIGHTS AND POWERS OF ASSOCIATION**

Section 1. Association's Rights and Powers as Set Forth in Articles and Bylaws.

In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such right and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by the law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 2. Association's Rights of Enforcement of Provisions of this and Other Instruments.

The Association, as the agent and representative of the Owners, shall have the right to enforce the

Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

Section 3. Contracts with Others for Performance of Association's Duties.

Subject to the restrictions and limitations contained herein, the Association may enter into contacts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

Section 4. Change of Use of Association Land and Procedure Therefore.

Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land or of the Association's interest in any Common Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions, (or zoning regulations), or Tract Declaration restricting or limiting the use of the Association Land.

ARTICLE XIII

TERM; AMENDMENTS; TERMINATION

Section 1. Term; Method of Termination.

This Declaration shall be effective upon the date of Recording hereof and, as amended from time to time, shall continue in full force and effect for a term of thirty (30) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) Years each, unless there is an affirmative vote to terminate this Declaration by the then members casting ninety percent (90%) of the total votes cast at an election held for such purpose in person or by proxy within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may likewise be terminated at any time if ninety percent (90%) of the votes cast by each class of Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Article VIII, Section 3 above, on seventy-five percent (75%) of the Lots and Parcels upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa County, Arizona, a Certificate of

Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration and the Covenants contained herein shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 2. Amendments.

This Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section 1 of this Article. The Certificate of Amendments shall set forth in full the amendment adopted, and, except as provided in Section 3 of this Article, shall certify that at any election duly called and held pursuant to the provisions of the Articles and Bylaws the Members casting ninety percent (90%) of the votes of each Class of Members at the election voted affirmatively either in person or by proxy for the adoption of the amendment; provided, however, after twenty (20) years from the date of the Recording of this Declaration, the affirmative vote of Members casting only seventy-five percent (75%) of the votes of each Class of Members at a duly called election shall be necessary to amend this Declaration. A Tract Declaration may be amended in the same manner as this Declaration provided that there is also obtained the written concurrence of ninety percent (90%) (or, after twenty (20) years from the date of the Recording of this Declaration, seventy-five percent (75%) of the Owners of all Lots and Parcels subject to such Tract Declaration. In addition, a Tract Declaration, so long as the Declarant is the Owner of a Lot or parcel subject to such Tract Declaration, may be amended by a Recorded instrument executed by the Declarant, the Owners of all Lots and Parcels subject to the Tract Declaration, the holders of any first mortgages and deeds of trust described in Article VIII, Section 3, on Lots or Parcels subject to the Tract Declaration, and the FHA or VA, as applicable, if such agency has guaranteed or insured any loan on a Lot or Parcel subject to the Tract Declaration. Notwithstanding the foregoing to the contrary, (i) all amendments must be approved by the Board, and (ii) all amendments to Article VIII, Section 3 affecting lienholder priority must be approved by the holders of any and all first mortgages and deed of trust affected thereby.

Section 3. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions.

Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any portion thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of the Covered Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for, and adopt as an amendment hereto, other and different control provisions. Except as provided in this Section 3, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 2 of this Article.

**ARTICLE XIV
ANNEXATION OF LAND**

Section 1. Annexation Without Approval and Pursuant to General Plan.

All or any part of the Annexable Property may be annexed to the Covered Property and become subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Supplementary Declaration of Covenants, Conditions and Restrictions, as described hereinafter in the Section of this Article entitled "Supplementary Declarations", covering the property sought to be annexed shall be executed and Recorded by Declarant or its successors and assigns; provided, however, no Supplementary Declaration shall be so executed and Recorded pursuant to this Section more than seven (7) years (i) subsequent to the Recording of this Declaration or (ii) subsequent to the last Recording of a Supplementary Declaration, whichever of (i) or (ii) shall have later occurred. The Recording of said Supplementary Declaration shall constitute and effectuate the annexation of said portion of the Annexable Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said property shall be part of the Covered Property and all of the Owners of Lots or Parcels in said property shall automatically be Members of the Association. Although Declarant or its successors and assigns shall have the ability to so annex all or any portion of the Annexable Property, neither Declarant nor its successors and assigns shall be obligated to annex all or any portion of such Annexable Property and such Annexable Property shall not become subject to this Declaration unless and until a Supplementary Declaration shall have been so executed and Recorded.

Section 2. Supplementary Declarations.

The annexations authorized under the foregoing section shall be made by Recording in the office of the County Recorder of Maricopa County, Arizona, a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to the Annexable Property or subject portion thereof which shall extend the coverage of this Declaration to such property. Any such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property so annexed and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, revoke, modify or add to the covenants established by this Declaration within the existing Covered Property.

**ARTICLE XV
USE OF WATER RIGHTS**

Section 1A. Association Use.

Any and all water rights, whether as to surface water and/or groundwater, including rights existing by virtue of inclusion of the Lot or Parcel, or any portion thereof, within the Salt River Project Agricultural Improvement and Power District, that may be deemed to be appurtenant to a Lot or Parcel, or to the Common Areas, located within Ocotillo, shall be made available to the Association, or to an entity designated in writing by the Board, to be used for the benefit of the Owner of any such Lot or Parcel, all other Owners, the Association and Ocotillo for the purposes of filling and maintaining the Lakes, irrigation of the Common Areas and for such other purposes as the Association deems appropriate, provided that such water rights shall only be used in connection with the enhancement of the value, desirability and attractiveness of Ocotillo. No Owner shall have any right to demand or receive water from the Salt River Project Agricultural Improvement and Power District or to pump any groundwater from a Lot or Parcel. Each grantee of Declarant by the acceptance of a deed of conveyance, or each purchaser under any agreement of sale, or each person acquiring a Membership in the Association, and the heirs, personal representatives, successors and assigns of the foregoing persons: (a) accept the same subject to the exclusive use of the water rights

by the Association, or its designee as hereinabove set forth, as a covenant running with the land and an equitable servitude; (b) agree to execute any and all documents that may be required in order to authorize the use of such water rights by the Association or its designee; and (c) hereby constitute and appoint the Association as his attorney-in-fact to execute, acknowledge and deliver any instruments or documents necessary, appropriate or helpful for such purpose, which power of attorney is irrevocable and coupled with an interest. Notwithstanding any provision in this paragraph, each Owner remains responsible to the City of Chandler or any other government entity or water company which provides domestic water to such Owner for his individual use in connection with his Lot or Parcel.

Section 1B. Water Management Agreement.

The Association is party to a Water Management Agreement between Ocotillo Management Group and Declarant which designates the Association as beneficiary upon the transfer of title to that portion of the Common Areas designated as Lakes from Declarant to Association. Such Agreement provides that the Ocotillo Management Group may use that portion of the Lakes which shall be owned by the Association as a water reservoir and distribution system. The Declarant and Association agree to the purchase and use initially of one million gallons of effluent to be provided by the Ocotillo Management Group and agree to initially pay the price of \$28 per acre foot for such water and further agree to use a portion of the water as irrigation water for Common Area landscaping, and will, through agreement to be contained in Tract Declarations for certain Parcels, use portions of the Association allocation for sub-association landscaping, water features, and, in certain instances, for individual Lot landscaped irrigation.

The water from the Ocotillo Management Group will be made available to the Declarant/Association by delivery into the system of Lakes built on a part of Ocotillo and the Declarant/Association and Parcel or Lot Owners using the water shall be responsible to deliver the water from the Lakes to the point of use and to meter all water so taken through a metering system approved by the Ocotillo Management Group.

Ocotillo Management Group benefits by the use of the Lakes as a storage and distribution system and the Association benefits by using the Lakes for recreational purposes.

The Association shall be designated as the water manager for all of the water in the Lakes on Ocotillo, regardless of ownership of the land beneath the Lakes.

**ARTICLE XVI
MISCELLANEOUS**

Section 1. Interpretation of the Covenants.

Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

Section 2. Severability.

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 3. Rule Against Perpetuities.

If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities starts to run on the challenged interest; the "lives in being" for

computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 4. Change of Circumstances.

Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 5. Rules and Regulations.

In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the rights to adopt rules and regulations with respect to all other aspects of the Associations's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 6. Declarant's Disclaimer of Representations.

Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Recorded plat or other instrument Recorded in the office of the County Recorder of Maricopa County, Arizona, Declarant makes no warranties or representations whatsoever that the plans presented envisioned for the complete development of Ocotillo can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 7. References to the Covenants in Deeds.

Deeds to and instruments affecting any Lot or Parcel or any part of the Covered Property may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrations, successors and assigns.

Section 8. Successors and Assigns of Declarant.

Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder.

Section 9. Gender and Number.

Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 10. Captions and Titles.

All captions, titles of headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Section 11. Notices.

If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City of Chandler or Ocotillo. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 12. FHA/VA Approval.

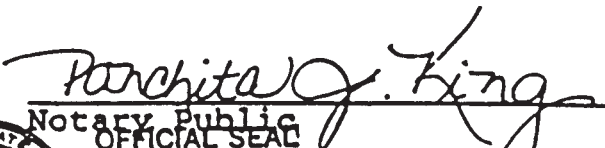
If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B Membership, the following actions will required the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by

FHA or VA: Dedications of Common Areas (except where such dedication is required as of the date hereof to the City of Chandler); and amendment of this Declaration.

IN WITNESS WHEREOF, OCOTILLO WEST JOINT VENTURE, an Arizona joint venture partnership, has hereunto caused its name to be signed by the signatures of its duly authorized representatives as of the day and year first above written.

The foregoing instrument was acknowledged before me this 17th day of March, 1986, by Ted E. Garrett, Jr. the Vice President of Ameriwest Corporation, a New Mexico corporation, as general partner of Ocotillo West Joint Venture, an Arizona joint venture partnership, on behalf of the partnership.

In witness whereof, I hereunto set my hand and official seal.


Notary Public
OFFICIAL SEAL
PANCHITA J. KING
NOTARY PUBLIC - STATE OF NEW MEXICO
Notary Bond Filed with Secretary of State
My Commission Expires 11/16/86

My Commission Expires:
November 16, 1986

River Base and Meridian, Maricopa County, Arizona, more particularly described s follows:

BEGINNING at the Northeast corner of Section 17;

thence along the East line of said Section South 00°52'20" West 2645/10 feet to the East quarter corner of Section 17;

thence still along same South 00°56'30 West 2652.32 feet to the Southeast corner of Section 17;

thence along the South line of Section 17 South 89°58'44" West 2684.50 feet to the South quarter corner of said Section;

thence along same North 89°21'22" West 2643.06 feet to the Southwest corner of Section 17 and the Southeast corner of section 18;

thence along the South line of Section 18 South 89°50'56" West 2650.18 feet to the South quarter corner of Section 18;

thence along the mid-section line of said Section North 00°10'07" East 2660.43 feet to the center of Section 18;

thence still along the mid-section line North 01°45'10" East 660.66 feet to a point which is the Northeast corner, Southeast quarter, Southeast quarter, Northwest quarter of said Section;

thence along the North line of the Southeast quarter, Southeast quarter, Northwest quarter North 84°54'10" West 1310.17 feet to the Northwest corner of the Southwest quarter, Southeast quarter, Northwest quarter;

thence along the Westerly line of the Northwest quarter of the Southeast quarter of the Northwest quarter North 01°20'02" East 660.81 feet to a point which is the Northeast corner of the Southwest quarter of the Northwest quarter of said Section;

thence along the North line of the Southwest quarter of the Northwest quarter North 89°53'26" West 55.00 feet to a point;

thence North 01°20'02" East 1321.64 feet to a point in the Northerly line of Section 18;

thence along said Northerly line South 89°52'01" East 1379.65 feet to the North quarter corner of Section 18;

thence still along same South 89°50'51" East 2642.15 feet to a point which is the Northeast corner of Section 18 and the Northwest corner of Section 17;

thence along the Northerly line of Section 17 South 89°46'26" East 2647.77 feet to the North quarter corner of Section 17;

thence still along same South 89°48'03" East 2682.87 feet to the true point of beginning.

EXCEPT an undivided one-half (1/2) interest in and to that certain concrete canal located in proximity to and parallel to the East boundary line of the South half of said Section 17.

PARCEL NO. 2:

A portion of Section 16, T. 2 S., R. 5. E., G. & S.R. B. & M., Maricopa County, Arizona; and is more particularly described as follows:

BEGINNING at the NW corner of Section 16; THENCE along the Northerly line of said Section 16, S 89 37'56" E, 658.87 feet to a point which is the NE corner of the NW?, NW?. NW?; THENCE along the East line of the NW?, NW?, NW? in part and partly along the East line of the SW?, SW? NW? S 00 52'01" W, 2643.88 feet to a point which is the SE corner of the SW?, SW?, NW?; THENCE along the mid-section line N 89"44'17" W, 659.13 feet to the West quarter corner of said Section; THENCE along the West line of Section 16, N 00 52'20" E, 2645.10 feet to the TRUE POINT OF BEGINNING.

Exhibit "B"

PARCEL NO. 1:

The West half of Section 17, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2:

The East half of Section 17, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the East 30 feet of the West half of the Northeast quarter of said Section; and

EXCEPT an undivided 1/2 interest in and to that certain concrete canal located in proximity to and parallel to the East boundary line of the South half of said Section.

PARCEL NO. 3:

The East 30 feet of the West half of the Northeast quarter of Section 17, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

PARCEL NO. 4:

All of Section 18, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

Except Lots 2 and 3 thereof.

PARCEL NO. 5:

All of Section 19, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

PARCEL NO. 6:

All of Section 20, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT an undivided 1/2 interest in and to that certain concrete canal located in proximity to and parallel to the East boundary line of said Section, and

EXCEPT certain Tracts located in the Southeast quarter of the Northeast quarter and in the Northeast quarter of the Southeast quarter thereof more particularly described as follows:

TRACT 1:

Beginning at a point which is 402.55 feet North and 99.00 feet South 89 degrees 59 minutes West of the Southeast corner of the Northeast quarter of said Section 20; thence South parallel to the East line of the Section, a distance of 174.27 feet to an iron pipe; thence South 89 degrees 59 minutes West a distance of 288.62 feet to an iron pipe; thence North a distance of 174.97 feet to an iron pipe; thence North 89 degrees 59 minutes East a distance of 288.62 feet to an iron pipe and the point of beginning.

TRACT 2:

Beginning at a point which is 634.52 feet North and 99.00 feet South 89 degrees 59 minutes West of the Southeast corner of the Northeast quarter of said Section 20; thence South parallel to the East line of the Section, a distance of 161.97 feet to an iron pipe; thence South 89 degrees 59 minutes West a distance of 288.62 feet to an iron pipe; thence North a distance of 161.97 feet to an iron pipe; thence North 89 degrees 59 minutes East a distance of 288.62 feet to an iron pipe and the point of beginning.

TRACT 3:

Beginning at a point which is 822.49 feet North and 99.00 feet South 89 degrees 59 minutes West of the Southeast corner of the Northeast quarter of said Section 20; running thence South 164.97 feet; running thence South 89 degrees 59 minutes West 288.62 feet; running thence North 164.97 feet; running thence North 89 degrees 59 minutes East, a distance of 293.62 feet to the point of beginning.

TRACT 4:

Beginning at a point 73 feet West of the Southeast corner of the Northeast quarter of the Northeast quarter of said Section 20; thence North (assumed bearing) parallel to the East line of said Section 20, a distance of 332.65 feet; thence South 89 degrees 59 minutes parallel to the South line of the Northeast quarter of the Northeast quarter of Section 20, a distance of 351.12 feet; thence South 764.94 feet; thence North 89 degrees 59 minutes East, a distance of 351.12 feet to a point 73 feet West of the East line of said Section 20; thence North 432.26 feet of the point of beginning.

TRACT 5:

Commencing at the Southeast corner of the Northeast quarter of the Northeast quarter of said Section 20; thence South 0 degrees 01 minutes 10 seconds West along the Easterly section line of the said Section 20, a distance of 466.54 feet; thence West (assumed bearing) a distance of 424.12 feet; thence North 0 degrees 01 minutes 10 seconds East, being parallel to the said Easterly line of Section 20, a distance of 239.75 feet to the true point of beginning; thence North 89 degrees 58 minutes 50 seconds West a distance of 200.00 feet; thence North 0 degrees 01 minutes 10 seconds East, a distance of 70.00 feet; thence South 89 degrees 58 minutes 50 seconds East, a distance of 200.00 feet; thence South 0 degrees 01 minutes 10 seconds West, a distance of 70.00 feet to the true point of beginning.

TRACT 6:

Beginning at a point which is 634.52 feet North and 457.62 feet South 89 degrees 59 minutes West of the Southeast corner of the Northeast quarter of said Section 20; thence South parallel to the East line of the Section, a distance of 161.97 feet to an iron pipe; thence South 89 degrees 59 minutes West a distance of 350.00 feet to an iron pipe; thence North, a distance of 161.97 feet to an iron pipe; thence

North 89 degrees 59 minutes East a distance of 350.00 feet to an iron pipe and the point of beginning.

TRACT 7:

Beginning at a point which is 634.52 feet North and 877.62 feet South 89 degrees 59 minutes West of the Southeast corner of the Northeast quarter of said Section 20; thence South parallel to the East line of the Section, a distance of 161.97 feet to an iron pipe; thence South 89 degrees 59 minutes West a distance of 137.00 feet to an iron pipe; thence North a distance of 161.97 feet to an iron pipe; thence North 89 degrees 59 minutes East, a distance of 137.00 feet to an iron pipe and the point of beginning.

TRACT 8:

Beginning at a point which is 16.43 feet South and 99 feet West of the East quarter corner of said Section 20; running thence South a distance of 175.00 feet; running thence West a distance of 131.12 feet; running thence North a distance of 175.00 feet; running thence East a distance of 131.12 feet to the point of beginning.

TRACT 9:

From the Southeast corner of the Northeast quarter of the Southeast quarter of Section 20, run North (assumed bearing) along the Section line 43.00 feet; thence West 50 feet to the point of beginning of the parcel of land herein described and the Southeast corner thereof; thence North 100.00 feet; thence West 100.00 feet, thence South 100.00 feet; thence East 100.00 feet to the point of beginning.

EXCEPT the following described parcel:

All of Section 17 and a portion of Section 18, Township 2 South, Range 5 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of Section 17;

thence along the East line of said Section South 00°52'20" West 2645.10 feet to the East quarter corner of Section 17;

thence still along same South 00°56'30" West 2652.32 feet to the Southeast corner of Section 17;

thence along the South line of Section 17 South 89°58'44" West 2684.50 feet to the South quarter corner of said Section;

thence along same North 89°21'22" West 2643.06 feet to the Southwest corner of Section 17 and the Southeast corner of Section 18;

thence along the South line of Section 18 South 89°50'56" West 2650.18 feet to the South quarter corner of Section 18;

thence along the mid-section line of said Section North 00°10'07" East 2660.43 feet to the center of Section 18;

thence still along the mid-section line North 01°45'10" East 660.66 feet to a point which is the Northeast corner, Southeast quarter, Southeast quarter, Northwest quarter of said Section;

thence along the North line of the Southeast quarter, Southeast quarter, Northwest quarter North 84°54'10" West 1310.17 feet to the Northwest corner of the Southwest quarter, Southeast quarter, Northwest quarter;

thence along the Westerly line of the Northwest quarter of the Southeast quarter of the Northwest quarter North 01°20'02" East 660.81 feet to a point which is the Northeast corner of the Southwest quarter

of the Northwest quarter of said Section;

thence along the North line of the Southwest quarter of the Northwest quarter North 89°53'26" West 55.00 feet to a point;

thence North 01°20'02" East 1321.64 feet to a point in the Northerly line of Section 18;

thence along said Northerly line South 89°52'51" East 1379.65 feet to the North quarter corner of Section 18;

thence still along same South 89°50'51" East 2642.15 feet to a point which is the Northeast corner of Section 18 and the Northwest corner of Section 17;

thence along the Northerly line of Section 17 South 89°46'26" East 2647.77 feet to the North quarter corner of Section 17;

thence still along the same South 89°48'03 East 2682.87 feet to the true point of beginning.

EXCEPT an undivided one-half (1/2) interest in and to that certain concrete canal located in proximity to and parallel to the East boundary line of the South half of said Section 17.

PARCEL NO. 7

The Northwest Quarter of Section 16 Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; Except that portion thereof described as follows:

Beginning at the Northwest corner of Section 16; thence along the Northerly line of said Section 16, South 89 degrees, 37 minutes, 56 seconds East 658.87 feet to a point which is the Northeast corner of the Northwest Quarter of the Northwest Quarter of the Northwest Quarter; thence along the East line of the Northwest Quarter of the Northwest Quarter of the Northwest Quarter in part and partly along the East line of the Southwest Quarter of the Southwest Quarter of the Northwest Quarter, South 00 degrees, 52 minutes, 01 seconds West 2643.88 feet to a point which is the Southeast corner of the Southwest Quarter of the Southwest Quarter of the Northwest Quarter; thence along the mid-section line North 89 degrees, 44 minutes, 17 seconds West 659.13 feet to the West Quarter corner of said Section; thence along the West line of Section 16 North 00 degrees, 52 minutes, 20 seconds East 2645.10 feet to the true point of beginning.