

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE LAKES

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DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by THE LAKES, a joint venture of Diversified Properties, Inc. and El Paso Development Company, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Tempe, County of Maricopa, State of Arizona, which is more particularly described as:

THE LAKES TRACT A, According to Book 133 of Maps,  
Page 45, Records of Maricopa County, Arizona.

THE LAKES TRACT B, according to Book 133 of Maps,  
Page 46, Records of Maricopa County, Arizona.

THE LAKES TRACT E, according to Book 134 of Maps, Page 14, Records of Maricopa County,  
Arizona.

THE LAKES TRACT F-1, according to Book 134 of Maps, Page 13, Records of Maricopa County,  
Arizona.

THE LAKES TRACT F-2, according to Book 135 of Maps, Page 13, Records of Maricopa County,  
Arizona.

THE LAKES TRACT F-3, according to Book 137 of Maps, Page 41, Records of Maricopa County,  
Arizona.

THE LAKES TRACT G-1, according to Book 137 of Maps, Page 40, Records of Maricopa County,  
Arizona.

THE LAKES TRACT S and TRACT S-1, according to Book 131 of Maps, Page 36, Records of  
Maricopa County, Arizona.

THE LAKES TRACT S-9 and TRACT S-10 of THE LAKES TRACT "E", according to Book 134 of  
Maps, Page 14, Records of Maricopa County, Arizona.

THE LAKES TRACT S-11 of THE LAKES TRACT 'IF-111, according to Book 134 of Maps, Page  
13, Records of Maricopa County, Arizona.

THE LAKES TRACT S-12, TRACT S-13, and TRACT S-14 of THE LAKES TRACT "A",  
according to Book 133 of Maps, Page . 45, Records of Maricopa County, Arizona.

THE LAKES TRACT S-15 and TRACT S-16 of THE LAKES TRACT "B", according to Book 133  
of Maps, Page 46, Records of Maricopa County, Arizona.

THE LAKES TRACT S-18 and TRACT S-19 of THE LAKES TRACT "F-2", according to Book 135  
of Maps, Page 13, Records of Maricopa County, Arizona.

THE LAKES TRACT 8-27 of THE LAKES TRACT 'IF-311, according to Book 137 of Maps, Page  
41, Records of Maricopa County, Arizona.

THE LAKES TRACT S-34 of THE LAKES TRACT according to Book 137 of Maps, Page 40, Records of Maricopa County, Arizona.

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

THE LAKES TRACT S-18 and TRACT S-19 of THE LAKES TRACT F-2, according to Book 135 of Maps, Page 13, Records of Maricopa County, Arizona.

THE LAKES TRACT S-27 of THE LAKES TRACT F-3, according to Book 137 of Maps, Page 41, Records of Maricopa County, Arizona.

THE LAKES TRACT S-34 of THE LAKES TRACT G-1, according to Book 137 of Maps, Page 40, Records of Maricopa County, Arizona.

Section 8. "Declarant" shall mean The Lakes, a joint venture between Diversified Properties, Inc., an Arizona corporation, and El Paso Development Company, a Delaware corporation, or any trustee or escrowee which may be designated by The Lakes, including its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 9. "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as same may from time to time be amended, together with any and all Tract Declarations which may be recorded by Declarant, as said Tract Declarations may be amended from time to time, relating to all or part of The Lakes. Section 10. "Improvement" shall mean the buildings, garages, carports, roads, driveways, parking areas, fences, walls, docks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

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

Section 12. "Lot" shall mean any parcel of real property designated as a Lot on any recorded Subdivision Map within The Lakes, with the exception of the Common Area. A Lot shall be deemed "Developed" when all offsite streets, curbs, gutters, sidewalks and other utilities have been completely installed. A Lot shall be deemed "Improved" when a Single Family Residence or other substantial improvement has been completely constructed thereon, but in no event later than one hundred eighty days (180) after the start of construction thereon. All other Lots shall be deemed "Undeveloped" Lots. The term "Lot" shall include a condominium owned by a Public Purchaser (a condominium, for this purpose, being herein defined as an apartment and all general and limited common elements in a Horizontal Property Regime established pursuant to Arizona law).

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

Section 14. "Owner(s)" shall mean and refer to the record owners whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. "Owner" shall include the purchaser of a Lot under an executory contract for the sale of real property. The foregoing does not include persons Or entities who hold an interest in any Lot merely as security for tile performance of an obligation. 'Except as stated otherwise herein, "Owner" shall not include a lessee or tenant, of an apartment, condominium, or a Since Family Residence. For the purposes of ARTICLE IV only, unless tile context otherwise requires, "owner" shall also include the Family, invitees, licensees, and lessees of any owner, together with any other person or parties holding any possessory interest granted by such owner in any Lot. The term "Owner" shall not include a Developer, who for this Declaration shall be defined as a builder, contractor, investor or other person or entity that purchases a Lot in The

Lakes for the purpose of resale thereof to a Public Purchaser, or for the purpose of constructing Improvements thereon for resale to a Public Purchaser.

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

Section 16. "Public Purchaser" shall mean any person or other legal entity who becomes an Owner of any Lot within The Lakes.

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

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

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

Section 20. "Subdivision Map" or "Subdivision Plat" shall mean a recorded map or plat covering any or all of the property referred to in this Declaration, or annexed hereto.

Section 21. "The Lakes" shall mean all real property located in the County of Maricopa, State of Arizona, which becomes subject to the Declaration, together with such other real property as may from time to time be annexed thereto.

Section 22. "Tract" shall mean any parcel of real property designated as a Tract on any recorded Subdivision Map within The Lakes, with the exception of the Common Area.

Section 23. "Tract Declaration" shall mean any declaration of covenants, conditions and restrictions which may be recorded by Declarant, relating to all or part of -The Lakes.

Section 24. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of this Declaration or the Lakes Rules;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded.

(d) A lessee or- tenant of an apartment in a multiple family apartment area shall not be entitled to said right of use and enjoyment of the Beach and Tennis Club. This specific provision shall not apply to the lessee or tenant of a Condominium, as defined above in Article I, Section 12.

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

ARTICLE III  
PROPERTY SUBJECT TO THE LAKES RESTRICTIONS

Section 1. General Declaration Creating The Lakes. Declarant shall develop The Lakes by subdivision into various Lots and Tracts. As each is developed, Declarant intends, with respect to particular property, to Record one or more Tract Declarations which will incorporate this Declaration therein by reference, and which may supplement or modify this Declaration with such additional covenants, conditions and restrictions as may be appropriate for that property, subject to the approval of the FHA and VA. Thereafter, Declarant intends to sell and convey, to Public Purchasers, Lots in the property so developed subject to both this Declaration and the Tract Declarations, if any, for that Tract. Declarant hereby declares that all of the real property within The Lakes is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration and any recorded Tract Declarations, as amended or modified from time to time. This Declaration and said Tract Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of said real property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and every part thereof. All of this Declaration shall run with all of said real property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all owners and their successors in interest.

Section 2. Staged Developments. Additional land within the area described as THE LAKES, Tempe, Arizona, a subdivision recorded in Book 131 of Maps, Page 36, Maricopa County Records, Maricopa County, Arizona, on August 6, 1970, may be annexed by the Declarant without the consent of Members within five (5) years of the date of this Declaration provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them. Such annexed land may, but shall not necessarily include, additional land for Single Family Residential Use, Common Area, Commercial Area, and Multiple Family Residential Use (including apartments and condominiums).

ARTICLE IV  
LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 1. Land Use Classifications. As each Tract or portion thereof within The Lakes is developed and annexed, the use classifications, restrictions, easements, rights of way, and other matters including new or different uses and restrictions therefore, including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in any Tract Declaration which may be Recorded for that Tract, subject to the approval of FHA and VA. In exercising such authority as granted herein, Declarant shall not impose any new land use classifications or now restrictions which are not generally in consonance with existing uses and restrictions applicable to The Lakes. When property is annexed to The Lakes, the use classifications thereof shall be established by the Tract Declaration covering said property.

Section 2. Permitted Uses and Restrictions - Single Family. The permitted uses, easements, and restrictions for all property within The Lakes covered by this Declaration, except for Common Area, shall be as follows:

A. SINGLE FAMILY RESIDENTIAL USE. All property shall be used, improved and devoted exclusively to single Family Residential Use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any such property. Nothing herein shall be deemed to prevent the leasing of all such property to a single family from time to time by the owner thereof, subject to all of the provisions of The Declaration. No structure whatever, other than one private, Single Family Residence, together with a private garage for not more than three (3) cars, a guest house, and 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 house or servants' quarters to be erected on said premises. No composition or asbestos roofs shall be allowed.

B. ANIMALS. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any property within THE LAKES and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any OWNER, the BOARD shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Paragraph, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, or 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 as other restrictions contained herein.

C. ANTENNAS. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property within THE LAKES, whether attached to a building or structure or otherwise, unless approved by the BOARD.

D. UTILITY SERVICE. No lines, wires, or other devices for the communication or transmission or electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property within THE LAKES unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the ARCHITECTURAL COMMITTEE. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the ARCHITECTURAL COMMITTEE.

E. IMPROVEMENTS AND ALTERATIONS. No improvements, alterations, repairs, excavation or other-work which in any way alters the exterior appearance of any property within THE LAKES or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by DECLARANT to a Public Purchaser or annexed to THE LAKES, whichever is later, shall be made or done without the prior approval of the ARCHITECTURAL COMMITTEE, except as otherwise expressly provided in this DECLARATION. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, made or done without **the** prior written approval of the ARCHITECTURAL COMMITTEE or any committee established by the ARCHITECTURAL COMMITTEE for the purpose. Pursuant to its rule making power, the ARCHITECTURAL COMMITTEE shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement. The ARCHITECTURAL COMMITTEE shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, shall be subject to the prior approval of the ARCHITECTURAL COMMITTEE. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the ARCHITECTURAL COMMITTEE. All decisions of the ARCHITECTURAL COMMITTEE shall be final and no lot owner or other parties shall have recourse against the ARCHITECTURAL COMMITTEE for its refusal to approve any such plans and specifications or plot plan, including lawn area and landscaping.

F. TEMPORARY OCCUPANCY. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time for a residence on any property within THE LAKES either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

G. TRAILERS AND MOTOR VEHICLES. Except with approval of the ARCHITECTURAL COMMITTEE, no mobile home, trailer of any kind, truck camper, or permanent tent or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any property or street (public or private) within THE LAKES in such a manner as will be Visible From Neighboring Property; provided, however, that the provisions of this Paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the ARCHITECTURAL COMMITTEE.

H. MAINTENANCE OF LAWNS AND PLANTINGS.

(1) BY OWNER. Each OWNER of a LOT within THE LAKES shall keep all shrubs, trees, grass and plantings of every kind on his property, including set back areas, Planted areas between adjacent sidewalks and the street curb, if any, and any other area located between the boundary line of his property and the street or other property (public or private) on which such OWNER'S property abuts, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such OWNER shall not be responsible for maintenance of any other Area as to which Declarant or the Association has assumed the responsibility. Declarant of the Association or its authorized agents shall have the right at any reasonable time to enter upon any LOT of OWNER to plant, replace, maintain, and cultivate shrubs, trees, grass or other plantings located thereon within an area twenty (20) feet toward the interior of any such LOT from any street and fifteen (15) feet from the shoreline of any lake.

(2) BY DECLARANT OR THE ASSOCIATION. DECLARANT or the ASSOCIATION shall have the right, at any time, to plant, replace, maintain and cultivate shrubs, trees, grass and plantings on any property within THE LAKES other than on a Lot, and on such easements over an OWNER'S LOT as may have been granted to DECLARANT or the ASSOCIATION, regardless of whether any OWNER or the ASSOCIATION is responsible hereunder for maintenance of such areas. No OWNER shall remove, alter, injure or interfere in any way with any shrubs, trees, grass or plantings placed upon any such property by DECLARANT or the ASSOCIATION without the written consent of the ASSOCIATION having first been obtained. The ASSOCIATION or its authorized agents shall have the right to enter upon any property within such other areas, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such shrubs, trees, grass or plantings, and shall not be liable for trespass for so doing.

I. NUISANCES. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property within THE LAKES, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. The BOARD in its sole discretion shall have the right to determine the existence of any such nuisance.

J. REPAIR OF BUILDINGS. No building or structure upon any property within THE LAKES shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

K. TRASH CONTAINERS AND COLLECTION. No garbage or trash shall be placed or kept on any property within THE LAKES except in covered containers of a type, size and style which are approved by the ARCHITECTURAL COMMITTEE. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and, then, only the shortest time reasonably necessary to effect such collection. The BOARD shall have the right, in its sole discretion, to require all OWNERS to subscribe to a carport trash service. All rubbish, trash, or garbage shall be removed from the LOTS and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any LOT.

L. CLOTHES DRYING FACILITIES. outside clotheslines or other outside facilities for drying or-airing clothes shall not be erected, placed or maintained on any property within THE LAKES unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.

M. ENCROACHMENTS. No tree, shrub, or planting of any kind on any property devoted to Single Family Residential Use within THE LAKES 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 twelve (12) feet, without the prior approval of the ARCHITECTURAL COMMITTEE.

N. RIGHT OF WAY. During reasonable hours, DECLARANT, any member of the ARCHITECTURAL COMMITTEE, any member of the BOARD, or any authorized representative of any of them, shall have the right to enter upon and inspect any property within THE LAKES, and the improvements thereon, except for the interior portions of any residence, for the purpose of ascertaining whether or not the provisions of this DECLARATION have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

O. MINERAL EXPLORATION. No property within THE LAKES shall be used in any more for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

P. MACHINERY AND EQUIPMENT. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any property within THE LAKES except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures, or other improvements, and except that which DECLARANT or the ASSOCIATION may require for the operation and maintenance of THE LAKES.

Q. DISEASES AND INSECTS. No OWNER shall permit any thing or condition to exist upon any property within THE LAKES which shall induce, breed or harbor infectious plant diseases or noxious insects.

R. RESTRICTION ON FURTHER SUBDIVISION. No LOT within THE LAKES shall be further subdivided or separated into smaller lots or parcels by any OWNER, and no portion less than all of any such LOT, nor any easement or other interest therein, shall be conveyed or transferred by any OWNER without the prior written approval of the BOARD. This provision shall not, in any way, limit DECLARANT from subdividing or separating into smaller lots or parcels any property not yet platted or subdivided into Lots owned by DECLARANT. No portion of a LOT but for the entire LOT, together with the improvements thereon, may be rented, and then only to a single family.

S. SIGNS. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any LOT or parcel of property within THE LAKES except:

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

- (2) Not more than two (2) residential identification signs each of a combined total face area of seventy-two square inches or less;
- (3) During the time of construction of any building or other improvement, one job identification sign not larger than eighteen by twenty-four inches in height and width and having a face area not larger than three square feet; and
- (4) such signs the nature, number, and location of which have been approved in advance by the ARCHITECTURAL COMMITTEE.
- (5) Such signs, the number, type and size of which as may be approved from time to time by DECLARANT for Developers.

T. **DECLARANT'S EXEMPTION.** Nothing contained in this DECLARATION shall be construed to prevent the erection or maintenance by DECLARANT, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development or sale of property within THE LAKES.

U. **UTILITY EASEMENTS.** There is hereby created a blanket easement upon, across, over and under the above described premises for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said residences. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said premises except as initially programmed and approved by the major building of said premises or thereafter approved by the said builder or the BOARD. This easement shall in no way affect any other recorded easements on said premises. This easement shall be limited to improvements as originally constructed.

Each residence shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the residence is partially or totally destroyed, and then rebuilt the Owners agree that minor encroachments of parts of the adjacent residence due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Anything herein to the contrary notwithstanding, any such encroachment shall not exceed one (1) foot.

V. **PARTY WALLS.** The rights and duties of OWNERS with respect to Party Walls or Party Fences shall be as follows:

- (1) The OWNERS of contiguous lots who have a Party Wall or Party Fence shall 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.
- (2) In the event that any Party Wall or Party Fence is damaged or destroyed through the act of an OWNER or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such OWNER to rebuild and repair the Party Wall or Fence without cost to the other adjoining lot OWNER or OWNERS.
- (3) In the event any such Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an

adjoining OWNER, his agents, guests or family, it shall be the obligation of all OWNERS whose lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.

- (4) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Wall without the prior consent of all OWNERS of any interest therein, whether by way of easement or in fee.
- (5) In the event of a dispute between OWNERS with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to the sharing of the cost thereof, such adjoining OWNERS shall submit the dispute to the BOARD, the decision of which shall be binding.

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

A. Maintenance by Association. The Association may, at any times as to any Common Area, conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the owners being required:

- (1) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) in accordance with
  - (a) the last plans thereof approved by the Board, (b) the original plans for the improvement, or (c) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed,-
- (2) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, driveway, parking area, lake area, and lake liner;
- (3) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and
- (4) Place-and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.
- (5) Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration.
- (6) The Board shall be the sole judges as to the appropriate maintenance of all grounds within the Common Area.

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

C. Lake Area. Lake Area shall consist of all property within The Lakes restricted to Lake Area Use as determined by Declarant or the Association. All property within such Area shall be for the exclusive use and benefit of Owners thereof, subject, however, to all of the following limitations and restrictions:

1. Definitions:

(a) Lake Rules: The term Lake Rules shall mean any rules or regulations promulgated or adopted by Declarant, the Association, or the Architectural Committee pertaining to the use and operation of the Lake Area, Waterfront Area, and Waterways.

(b) Waterfront Area: The term Waterfront Area shall mean the Area of a Waterway designated by the Architectural Committee for the purpose of storing and keeping boats and other watercraft therein and for all other purposes incident thereto.

(c) Waterfront Facilities: The term Waterfront Facilities shall mean and refer to docks, decks, wharfs, floats, slips, ramps, piers, landings, and other structures or equipment located or proposed to be located in any Waterfront Area.

(d) Waterfront Lot: Any Lot shall be adjacent to a Waterway.

(e) Any real property now or hereafter or from time to time covered by water which is designated on-any Declaration or hereafter Recorded as Lake Area.

2. Use of Waterfront Area: The Waterfront Area shall be used for the construction and use thereon of Waterfront Facilities for the storage or other accommodation of private boats owned by the Owner of a Lot for non-commercial, recreational purposes only. This provision shall not apply to the Association, which shall have the right to use a Waterfront Area for all purposes consistent with the duties of the Association under this Declaration. No houseboat may be used or stored in the Waterfront Area. No boat shall be used as a Residence, and no boat shall be lived in while in the Lake Area. Nothing shall be done or kept in the Waterfront Area or on any Waterway which would be a violation of any provision of the Master Declaration, or any Tract Declaration, which is or may hereafter be Recorded as to The Lakes, or any Lake Rules.

3. Waterfront Facilities: No Owner of any Waterfront Lot shall locate, construct, maintain, or operate, any Waterfront Facility, except within the limits of the Waterfront Area pertaining to the owner's Lot. Each conveyance or transfer of a Waterfront Lot shall include all right, title, interest and estate of the owner in the Waterfront Area appurtenant thereto. No Waterfront Facilities shall be constructed, erected, installed, placed, altered, or maintained, without the prior written consent of the Architectural Committee established pursuant to the Master Declaration. Each Owner of any Waterfront Lot shall, at his sole cost and expense, keep and maintain all Waterfront Facilities and other Improvements which are approved by the Architectural Committee, in good and clean appearance and in good and safe condition and repair, as to all Waterfront Facilities appurtenant to said Lot. This shall include periodic repair, painting, and refurbishing thereof. Without prior written consent of the Architectural Committee, no such Waterfront Facilities shall be leased or used except by the Owner of the Lot to which the Waterfront Facilities are appurtenant, and said Owner's family, guests, and visitors. Without the prior written consent of the Architectural Committee, no structures, facilities or other improvements shall be located, constructed, maintained

or operated in, upon, or under any Waterfront Area or in any Waterway except for Waterfront Facilities and other structures and improvements approved by the Architectural Committee.

4. **Lake Rules.** The Association shall have the right to make, promulgate, supplement, amend, change, or revoke Lake Rules pertaining to the use and operation of the Waterfront Areas and Waterways, without advance notice to Owners. Without limiting the generality of the foregoing, the Lake Rules may pertain to the launching, recovery, mooring, storage, maintenance, and operation of boats; the painting, repairing, and overhauling of all or any part of a boat or any equipment in, on, or used in connection with, such boat; swimming, 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 shall abide by the Lake Rules and **shall** be responsible for all acts of the Owner's Family, guests, and invitees.

5. **Right of Way.** The Association reserves the right to enter upon and use any portion of the real property of any owner underlying the Waterfront Areas or the Waterways overlying the same for any lawful purpose which does not unreasonably interfere with the Owner's use of a Lot.

6. **Boats and Watercraft:** Unless otherwise approved in writing by the Board, only the following types of boats and watercraft shall be allowed in any Lake Area:

(a) Sailboats not to exceed fourteen feet (14') in length.

(b) Canoes, dingies, and paddle boats.

(c) Electrical or battery operated boats not to exceed sixteen feet (16') in length.

(d) Power boats operated by the Association for maintenance, safety, or other community purposes. No gasoline or other combustible powered boats shall be permitted on any Lake Area. All boats must be registered with the Association and must bear identification numbers as assigned by the Association. One or more persons may be named by the Association which shall constitute the Harbor Patrol, which person(s) shall have authority to restrict the usage on any Lake Area of any person, including an Owner or an Owner's family or guests, 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 Lake Rules.

7. **Lake Front Easements.** There is hereby created a blanket easement in favor of the Association upon, across, over and under the forty (40) feet from the rear lot line inward towards the front of each Lot located adjacent to the Lake Area as shown on Exhibit A of this Declaration, for the purposes of developing, operating, repairing and maintaining a lake, shoreline, sprinkler system, and landscaping, in such form, manner and type and at such time or times, as determined by Declarant so long as Declarant holds any Class B Membership in the Association, and as determined by the Association thereafter. Nothing contained herein shall obligate Declarant to develop or install any such item or continue to maintain same once installed or developed. No Improvements of any kind or nature shall be made or done by any Owner or Public Purchaser, on or in the area covered by said easement, without the prior approval of the Architectural Committee. The Association shall have the right to require any Owner to maintain landscaping within the area covered by said easement as prescribed by the Architectural Committee, at owner's expense. This provision shall be enforceable by the Association

in the same manner as other requirements contained in this Declaration, including, but not limited to, the right to levy an assessment.

ARTICLE V  
THE LAKES COMMUNITY ASSOCIATION

Section 1. Organization

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

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

C. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and the Bylaws, as same may be amended from time to time.

Section 2. Powers and Duties of the Association. The Association shall have such rights, duties and powers as set forth in the Articles and Bylaws, as same may be amended from time to time.

Section 3. The Lakes 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 "Lakes Rules". The Lakes Rules may restrict and govern the use of any area by any Owner, by the Family of such owner, or by any invitee, licensee or lessee of such Owner; provided, however, that The Lakes Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Lakes Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be Recorded. Upon such Recordation, said Rules shall have the same force and effect as if they were set forth in and were a part of the Declaration.

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

ARTICLE VI  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

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

among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

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

- (a) when the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership, or
- (b) On January 1, 1976.

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

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

Section 5. Each member shall have such other rights, duties, and obligations as set forth in the Articles and Bylaws, as same may be amended from time to time.

Section 6. The Association membership of each Owner of a Lot within The Lakes shall be appurtenant to said Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to the Owner's Lot and then only to the transferee of ownership to such Lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to said Lot shall operate to transfer said membership to the new Owner thereof. This provision shall not apply to Declarant upon making a sale or transfer of a Lot in The Lakes to a Developer.

Section 7. In the event Lots or Tracts within The Lakes are devoted to Multiple Family Residential Use as apartments or condominiums, or other uses, the Owner shall be entitled to one Class A Membership and one (1) vote for each 43,560 square feet or less depending on the size of the Lot or Tract.

## ARTICLE VII COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within The Lakes, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Improved Lot to an owner, the maximum annual assessment in all areas designated for Single Family Residential Use shall be one Hundred Eighty Dollars (\$180.00) per each Improved Lot; and twenty (20%) percent of the said assessment per each Improved Lot for each Undeveloped Lot; and Thirty-three and one-third (33 1/3%) percent of the said assessment per each Improved Lot for each Developed Lot. Until January 1 of the year immediately following the conveyance of the first Improved Lot to an Owner, the maximum annual assessment in all areas designated for Multiple Family Apartment Use shall be \$180.00 per each eleven (11) apartment units constructed on a Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five (5%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

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

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice Of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. if the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section-6 . Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis. However, the amount of the assessment in any one year and from year to year may vary between undeveloped, developed and improved Lots, between a Single Family Area and a Multiple Family Area (including apartments and condominiums), and between Single or Multiple Family Areas and areas devoted to other uses.

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

Section B. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner of any Lot shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and Member agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner or Member to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of seven percent (7% ) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner or Member.

B. Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Lot within The Lakes to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots under The Lakes Restrictions, together with interest thereon at the rate of seven percent (7% ) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time within ninety days after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the Lot of the defaulting owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

1. The name of the delinquent Owner;
2. The legal description and street address of the Lot against which claim of Lien is made;
3. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorneys' fees (with any proper offset allowed);
4. That the claim of lien is made by the Association pursuant to The Lakes Restrictions; and
5. That a lien is claimed against said Lot in an amount equal to the amount stated.

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

favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each owner, by becoming an owner of a Lot in The Lakes, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VIII ARCHITECTURAL CONTROL

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

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

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

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

Office No. 1 - Lloyd A. Snook Jr. regular member

Office No. 2 - John W. Blundell regular member

Office No. 3 - Arnold R. Dahlberg regular member

Office No. 4 - Jon Jerde alternate member

Office No. 5 - Edward B. Juliber alternate member.

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

1. The term of office No. 1 shall expire March 1, 1974;
2. The term of office No. 2 shall expire March 1, 1973;
3. The term of office No. 3 shall expire March 1, 1972;
4. The terms of office No. 4 and office No. 5 shall both expire March 1, 1972.

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

E. Appointment and Removal. The right to appoint and remove all regular and alternate members of the Architectural Committee at any time, shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Architectural Committee by the Board except by the vote or written consent of four-fifths of all of the members of the Board. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the Recordation of a declaration identifying each new regular or alternate member appointed to the Committee and each regular or alternate member replaced or removed therefrom.

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

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

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

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

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

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

Section 6. Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Association, any owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any property within The Lakes, or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Committee, or any

member thereof, may, but is not required to, consult with or hear the views of the Association or any owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee. designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 7. Time for approval. In the event said Board, or its ????

## ARTICLE IX GENERAL PROVISION'S

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

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment . The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property (both single family and multiple family, including apartments and condominiums), Common Area and Commercial Area may be annexed to The Lakes with the consent of two-thirds (2/3) of each class of members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

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

Section 7. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within The Lakes is hereby declared to be a violation of The Lakes Restrictions and subject to any or all of the enforcement procedures set forth in said Restrictions.

Section 8. Remedies Cumulative. Each remedy provided by The Lakes Restrictions is cumulative and not exclusive.

Section 9. Delivery of Notices and Documents. Any written notice or other documents relating to or required by The Lakes Restrictions may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, at 5400 Lakeshore Drive; if to the Architectural Committee, at 5400 Lakeshore; if to an Owner, to the address of any Lot within The Lakes owned, in whole or in part, by him or to any

other address last furnished by an Owner to the Association; and if to Declarant, at 120 W. Third Ave., Suite 4, Scottsdale, Arizona 85251; provided, however, that any such address may be changed at any time by the party concerned by Recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 10. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.