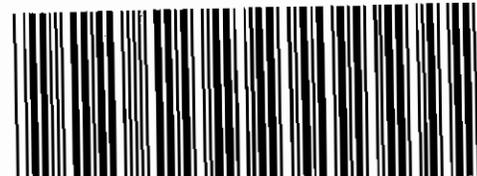


WHEN RECORDED RETURN TO:
Surprise Village Company L.L.C.
Attention: Rick West
11811 N. Tatum #4052
Phoenix, AZ 85028



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2003-0111911 01/30/03 10:25
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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
ASSESSMENTS, CHARGES, SERVITUDES, LIENS,
RESERVATIONS AND EASEMENTS
FOR
SURPRISE FARMS II

THIS DECLARATION of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (hereinafter termed the "Declaration") is made this twenty-first (21st) day of January, 2003 by Surprise Village Company L.L.C., an Arizona limited liability company (hereinafter sometimes termed "Declarant").

WITNESSETH

WHEREAS, Declarant is the developer of approximately two hundred forty-five (245) acres of land in the City of Surprise, State of Arizona, presently being developed under the name "Surprise Farms II"; and

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

WHEREAS, Declarant may, without obligation, annex Additional Property (as hereinafter defined) to the Covered Property, to become a part thereof and subject to this Declaration; and

WHEREAS, Declarant desires to develop, in stages, the Covered Property and those portions of the Additional Property which may from time to time be annexed pursuant to this Declaration and become part of the Covered Property; 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 Surprise Farms II to the public for streets, roadways, drainage, flood control, general public use, and such other purposes as may be determined by



Declarant; and to Record various Tract Declarations covering portions of Surprise Farms II, which Tract Declarations will designate the purposes for which such portions of Surprise Farms II may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of Surprise Farms II; and

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

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

WHEREAS, in order to cause the Declaration to run with the Covered Property and to be binding upon the Covered Property and the Owners and Residents 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 Declaration 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 and all other Persons acquiring any interest in the Covered Property or any portion thereof, for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Declaration (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such Persons are specifically excepted herefrom.

NOW, THEREFORE, DECLARANT hereby declares as follows:

ARTICLE I
DEFINITIONS

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

- A. "Additional Property" shall mean real property situated in the City of Surprise, State of Arizona, and the Improvements located thereon which is in a three (3) mile radius of any real property previously subjected to this Declaration, including but not limited to property legally described on Exhibit B. Additional Property may be added to the Covered Property in one or more additional phases by Supplemental Declaration pursuant to the provisions of Article XIII hereof.
- B. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot and Parcel pursuant to Article VII, Section 7.2 hereof.
- C. "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.
- D. "Assessable Property" shall mean any Lot or Parcel, except such part or parts thereof as may from time to time constitute Exempt Property.
- E. "Assessment" shall mean an Annual Assessment, Special Assessment, and/or Maintenance Charge.
- F. "Assessment Lien" shall mean the lien created and imposed by Article VII, Section 7.1 hereof.
- G. "Assessment Period" shall mean the time period set forth in Article VII, Section 7.8.
- H. "Association" shall mean the Arizona non-profit corporation to be organized by Declarant to administer and enforce the Declaration 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 Surprise Farms II Community Association", and hereby reserves the right to use any similar name if, for any legal or other reason, "The Surprise Farms II Community Association" cannot or should not be used.
- I. "Association Land" shall mean such part or parts of the Covered Property, together with the buildings, structures and Improvements thereon, and other real property, which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

J. "Association Rules" shall mean rules adopted by the Association pursuant to this Declaration, as amended from time to time.

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. "Cluster Residential Development" shall mean Lots limited by a Tract Declaration to Single Family occupancy, including, but not limited to, 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.

N. "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 Committee and within the restrictions created by the Declaration.

O. "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, or Developer (with the written consent of 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 or Developer (with the written consent of Declarant) indicates on a Recorded subdivision plat or Tract Declaration is to be used for landscaping, water retention, drainage, and/or flood control for the benefit of Surprise Farms II and/or the general public and is to be dedicated to the public upon the expiration of a fixed period of time, but only until such land is so dedicated; and/or (d) all land within or adjacent to Surprise Farms II which is owned privately or by the City of Surprise or other 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 (including, but not limited to, landscaping within dedicated rights-of-way within or adjacent to Surprise Farms II).

P. "Condominium Development" shall mean a condominium established under the laws of the state of Arizona.

Q. "Condominium Unit" shall mean a unit, together with any appurtenant interest in all common elements, within a Condominium Development.

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

S. "Covered Property" shall mean the real property described on Exhibit A attached hereto, and the Improvements completed or to be completed thereon, and any Additional Property (and the Improvements thereon) added to the Covered Property pursuant to the provisions of Article XIII hereof.

T. "Declarant" shall mean SURPRISE VILLAGE COMPANY L.L.C., an Arizona limited liability company, and the successors and assigns of Declarant's rights and powers hereunder, as set forth by a Recorded instrument.

U. "Declarant Affiliate" shall mean any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, (i) any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder, and (ii) each Person that is a member in Declarant, and each Person that is a member in any such member in Declarant.

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

W. "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot" or "Parcel".

X. "Design Guidelines" shall mean the architectural guidelines and standards promulgated by the Design Review Committee as provided in Article XI, Section 11.1 hereof.

Y. "Design Review Committee" shall mean the committee of the Association to be created and appointed pursuant to Article XI hereof.

Z. "Designated Utility" shall mean a Person engaged in the business of providing public or private utilities and who is providing such utilities within Surprise Farms II and is designated as a Designated Utility hereunder in a Recorded instrument signed by Declarant, and the successors and assigns of such Designated Utility.

Aa. "Developer" shall mean a Person who is engaged in residential or commercial real estate development and who purchases one or more Lots or Parcels from the Declarant for the purpose of constructing Improvements thereon for sale or lease, and is designated as a Developer hereunder in a Tract Declaration or other Recorded instrument signed by Declarant, and the successors and assigns of such Developer.

Bb. "Development" shall mean and refer to the real property described on Exhibit A and any part of the Additional Property added to the Covered Property pursuant to Article XIII hereof.

Cc. "Development Master Plan" shall mean The Villages at Surprise-South (Surprise Farms II) Planned Area Development as approved by the City of Surprise , as the same may be amended from time to time.

Dd. "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.

Ee. "Exempt Property" shall mean the following parts of Surprise Farms II:
(1) All land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, the City of Surprise , or any political subdivision as the owner thereof, for so long as said dedication remains effective; (2) All Association Land, for as long as the Association is the owner or lessee thereof.

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

Gg. "Improvement" shall mean buildings, roads, driveways, levees, dams, channels, basins, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping Improvements of every type and kind.

Hh. "Land Use Classification" shall mean the classification to be established by the Declarant pursuant to Article IV, Section 4.1, which designates the type of Improvements which may be constructed on a Lot, Parcel or Association Land and the purposes for which such Improvements and the Lot or Parcel on which they are located may be utilized.

Ii. "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.

Jj. "Lot" shall mean any area of real property within the Covered Property designated as a lot on any subdivision plat Recorded and approved by the Declarant or Board and any Condominium Unit within the Covered Property.

Kk. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article X, Section 10.2 hereof.

Ll. "Member" shall mean any Person holding a Membership in the Association pursuant to this Declaration.

Mm. "Membership" shall mean a Membership in the Association and the corresponding rights, privileges and responsibilities of the Owners and Declarant pursuant to this Declaration, including but not limited to, the provisions of Article VI hereof.

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

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

Pp. "Party Wall" shall mean a wall or 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.

Qq. "Person" shall mean a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

Rr. "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.

Ss. "Rental Apartments" shall mean four (4) or more Dwelling Units within a building under single ownership, each of which is assigned 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.

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

Uu. "Residential Condominium Development" shall mean a Condominium Development which is limited by the Tract Declaration to residential use.

Vv. "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 Declaration.

Ww. "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.

Xx. "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.

Yy. "Special Assessment" shall mean any assessment levied and assessed pursuant to Article VII, Section 7.5 hereof.

Zz. "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.

AA. "Sub-Association" shall mean an owners association created within Surprise Farms II other than the Association established under this Declaration, which owners association shall be subject to this Declaration. Each Owner who is a member of a Sub-Association shall also hold Membership in the Association established under this Declaration.

BB. "Supplemental Declaration" shall mean a written instrument recorded pursuant to Article XIII.

- CC. "Surprise Farms II" shall mean the Covered Property.
- DD. "Surprise Farms II Rules" shall mean the rules for Surprise Farms II adopted by the Board pursuant to Article V, Section 5.3 hereof.
- EE. "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.
- FF. "Tract Declaration" shall mean a declaration recorded pursuant to Article IV, Section 4.1 of this Declaration.
- GG. "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 any street, Lot, Parcel or Common Area which adjoins the Lot or Parcel on which such object is located.

ARTICLE II PROPERTY SUBJECT TO THE SURPRISE FARMS II DECLARATION

Section 2.1. General Declaration Creating Surprise Farms II. Declarant intends (but is not obligated) to develop Surprise Farms II and to sell and convey Lots and Parcels. As portions of Surprise Farms II are developed, Declarant intends, with respect to particular property, to record one (1) or more Tract Declarations covering Lots and Parcels which may designate Common Areas and 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 real property within Surprise Farms II 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 Declaration(s) 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 conveyed to the public or a governmental entity for public purposes shall not be subject to this Declaration and the covenants herein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Owners, Lessees and Residents concerning the use and maintenance of such public areas shall at all times apply to the Owners, Lessees 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 Surprise Farms II and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Surprise Farms II and every part thereof. All of this Declaration shall run with the Covered Property and with all Lots, Parcels and Association Land for all

purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Lessees and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Development Master Plan as to any portion of Surprise Farms II owned by the Declarant or from dedicating or conveying portions of Surprise Farms II owned by the Declarant, including streets, roadways, or public or private utility easements, for uses other than as a Lot, Parcel or Association Land.

Section 2.2. Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Declaration shall be binding upon and shall benefit the Association.

ARTICLE III EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

Section 3.1. Easements of Enjoyment. Every Owner and Tenant 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.
- 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, Special Use Fee or other charge 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, the Surprise Farms II Rules, or the Association Rules and (iii) for successive suspension periods if any such infraction is not corrected during any prior 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 company 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 Surprise effective prior to the date hereof or specified on a Recorded subdivision plat, and except as provided in Section 3.1(f) below, no such dedication or transfer shall be effective unless approved by the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by each class of Membership, except that the Board shall have authority to transfer to such public agencies, authorities or utility companies easements and rights-of-way which are intended

to benefit Surprise Farms II 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 Surprise Farms II Rules and to prohibit access to those Common Areas, such as landscaped rights-of-way, not intended for use by the Members. Surprise Farms II Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents.

(e) If a Recorded Tract Declaration designates a portion of the Common Area as an area which is to be operated, maintained, repaired and replaced by the Association but which is for the sole or primary benefit of the Owners of fewer than all of the Lots and Parcels in the Covered Property, then only the Owners and Tenants of those Lots and Parcels which are assessed a Special Use Fee therefor (as designated in such Tract Declaration) shall have the right to use such portion of the Common Area.

(f) The right of the Association, without the requirement of any vote or consent of Members or any other Persons, to enter into reciprocal use agreements and or easements with any other homeowner association or sub-association established for any property within the Development Master Plan, on such terms as the Board may determine, pursuant to which mutual rights of use and/or easements are granted with respect to the Common Areas and the common areas owned by such other homeowner association or sub-association as specified therein.

Section 3.2. Delegation of Use. Any Member may, in accordance with the Surprise Farms II 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 Lessees, 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 AND RESTRICTIONS

Section 4.1. Land Use Classifications. As portions of Surprise Farms II are readied for development, the Land Use Classifications, restrictions, easements, rights-of-way, and other matters, including new or different uses and restrictions therefor and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration which may be Recorded for that portion of Surprise Farms II. Any such Tract Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. The Land Use Classifications for Lots, Parcels and Association Land established by a Tract Declaration shall not be changed except by amendment of the Tract Declaration in the manner set forth in Article XIV, Section 14.2 of this Declaration. Contemplated Land Use Classifications include, but are not limited to, the following Land Use Classifications:

- (a) Single Family Residential Use.
- (b) Apartment Development Use, which may be converted to Residential Condominium Development Use upon approval by the Board.
- (c) Residential Condominium Development Use, which may be converted to Apartment Development Use upon approval by the Board.
- (d) Commercial Condominium Development Use, which may include Office Condominium Development Use.
- (e) General Commercial Use.
- (f) Commercial Office Use.
- (g) Association Use, which may include Common Areas.
- (h) Cluster Residential Development 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.
- (i) Clubhouse Use.
- (j) Church Use.

- (k) Shopping Center Use.
- (l) Public/Private Recreation Use.
- (m) School Use.
- (n) General Public Use.
- (o) Public or Private Utility Use.

These Land Use Classifications represent an inexhaustive list of potential and possible land uses to be designated at the discretion of Declarant, and do not impose on Declarant any mandatory duty regarding Land Use Classifications, or preclude Declarant from employing other land uses. 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.

Section 4.2. Covenants, Conditions, Restrictions and Easements Applicable to Lots and Parcels within All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels, and the Owners, Lessees and Residents thereof, regardless of Land Use Classifications.

- (a) Architectural Control. No excavation or grading work shall be performed on any Lot without the prior written approval of the Design Review Committee. No Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot or Parcel without the prior written approval of the Design Review Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any part of a Lot or Parcel, or any Improvements located thereon which are Visible From Neighboring Property, from their appearance on the date this Declaration is Recorded or from their appearance as previously approved by the Design Review Committee, shall be made or done without the prior written approval of the Design Review Committee. Any Owner desiring approval of the Design Review Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. The Design Review Committee may from time to time adopt submittal requirements including, without limitation, a standard form of application as may be necessary for the

Committee to perform its duties hereunder. Any Owner requesting the approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request. In the event that the Design Review Committee fails to approve or disapprove an application for approval within forty-five (45) days after its receipt of a properly submitted application together with supporting plans, specifications and other information as requested by the Committee, any fee payable pursuant to this Section 4.2 (a), and all supporting or any additional information, plans and specifications requested by the Design Review Committee (whether or not submitted with the initial application), have been submitted to the Design Review Committee, approval will not be required and this Section will be deemed to constitute approval of such plans. The approval by the Design Review Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval. Upon receipt of approval from the Design Review Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Design Review Committee as soon as practicable and shall diligently pursue such work so that it is completed within sixty (60) days of issuance of such approval or such additional period of time as may be approved by the Committee at the time of issuance or any extension of such time period subsequently granted by the Committee. Any change, deletion or addition to the plans and specifications approved by the Design Review Committee must be approved in writing by the Design Review Committee. The Design Review Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. The amount of such fees shall be based upon the reasonable costs of the Design Review Committee to perform its design and review duties and may include the fees and costs of any architect, engineer or other consultant employed by the Committee to assist the Committee in performing such duties.

(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, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any

Member or Resident, or upon the Board's own initiative, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this 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.

(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 other structure on any property shall be removed immediately after the completion of construction.

(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 maintained and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (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 10.1 of this Declaration; (3) the City of Surprise or other public agency assumes responsibility, for so long as the Association or the City of Surprise or other public agency assumes or has responsibility as provided in (1), (2), or (3) above; or (4) the Association has responsibility under this Declaration.

(e) Nuisances; construction Activities. No rubbish, debris, petroleum products or similar product of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Parcel, and no odors shall be permitted to arise or emit therefrom so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or 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 occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers,

bells or other sound devices, except security devices shall be used or placed on any such property without prior approval of the Board. Normal construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved in writing by the Design Review Committee, which may also require screening of the storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.

(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.

(h) Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, but not limited to, satellite television or radio discs, antennas or equipment, shall be erected, used or maintained outdoors on any Lot or Parcel, whether attached to a building or structure or otherwise, unless approved in writing by the Design Review Committee, unless applicable law prohibits the Design Review Committee from requiring such prior approval. Even if applicable law prohibits the Design Review Committee from requiring prior approval of certain types of antennas or other devices for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, any such antennas or other devices must be installed or constructed in accordance with such regulations as the Design Review Committee may adopt. Subject to compliance with applicable law, the Design Review Committee may regulate location, placement and appearance of such devices. The provisions of this Subsection (h) shall not apply to any telecommunications center which may be constructed and/or operated by the Declarant or any machinery, equipment, satellite disc wires and other facilities used in connection with the operation of any such telecommunications center.

(i) Mineral Exploration. No Lot or Parcel shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind, except for grading and

excavation work and the removal of fill material including, but without limitation, gravel, rock and sand, in connection with the construction of Dwelling Units, buildings, structures or other Improvements which have been approved in writing by the Design Review Committee or which are being constructed by, or on behalf of, the Declarant.

(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 in writing by the Design Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to affect such collection or for such time which may be specified in the Design Guidelines. All rubbish, trash, or garbage shall be removed from the Lots and Parcels and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot or Parcel.

(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 the Declarant or the Association may require for the operation and/or maintenance of Surprise Farms II; or (iii) that used in connection with any 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) no more than two (2) identification signs for individual residences, each with a face area of seventy- two (72) square inches or less;. (iii) signs (including "For Sale" and "For Lease" signs) the nature, number, location, size, color, design, message content and type of which have been approved in advance and in writing by the Design Review Committee; (iv) promotional and advertising signs of Developers on any Lot or Parcel approved from time to time by Declarant as to number, size, color, design, message content, location and type; and (v) such other signs (including, but not limited to, construction job identification signs, builder identification signs, and subdivision, shopping center,

and business identification signs) which are in conformance with the requirements of the City of Surprise , or other governmental agencies and which have been approved in writing by the Design Review Committee as to size, color, design, message content and location.

(n) Restriction on Further Subdivision, Property Restrictions and Rezoning. Unless otherwise provided in the Tract Declaration applicable to such Lot or Parcel, no Lot or Parcel shall be further subdivided or separated into smaller Lots or Parcels by any Owner other than the Declarant, and no portion less than all of any such Lot or Parcel, shall be conveyed or transferred by any Owner other than Declarant, without the prior written approval of the Board. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots or Parcels any property at any time owned by Declarant. No portion of a Lot other than 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, Lessee, or other Person other than the Declarant against any Lot or Parcel or any other portion of the Covered Property without the provisions thereof having been first approved in writing by the Board with such approval having been endorsed on such Recorded covenants, conditions, restrictions and easements, and any covenants, conditions, restrictions or easements Recorded without such approval being endorsed thereon shall be null and void.

(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 service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, as such utilities are installed in connection with the initial development of the Lot or Parcel and the construction of the first Dwelling Unit or other building thereon. Pursuant to this easement, and subject to the provisions of 4.2 (a) a providing utility or service company, whether public, quasi-public, or private, may install and maintain facilities and equipment on the Lot or Parcel and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots and Parcels. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utility or service lines may be installed or relocated on any Lot or Parcel except as initially programmed and approved by the Declarant or in writing by the Design Review Committee, or, if installed after the Recording of the Tract Declaration for a Lot or Parcel, as approved in writing by the Owner of such Lot or Parcel and the Design Review Committee.

(p) Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to Party Walls shall be as follows: (i) the Owners of

contiguous Lots or Parcels who have a Party Wall shall both equally have the right to use such wall or fence, provided that such use by one (1) Owner does not interfere with the use and enjoyment of same by the other Owner; (ii) in the event that any Party Wall is damaged or destroyed through the act of an Owner or any of his Tenants, Lessees, 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 without cost to the Owner of the adjoining Lot or Parcel, and 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 reimbursement and indemnity therefore from the Persons causing such damage; (iii) in the event any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Tenants, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin such Party Wall to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots or Parcels on the Party Wall; (iv) notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee; (v) in the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Anything in the foregoing to the contrary notwithstanding: in the case of Party Walls between Common Areas and Lots or Parcels, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, Sections 10.2 and 10.3, except that each Owner of a Lot or Parcel shall be responsible for painting and maintenance of the portion of the Party Wall facing his Lot or Parcel or the portion thereof which is not a portion of the Common Area. The provisions of this Subsection (p) shall not apply to any Party Wall which separates the interiors of two (2) Dwelling Units and the rights of the Owners of such Dwelling Units with respect to Party Walls shall be governed by plats and covenants, conditions and restrictions to be Recorded by the Developer of the Dwelling Unit.

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

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

(s) Trucks, Trailers, Campers and Boats. No motor vehicle, mobile home, recreational vehicle, travel trailer, tent trailer, camper shell, detached camper, boat, boat trailer, hang glider, ultra lights, or other similar equipment or vehicle may be parked or maintained on any Lot or Parcel or on any street in Surprise Farms II so as to be Visible From Neighboring Property, the Common Areas or the streets. Certain exceptions to this Section may be provided for in the Surprise Farms II Rules to accommodate loading and unloading and various other temporary provisions. However, the provisions of this Section shall not apply to (i) motor vehicles not exceeding seven (7) feet in height measured from ground level and eighteen (18) feet in length which are parked as provided in Subsection (u) below and are used on a regular and recurring basis for basic transportation and do not display any commercial name, telephone number, message or attachments that are generally considered commercial in nature, or (ii) 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 nonresidential Land Use Classifications. The Board shall have the right and power pursuant to Section 5.3 herein to adopt rules and regulations governing, interpreting and implementing the provisions of this Section.

(t) Motor Vehicles. No automobile, motorcycle, motorbike or other motor or electric vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street in Surprise Farms II, and no inoperable vehicle, including but not limited to vehicles with flat tires, may be stored or parked on any such Lot, Parcel or street, so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section 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 in writing by the Design Review Committee.

(u) Parking. Vehicles of all Owners, Lessees and Residents, and of their employees, guests and invitees, shall be kept in garages, carports, residential driveways of the Owner, designated spaces in commercial areas, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot or Parcel; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking on Surprise Farms II is otherwise prohibited or the

parking of any inoperable vehicle. The Board may further restrict on-street parking including, but not limited to, the total prohibition of on-street parking, through rules and regulations adopted pursuant to Section 5.3 herein.

(v) 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 Committee, any member of the Board, or any authorized representative of any of them, shall have the right and license to enter upon and inspect any Lot or Parcel, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration, the Design Guidelines, the Association Rules, or the Surprise Farms II Rules have been or are being complied with and such Persons shall not be deemed guilty of trespass by reason of such entry.

(w) Declarant's Use for Sales and Leasing Purposes. Notwithstanding any other provision of this Declaration, Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Covered Property and to maintain one (1) or more advertising signs on the Common Area while the Declarant or any Developer is selling Lots, Parcels and other property in the Covered Property. Declarant reserves the right to place models, management offices and sales, marketing, information and/or leasing offices on any Lots, Parcels or other property owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate. Declarant may by a Tract Declaration or other Recorded instrument delegate its rights under the preceding sentence to one or more Developers and/or Designated Utilities on such terms as may be provided in such Recorded instrument. So long as Declarant or any Developer is marketing Lots, Parcels or other property, Declarant shall have the right to restrict the use of the parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(x) 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, Lessees and Residents, the Board may make rules restricting or regulating their presence on Surprise Farms II as part of Surprise Farms II Rules or may direct the Design Review Committee to make rules governing their presence on Lots or Parcels as part of the Design Guidelines.

(y) 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 and signs shall not prohibit the construction and maintenance

of model homes, signs, construction offices, and sales offices by Developers engaged in the construction, sale or leasing of Dwelling Units on Surprise Farms II and parking incidental to the visiting of such model homes, construction offices or sales offices so long as the location of such model homes, construction offices, sales offices and signs are approved in writing by the Design Review Committee, and the construction, operation and maintenance of such model homes, signs, construction offices and sales offices otherwise comply with all of the provisions of this Declaration. The Design Review Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes or the visiting of sales offices or construction offices, so long as such parking and parking areas are in compliance with the ordinances of the City of Surprise or other applicable governmental agencies and any rules of the Design Review Committee. 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 located in Surprise Farms II.

(z) Incidental Uses. The Board may approve uses of property within 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 Surprise Farms II 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, recreation facilities 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, and 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.

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

(bb) Maricopa Water District Disclosure. The terms of the following are hereby incorporated in this Declaration by reference and shall run with and be binding upon the land described therein and affected thereby: (i) that certain Memorandum of Agreement Recorded on December 3, 1999, in Instrument No. 99-1092981, and all amendments and additions thereto, and modifications and replacements thereof, and (ii) all notices related to Maricopa Water District as set forth in any subdivision plat Recorded with respect to the Covered Property and approved by the Declarant or the Board (including, but not limited to, notices relating to any development agreement and/or water service agreement entered into with Maricopa Water District, and notices relating to the consolidation of water rights and obligations).

Section 4.3. Covenants, Conditions Restrictions and Easements Applicable to Lots Within Residential Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots and the Owners and Residents thereof restricted by a Tract Declaration to Single Family Residential Use, Residential Condominium Development Use or Cluster Residential Use.

(a) Residential Use. All Dwelling Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Dwelling Unit, except that an Owner or other Resident of a Dwelling Unit may conduct a business activity within a Dwelling Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Covered Property; and (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Covered Property; (iv) the business activity does not violate any provision of this Declaration, the Design Guidelines, the Association Rules, or the Surprise Farms II Rules; and (v) the business activity is consistent with the residential character of the Covered Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Covered Property, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of an

entire Dwelling Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

(b) Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family Lessee from time to time by the Owner, subject to the provisions of this Declaration and the Surprise Farms II Rules, the Association Rules, and the Design Guidelines.

ARTICLE V ORGANIZATION OF ASSOCIATION

Section 5.1. Formation of Association. The Association shall be 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.

Section 5.2. 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 the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day today operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Unless this Declaration specifically requires a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

Section 5.3. The Surprise Farms II Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas; (ii) minimum standards for any maintenance of Lots and Parcels; and/or (iii) the health, safety or welfare of the Owners and Residents. In the event of any conflict or inconsistency between the provisions of this Declaration and the Surprise Farms II Rules, the provisions of this Declaration shall prevail. The Surprise Farms II Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

Section 5.4. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no other employee or representative of the Association shall be personally liable to any Member, or to any other 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, any

representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 5.5. Sub-Association. In the event any homeowner or similar association is to be formed by the Developer (other than the Declarant) of a Parcel or subdivision in Surprise Farms II, the covenants, conditions and restrictions, the articles of incorporation and bylaws and 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 Surprise Farms II Rules, the Association Rules, and the Design Guidelines.

ARTICLE VI MEMBERSHIPS AND VOTING

Section 6.1. Owners of Lots and Parcels. Every Owner (including the Declarant) of a Lot or Parcel which is Assessable Property shall be a Member of the Association. For the purposes of this Section, Lots and Parcels owned by the Declarant shall be considered Assessable Property even though said Lots and Parcels are not subject to Assessment so long as there is a Class B Membership in the Association. Each such Owner (including the Declarant) 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 the Owner of a Parcel restricted by a Tract Declaration to Residential Condominium Development Use, but as to which a condominium plat and declaration has not been Recorded, one Membership for each Dwelling Unit permitted upon the Parcel under the Development Master Plan, the number of such Dwelling Units to be determined on the assumption that the number of Dwelling Units within a density classification on the Development Master 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 Committee and the City of Surprise for a number of Dwelling Units different from the number of Dwelling Units permitted under the Development Master 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 authorized by the site plan; and

- (c) In the case of the Owner of a Parcel restricted by a Tract Declaration to Single Family Residential Use or Cluster Residential Development Use, one Membership for each Dwelling Unit permitted upon the Parcel under the Development Master Plan. If a subdivision plat or other instrument creating 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 Development area remains within the Parcel.
- (d) In the case of the Owner of a Parcel restricted by a Tract Declaration to Apartment Development Use, but as to which construction has not been completed, one Membership for each four Rental Apartments permitted under the Development Master Plan. If a site plan for a Parcel is subsequently approved by the Design Review Committee and the City of Surprise for a number of Rental Apartments different from the number of Rental Apartments permitted under the Development Master Plan, the number of Memberships shall be adjusted to reflect the actual number of Rental Apartments authorized by the site plan.
- (e) In the case of a Parcel restricted by a Tract Declaration to a Land Use Classification other than Single Family Residential Use, Cluster Residential Development Use, Apartment Development Use, or Residential Condominium Development Use, the number of Memberships and Assessments shall be determined by Declarant and included in the applicable Tract Declaration.

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.

Section 6.2. Declarant. The Declarant shall be a Member of the Association for so long as it owns any Lot or Parcel or any part of the Covered Property or owns or has a purchase option on any property covered by the Development Master Plan which has not been annexed and subjected to this Declaration. The Declarant shall have the following number of Memberships in the Association:

(a) The number of Memberships allocated to the Declarant pursuant to Section 6.1 of this Declaration as the Owner of Lots and Parcels which are Assessable Property; plus

(b) One Membership for each unit of density allocated by the Development Master Plan to the property shown on the Development Master Plan as available for residential development whether or not such property has been annexed and subjected to this Declaration pursuant to the provisions of Article XIII thereof.

Notwithstanding any contrary provision of this Section 6.2, Declarant shall have the right from time to time, in its sole and absolute discretion, to Record an instrument excluding certain property (and units of density therein) within the Development Master Plan that has not then been annexed and subjected to this Declaration from the property and units of density included in the calculation of Declarant's Memberships under this Section 6.2. If Declarant Records such an instrument, then the property specified in such Recorded instrument (and the units of density in such specified property) shall not be included or counted in the calculation and determination of the number of Declarant's Memberships under this Section 6.2.

Section 6.3. Voting. The Association shall have two classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships, except the Class B Memberships held by the Declarant or for which the Declarant holds Class B votes as provided in the next paragraph below. Each Owner shall be entitled to one (1) vote for each Class A Membership held by such Owner.

Class B. Class B Memberships shall be all Memberships held by Declarant and all Memberships held by Developer(s) entitled to a reduced assessment hereunder. The Declarant shall be entitled to three (3) votes for each Membership held by the Declarant. Declarant shall also be entitled to three (3) votes for each Membership held by a Developer entitled to a reduced assessment. The Class B Membership shall cease and be converted to Class A Memberships on the happening of the first of the following events:

(a) The date on which the total votes outstanding in the Class A Memberships equal the total votes outstanding in the Class B Membership; or

(b) The first day of January, 2023; or

(c) At any time by written notice from Declarant to the Association that it wishes to convert all its Class B Memberships to Class A Memberships.

Section 6.4. 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 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 6.5. 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, Surprise Farms II Rules, Association Rules and Design Guidelines as the same may be amended from time to time.

Section 6.6. Transfer of Class A Membership. 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 of the Lot or Parcel. A transfer of ownership of a Lot or Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust 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 of a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof.

Section 6.7. 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, attorney's fees and/or collection costs are paid in full.

ARTICLE VII COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 7.1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. The Declarant, for each Lot and Parcel established within Surprise Farms II, 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) Maintenance Charges established by Article X, Sections 10.2 and 10.3, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments and Maintenance Charges, together with interest, incidental and taxable costs, and reasonable attorney's fees, and all other sums which may become due and payable to the Association by an Owner 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 such 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 or Condominium Units located on such Lot or Parcel). Each such Annual and Special 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. However, such exemption does not apply to the obligation of the successor in title of the Owner to correct any violation of the Declaration, the Association Rules, the Surprise Farms II Rules, or the Design Guidelines by the Owner pursuant to Article XV, Section 15.16; and further provided, however, that the transfer of title shall not extinguish any Assessment Lien except a transfer pursuant to foreclosure of a superior lien in which the Assessment Lien has been extinguished by such foreclosure proceeding.

Section 7.2. 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 which is Assessable Property an Annual Assessment; provided, however, that Annual Assessments shall not be assessed against a Lot or Parcel prior to the commencement date therefor specified in the Recorded Tract Declaration for such Lot or Parcel. The amount of the Annual Assessment, subject to the provisions of Section 7.4 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 7.3. Determination of Assessment. The amount of any Annual or Special Assessment to be levied against each Lot and Parcel shall be determined as follows:

- (a) For purposes of this Section 7.3, the term "Membership Assessment" shall mean the total amount of any Annual Assessment or Special Assessment to

be levied against all Lots and Parcels which are Assessable Property divided by the total number of Memberships attributable to the Assessable Property.

(b) Except for Lots and Parcels covered by Subsections (c) through (g) and except for Lots and Parcels owned by the Declarant which are exempt from Assessment under Subsection (i) of this Section 7.3, each Lot and Parcel shall be assessed an Annual Assessment or Special Assessment, as the case may be, in an amount equal to the Membership Assessment multiplied by number of Memberships attributable to such Lot or Parcel pursuant to Section 6.1 of this Declaration.

(c) The Owner of a Lot shall be assessed 25% of the amount equal to the number of Memberships attributable to his Lot multiplied by the Membership Assessment until the earlier of (i) the completion of the first Dwelling Unit on the Lot, (ii) nine (9) months from the commencement of construction of the first Dwelling Unit on the Lot, or (iii) four (4) years from the date the title is first transferred from Declarant to an Owner.

(d) The Owner of a Parcel restricted under a Tract Declaration to uses other than residential shall be assessed 25% of the amount equal to the number of Memberships attributable to the Parcel multiplied by the Membership Assessment, until the earlier of (i) the completion of the first building on the Parcel, (ii) twelve (12) months from the commencement of construction of the first building on the Parcel, or (iii) three (3) years from the date the title is first transferred from Declarant to an Owner.

(e) The Owner of a Parcel restricted by a Tract Declaration to a Condominium Development shall be assessed 25% of the amount equal to the number of Memberships attributable to the Parcel multiplied by the Membership Assessment until the earlier of (i) a site plan has been approved by the Design Review Committee and the City of Surprise for any portion of the Parcel and Condominium Development has either been completed on the Parcel or (ii) nine (9) months have elapsed since construction of the Development was commenced, or (ii) three (3) years from the date the title is first transferred from Declarant to Owner.

(f) The Owner of a Parcel restricted by a Tract Declaration to Single Family Residential Use or Cluster Residential Use shall be assessed 25% of the amount equal to the number of Memberships attributable to the Parcel multiplied by the Membership Assessment.

(g) Reduced Assessments referred to in this Article VII, Section 7.3(c) through 7.3(f) above, upon approval by the Board, may be continued for unimproved portions of Parcels when Improvements are to be phased. The

portions of the Assessments affected by the phasing shall be determined by the Board.

(h) So long as there is a Class B Membership, Developers shall be required to pay to the Association the difference between the cost of operating and administering the Association, including funding of reserves, and the income from assessments in the form of a subsidy based on a prorata share of Lot ownership, determined as follows: For each monthly subsidy period, every Developer shall contribute based on the total subsidy amount for that month multiplied by a fraction, the numerator of which is the number of Lots owned by such Developer on the last day of the previous month and the denominator of which is the total number of Lots owned by all Developers on that same day. Notwithstanding any contrary provision hereof, in no event shall the aggregate total of the subsidy obligation payable by a Developer in any month pursuant to this Subsection (h) plus that Developer's reduced Assessment obligation pursuant to the applicable provisions of Subsections (c) through (f) above, exceed an amount equal to the total Assessment amount that would be payable by that Developer for that month at the full Assessment rate provided for in Subsections (a) and (b) above. When the Class B Membership ceases in accordance with Article VI, Section 6.3 hereof, all Parcels and Lots owned by Developers shall be subject to Assessment in the same way as any other Lot or Parcel.

(i) So long as there is a Class B Membership, Lots and Parcels owned by the Declarant shall not be subject to Assessment or any subsidy obligation under Section 7.3(h). However, Declarant shall be required to pay to the Association, in the form of a subsidy, the difference between (i) the cost of operating and administering the Association, including funding of reserves, and (ii) the total income derived from subsidy obligations of Developers under Subsection (h) above and from Assessments. When the Class B Membership ceases in accordance with Article VI, Section 6.3 hereof, all Parcels and Lots owned by Declarant shall be subject to Assessment in the same way as any other Lot or Parcel.

For the purposes of this Section 7.3, 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 rate of Assessment for a Parcel or Lot increases during the period to which an Annual Assessment or Special Assessment is attributable, the Assessment 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, as determined by the Board, 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 7.4. 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 Four Hundred Eighty dollars (\$480) per 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 ten percent (10 %) or the percentage increase, if any, of the Consumer Price Index (as hereinafter defined), but in no event greater than the maximum increase allowed under A.R.S. 33-1803(A) if such statute is then effective. 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, for All Urban Consumers (CPI-U)--U.S. City Average (1982-1984 Equals 100)", 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 to be determined.

$\frac{y-x}{x}$

x multiplied by the Maximum Annual Assessment for the then current year equals the amount by which the maximum Annual Assessment may be increased.

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. Nothing herein shall obligate the Board to establish, in any year, a budget that utilizes the full Maximum Annual Assessment. If the Board elects to establish a budget in any year that does not utilize the full Maximum Annual Assessment, the Board shall not be prevented from establishing a budget in any subsequent year that utilizes the full Maximum Annual Assessments for such year.

(c) From and after January 1 of the year immediately following the recordation of the first Tract Declaration, the Maximum Annual Assessment shall 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 7.5. 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 Common Area, 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. 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 7.6. Special Use Fees. The Association is authorized to bill for, administer, disburse, collect and sue for Special Use Fees and the obligation for payment thereof shall be secured by the Assessment Lien. Special Use Fees may be used to cover the costs of maintaining particular Common Area Improvements designed to benefit less than all of the Members of the Association. Such Common Area Improvements may include, but shall not be limited to, private streets, security gates and enhanced landscaping. All Special Use Fees collected shall, when imposed in connection with a particular Improvement, be separately accounted for and shall be expended on the particular Improvement to which they pertain. The applicable Tract Declaration for the affected Lot(s) or Parcel(s) shall further describe the purpose of the Special Use Fees.

Section 7.7. Notice and Quorum for Any Action Authorized Under Sections 7.4 and 7.5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.4(c) or 7.5 of this Article shall be sent to all Members no less than fifteen (15) days nor more than thirty (30) 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 initially scheduled meeting.

Section 7.8. 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 the 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 giving notice thereof to the Members of the Association. Notwithstanding the foregoing, the applicable Tract Declaration shall establish when Assessments shall commence for the Lots and/or Parcels covered by such Tract Declaration.

Section 7.9. Date of Commencement of Annual Assessments. The Tract Declaration for each Lot and Parcel shall establish the date of commencement of Annual Assessments as to each Lot and Parcel subject to such Tract Declaration.

Section 7.10. 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, Special Use Fees and the Maintenance Charges imposed pursuant to Article X, Section 10.2 and 10.3, 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 therefor 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 installment 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 changes during an Assessment Period. Successor Owners of Lots or Parcels shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the owner of a Membership becomes liable for payment of an increased sum pursuant to Section 7.3 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. Members shall notify the Association of a change of mailing address when applicable.

Section 7.11. Collection Costs and Interest on Delinquent Assessments.

Any Annual and Special Assessment, Special Use Fee, or Maintenance Charge or installment thereof not paid when due shall be deemed delinquent and the Board shall have the right to charge 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 Owner shall be liable for all taxable and incidental 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. Late fees may be established by the Board to be adjusted from time to time. 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 cost 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 7.12. Evidence of Payment of Annual and Special Assessments, Special Use Fees 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, Special Use Fees and Maintenance Charges (including interest, costs and attorney's fees, if any, as provided in Section 7.11 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, Special Use Fees and Maintenance Charges have not been paid, the amount of such Annual and Special Assessments, Special Use Fees 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 7.13. 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, Special Use Fees and, except as provided in Article X, Section 10.3, 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 Assessment, Special Use

Fees and, if theretofore exempt therefrom, Maintenance Charges (prorated as of the date such Exempt Property became Assessable Property) and the Assessment Lien.

Section 7.14. Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person who purchases from a Developer a Lot which is restricted by a Tract Declaration to Single Family Residential Use, Cluster Residential Use or Residential Condominium Development Use shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot, and each Person who purchases a Lot or Parcel restricted by a Tract Declaration to a use other than Single Family Residential Use, Cluster Residential Use or Residential Condominium Development Use from the Declarant shall pay to the Association at the time such Lot or Parcel no longer qualifies for a reduced rate of Assessment pursuant to Section 7.3 of this Declaration a sum equal to one-sixth (1/6th) of the current Annual Assessment for such Lot or Parcel. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration including, but not limited to, the establishment of reserves. Payments made pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

Section 7.15. Transfer Fee. Each Person other than a Developer who purchases a Lot or Parcel shall pay to the Association immediately upon becoming the Owner of the Lot or Parcel a transfer fee in such amount as is established from time to time by the Board.

ARTICLE VIII
ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS AND
MAINTENANCE CHARGES AND OF ASSESSMENT ;LIEN

Section 8.1. Association as Enforcing Body. The 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 8.2. Association's Remedies to Enforce Payment of Annual and Special Assessments, Special Use Fees and Maintenance Charges. If any Member fails to pay the Annual or Special Assessments, Special Use Fees or installments when due, or the Maintenance Charges assessed pursuant to Article X, Sections 10.2 and 10.3, the Association may enforce the payment of the Annual or Special Assessments, Special

Use Fees 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 rights to exercise the other remedy):

- (a) Bring an action at law and recover judgement against the Member personally obligated to pay the Annual or Special Assessments, Special Use Fees 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 any deficiency) and the Lot or Parcel may be redeemed after foreclosure sale as provided bylaw. The Association shall have the right to bid at any foreclosure sale.

Section 8.3. 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 first 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 in any manner may arise or be imposed upon each Lot or Parcel after the date this Declaration is Recorded. 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, Maintenance Charges, and Special Use Fees 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, Special Use Fees, and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 8.4. Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Assessments, Special Use Fees and Maintenance Charges. In any action taken pursuant to Section 8.2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the

amount of, the Annual and Special Assessments, Special Use Fees and Maintenance Charges together with interest and the Association's incidental and taxable costs including collection costs and attorney's fees, including those costs and fees specified in Article VII, Section 7.11. The Assessment Lien shall also secure payment of any other sums which may become payable to the Association by an Owner pursuant to this Declaration.

ARTICLE IX USE OF FUNDS; BORROWING POWER

Section 9.1. 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 Surprise Farms II 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 Surprise Farms II which may be necessary, desirable or beneficial to the general common interests of Surprise Farms II, the Members and the Residents. 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, public right of way, drainage areas within Surprise Farms II, recreation, liability insurance, communications, education, transportation, health, utilities, public services, safety, payment for and coordination of water orders, deliveries and reporting on behalf of all Owners pursuant to any water development and/or service agreement relating to Surprise Farms II (and the payment of assessments and charges relating thereto), 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 9.2. 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 9.3. 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 9.4. 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 with minimum bodily injury limits of \$2,000,000.00 per occurrence and minimum property damage liability limits of \$1,000,000.00 per occurrence or a combined single limit of \$2,000,000.00 per occurrence. In addition, the Board shall, in its own discretion, determine other appropriate limits of coverage as well as types of coverage.

ARTICLE X MAINTENANCE

Section 10.1. 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 the Common Areas, and the delivery and payment for water and other utilities delivered to the Common Areas; provided however, the Association shall not be responsible for providing or maintaining the landscaping, structures or other Improvements on any Common Areas which are part of Lots or Parcels unless (i) such landscaping, structures or other Improvements are available for use by all Owners and Residents or are within easements intended for the general benefit of Surprise Farms II or (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 not maintain areas which (i) the City of Surprise or a governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot or Parcel pursuant to Article IV, Section 4.2(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. Failure to so identify such specific areas to be maintained by the Association shall not affect the Association's rights and responsibilities. The Board shall use a standard of reasonable care in providing for the repair, management and maintenance of the Common Area so that the Surprise Farms II development will reflect a high pride of ownership. In this connection the Association may, 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, except that no permanent Improvements 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. In the event any subdivision plat, Tract Declaration 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 Surprise Farms II 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 the 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 10.2. 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 or other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests or invitees, 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 or Parcel 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 Persons described in the preceding sentence. Any charges or fees to be paid by

the Owner of a Lot or Parcel pursuant to Section 10.1 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 10.3. 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 Surprise Farms II 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, the Association Rules, the Surprise Farms II Rules, or the Design Guidelines or in the event the Owner or Lessee of any Lot or Parcel is failing to perform any of its obligations under this Declaration with respect to the maintenance, repair or replacement of the Improvements located on such Lot or Parcel, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written notice thereof to the Owner by mail to the mailing address of the Lot or Parcel and make demand that corrective action be taken with fourteen (14) calendar days of the date of the notice. If at the expiration of the said fourteen (14) day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken, (and the Board and its agents shall have the right and license to enter upon the Lot and Parcel in connection therewith), including but not limited to the hiring of an attorney to take action on behalf of the Board, whether by informal pre-suit action or by formal legal proceedings. The costs of any action taken by the Board as set forth herein, including but not limited to incidental and taxable costs, attorney's fees, and 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 COMMITTEE

Section 11.1. Establishment. The Declarant shall establish a Design Review Committee to perform the functions of the Design Review Committee set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the Design Review Committee, 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 Committee shall consist of such number of regular members and alternate members as the Declarant may designate and such members shall be appointed by the Declarant subject to the provisions of Section 11.4 of this Article. 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 Committee shall hold regular meetings, a quorum for which shall consist of a majority of the regular members shall be necessary for any decision of the Design Review Committee. 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 Guidelines shall interpret and implement this Declaration by setting forth the procedures for Design Review Committee review and the standards for development within Surprise Farms II, including, but not limited to, architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials, signage, wall design and similar matters. The Design Guidelines may also include provisions requiring the establishment of landscaping on Lots and Parcels pursuant to specific timetables. Subject to the provisions of Section 11.2 of this Article, the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

Section 11.2. Appeal. Any Owner or other Resident aggrieved by a decision of the Design Review Committee may appeal the decision (i) to Declarant, if Declarant at the time of such decision has the right to appoint the members of the Design Review Committee pursuant to Section 11.4, or (ii) to the Board in accordance with procedures to be established by the Board, if at the time of such decision Declarant does not have the right to appoint the members of the Design Review Committee pursuant to Section 11.4. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the Board's opinion warrant a reconsideration. If the Board fails to allow an appeal or if the Board, after appeal, again rules in a manner aggrieving the appellant, the decision of the Board is final. In the event the decision of the Design Review Committee is overruled by the Board on any issue or question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board and, for purposes of this Declaration, such decision, as so modified, shall thereafter be deemed the decision of the Design Review Committee. In this regard, the Board shall have the authority to modify or overrule the decision of the Design Review Committee on any matter presented to it.

Section 11.3. Fee. The Design Review Committee 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. The Design Review Committee may employ an architect and other design professionals and the fees for such services shall be included in review fees.

Section 11.4. Appointment of Design Review Committee Members. Design Review Committee members are appointed by the Declarant and may be replaced at

the discretion of the Declarant. The number of members shall be in the sole discretion of the Declarant. Declarant's right to appoint Design Review Committee members shall cease and the Board shall be vested with that right and all other rights of the Declarant pertaining to the Design Review Committee as stated in this Article XI, two (2) years after the date on which the Class B Membership is extinguished or when such right is expressly relinquished by Declarant to the Board in writing, whichever condition occurs first.

Section 11.5. Non Liability for Approval of Plans. Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, but the Design Review Committee takes no responsibility for engineering design or for compliance with zoning and building ordinances, and by approving any plans thereof neither the Association, any Member, the Board, nor the Declarant, nor any member, employee, agent of Declarant, nor any Declarant Affiliate assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, 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 Surprise Farms II. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty, whether express or implied, that said plans or specifications comply with applicable governmental ordinances or regulations including, without limitation, zoning ordinances and building codes, and industry standards for design or construction.

ARTICLE XII RIGHTS AND POWERS OF ASSOCIATION

Section 12.1. 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 or as provided by Arizona common law or statute. Such rights 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 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. In addition to all other rights and remedies granted

to the Association by this Declaration, the Association shall have the power to impose reasonable fines against an Owner for any violation of this Declaration or the Surprise Farms II Rules by the Owner, a Lessee or Tenant of the Owner or by any Resident or occupant of the Owner's Lot or Parcel.

Section 12.2. 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 this Declaration, including, but not limited to, the covenants set forth herein, and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any Tract Declaration, 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 12.3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts 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 12.4. Change of Use of Association Land and Procedure Therefor. 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 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 other 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 applicable Tract Declaration.

ARTICLE XIII
ANNEXATION OF ADDITIONAL PROPERTY

Section 13.1. Annexation Without Approval. All or any part of the Additional Property may be annexed to the Covered Property and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, by the execution and Recording of a Supplemental Declaration by Declarant describing the part of the Additional Property to be annexed. No Supplemental Declaration shall be so executed and Recorded pursuant to this Section more than twenty (20) years after the later of: (i) the Recording of this Declaration or (ii) the last Recording of a Supplemental Declaration. Thereafter, or at such earlier time that the Declarant no longer owns any part of the Covered Property or the Additional Property, the Board shall have the right to annex and subject to this Declaration all or any part of the Additional Property by executing and Recording a Supplemental Declaration. The Recording of said Supplemental Declaration shall constitute and effectuate the annexation of said portion of the Additional 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 the Board shall have the ability to so annex all or any portion of the Additional Property, neither Declarant nor the Board shall be obligated to annex all or any portion of such Additional Property and such Additional Property shall not become subject to this Declaration-unless and until a Supplemental Declaration shall have been so executed and Recorded. Notwithstanding anything to the contrary, if at the time of the Recordation of the Supplemental Declaration, the Additional Property described therein is owned by a Person other than Declarant, then that owner must join with Declarant (or the Board, as applicable) in the execution of the Supplemental Declaration.

Section 13.2. Supplemental Declarations. Any Supplemental 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 Additional Property so annexed and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplemental Declaration, revoke or modify the covenants established by this Declaration within the existing Covered Property.

Section 13.3. De-Annexation. Notwithstanding any other provision of this Declaration, Declarant shall have the right from time to time, at its sole option and without the consent of any other Person (except as provided in this Section 13.3), to delete from the Covered Property and remove from the effect of this Declaration one or more portions of the Covered Property, provided, however, that: (a) a portion of

the Covered Property may not be so deleted and removed unless at the time of such deletion and removal such portion is either (i) owned by Declarant, or (ii) Declarant executes and Records an instrument approving such deletion and removal; (b) a portion of the Covered Property may not be so deleted and removed unless at the time of such deletion and removal no Dwelling Units or Common Area recreational facilities have been constructed thereon (unless the de-annexation is for the purposes of accomplishing minor adjustments to the boundaries of one or more Lots, any Common Area or another portion of the Covered Property); and (c) a portion of the Covered Property may not be so deleted and removed if such deletion and removal would deprive Owners and occupants of other parts of the Covered Property of access or other easements or rights-of-way necessary to the continued use of their respective parts of the Covered Property (unless at the same time provision is made for reasonable adequate replacement easements or rights-of-way). Declarant may exercise its rights under this Section 13.3 in each case by executing and causing to be Recorded an instrument which identifies the portion of the Covered Property to be so deleted and removed and which is executed by each Owner of such portion (if other than Declarant), and the deletion and removal of such portion of the Covered Property shall be effective upon the later of: (i) the date such instrument is Recorded; or (ii) the effective date specified in such instrument, if any, whereupon, except as otherwise expressly provided in this Section 13.3, the portion of the Covered Property so deleted and removed shall thereafter for all purposes be deemed not a part of the Covered Property and not subject to this Declaration, and the Owner(s) thereof (or of interests therein) shall not be deemed to be Owners or Members with respect to the deleted portion of the Covered Property except as members of the general public. No such deletion and removal of a portion of the Covered Property shall act to release such portion from the Assessment Lien or other charges hereunder which have accrued prior to the effective date of such deletion and removal, but all such Assessments or other charges shall be appropriately prorated to the effective date of such deletion and removal, and no Assessments or other charges shall thereafter accrue hereunder with respect to the portion of the Covered Property so deleted and removed. Each portion of the Covered Property deleted and removed pursuant to this Section 13.3 shall thereafter be deemed to be a part of the Additional Property unless otherwise expressly provided to the contrary in the instrument Recorded by Declarant to effect such deletion and removal.

ARTICLE XIV
TERM; AMENDMENTS; TERMINATION

Section 14.1. 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 (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. 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 14.2. 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 14.1 of this Article. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 14.3 of this Article, or in Section 16.8 of Article XVI, shall certify that at an 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 Memberships 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 Memberships at a duly called election shall be necessary to amend this Declaration. A Tract Declaration may be amended with (i) the approval of the Board; (ii) the approval of the Declarant as long as the Declarant owns any property in Surprise Farms II; and (iii) the affirmative vote of the Class A Members who own a Lot or Parcel within the affected Tract, and are entitled to cast seventy-five percent (75%) or more of the votes entitled to be cast by all Class A Members who own a Lot or Parcel within the affected Tract. Notwithstanding the foregoing to the contrary, (i) all amendments must be approved by the Board, and (ii) all amendments to Article VIII, Section 8.3 affecting lienholder priority must be approved by the holders of any and all first mortgages and deeds of trust affected thereby.

Section 14.3. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions or to Comply with Law. Anything in this Section to the contrary notwithstanding, Declarant, so long as the Declarant owns any Lot or Parcel or other portion of the Covered Property, and thereafter, the Board, may amend all or any part of this Declaration to such an extent and with such language as may be requested by or may be necessary to comply with the applicable requirements of (i) Arizona statutes or other applicable laws, rules or regulations and/or (ii) 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 portions thereof. Any such amendment shall be effected by the Recording, by Declarant, if made by the Declarant, or by the Board if made by the Board, of a Certificate of Amendment. 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.

Section 14.4. Declarant Approval. So long as the Declarant owns any Lot or Parcel or any other portion of the Covered Property, or owns or holds an option to purchase any part of the Additional Property which is described on Exhibit B or is adjacent to the Covered Property, any amendment of this Declaration must be approved in writing by the Declarant.

ARTICLE XV ALTERNATIVE METHOD FOR RESOLUTION DISPUTE

Section 15.1. Alternative Method for Resolving Disputes. Declarant, the Association, its officers, and directors, all Owners and Members, each Developer and other Persons subject to this Declaration (each a "Bound Party") agree to encourage the amicable resolution of disputes involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 15.2 (collectively, "Claims") to the procedures set forth in Section 15.3.

Section 15.2. Claims. Unless specifically exempted below, all Claims arising out of or related to the interpretation, application or enforcement of the Declaration, or the rights, obligations and duties of any Bound Party under the Declaration or relating to the design or construction of Improvements on the Development shall be subject to the provisions of Section 15.3. Notwithstanding the foregoing sentence, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 15.3 (collectively "Claims Exempt from Dispute Resolution"):

- (a) any suit or action by the Association against any Bound Party for delinquent Assessments;
- (b) any suit by the Association, Declarant, or a Developer to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order

to maintain the status quo and to preserve the Association's ability to act under and enforce the provisions of Article XI and Article IV;

- (c) any suit between or among Owners, which does not include Declarant, a Developer or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration;
- (d) any suit in which any indispensable party is not a Bound Party; and
- (e) any suit as to which any applicable statute of limitations has expired or would expire within one hundred eighty (180) days of giving the notice required by Section 15.3.

Section 15.3. Mandatory Procedures.

(a) Notice. Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually referred to as a "Party," or collectively referred to as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) the proposed remedy; and
- (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, or, if the Parties

otherwise agree, to an independent agency providing dispute resolution services with substantial experience with comparable disputes.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Each Party shall bear its own costs of the mediation, including attorney's fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Section 15.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 15.3. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorney's fees and court costs.

(c) Termination of Mediation. Upon Termination of Mediation, Claimant shall thereafter be entitled to submit the matter to binding arbitration. Any arbitration proceeding shall (a) proceed in Phoenix, Arizona; (b) be governed by the Federal Arbitration Act (Title 9 of the United States Code); and (c) be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding shall be before a single arbitrator. The parties shall use reasonable efforts to agree upon a single arbitrator within ten (10) days after written notice from one party to the other requesting arbitration. If the parties are unable to agree upon an arbitrator within such ten (10) day period, at any time thereafter either party may require that the arbitrator be selected according to the Commercial Arbitration Rules of the AAA. The arbitrator shall be a neutral attorney who practices in the area of real estate, commercial or business law. The arbitrator

shall determine whether or not an issue is arbitrable and will give effect to the statutes of limitation in determining any claim. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. In any arbitration proceeding, the arbitrator shall decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. In any arbitration proceeding, discovery shall be permitted and shall be governed by the Arizona Rules of Civil Procedure. All discovery must be completed no later than twenty (20) days before the hearing date and within one hundred eighty (180) days of the commencement of arbitration proceedings. Any requests for an extension of the discovery periods, or any discovery disputes, shall be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with the provisions of this forbearance agreement. The laws of the State of Arizona shall apply in any arbitration proceeding, without regard to its conflict of laws rules.

(d) Member Approval of Association Claims and Actions. Notwithstanding anything contained herein to the contrary and in addition to any requirements prescribed by law, the Association shall not submit a Claim against the Declarant, a Declarant Affiliate, or any Developer to binding arbitration upon Termination of Mediation, and shall not file any action against Declarant, a Declarant Affiliate, or any Developer arising out of or related to the design, construction, condition or sale of any part of the Development or any Improvements thereon, until all of the following have occurred:

(i) In advance of the meeting described in Section 15.3(d)(ii) below, the Board has provided full disclosure in writing to all Members of all material information relating to the Claim or action. The material information shall include, without limitation, a statement that describes the manner in which the action will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant, the Declarant Affiliate, or the Developer, if applicable.

(ii) The Association has held a duly called meeting of its Members and the Board, at which a majority of the Class A Members, voting in person or by proxy, authorize the submittal of the Claim to arbitration or the filing of the action, as applicable.

(iii) The Board has authorized the submittal of the Claim to arbitration or the filing of the action, as applicable.

(e) WAIVER. DECLARANT, THE DECLARANT AFFILIATES, EACH DEVELOPER AND, BY ACCEPTING A DEED FOR THE COMMON AREA OR A LOT, AS THE CASE MAY BE, THE ASSOCIATION, EACH MEMBER AND EACH OWNER AGREE TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XV AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE XV. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE XV, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A COURT OR JURY.

ARTICLE XVI GENERAL PROVISIONS

Section 16.1. Interpretation of the Declaration. The Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. 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 Declaration and provisions hereof.

Section 16.2. 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 16.3. 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 computed from the date when the 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 16.4. 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 16.5. 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 right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 16.6. 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 presently envisioned for the complete development of Surprise Farms II 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 16.7. 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 administrators, successors and assigns.

Section 16.8. Right to Amend Name. Notwithstanding any contrary provision of this Declaration, the Declarant, in its sole discretion, shall have the right at any time that a Class B Membership exists to amend the name of the Association and/or the project name of the Covered Property, and in connection therewith amend this Declaration, the Bylaws, the Articles of Incorporation of the Association and the Surprise Farms II Rules to reflect such name change.

Section 16.9. 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 as set forth on a Recorded instrument.

Section 16.10. 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 16.11. Captions and Titles. All captions, titles or 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 16.12. 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 Surprise or Surprise Farms II. 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 16.13. FHA/VA Approval. If this Declaration has been 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 require 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 or mortgages of Common Areas, annexation of additional property, and amendment of this Declaration.

Section 16.14. Conveyance or Encumbrances of Association Land. The Association Land shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B Membership and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes in Class A Membership.

Section 16.15. Attorney's Fees. In addition to any other remedies set forth in this Declaration regarding costs and attorney's fees, in the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Declaration, Articles, Bylaws, Surprise Farms II Rules, Association Rules, or Design Guidelines, the offending Owner or other Person shall pay to the Association, upon demand, all attorney fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the Assessment Lien.

Section 16.16. Remedies Cumulative. Each remedy afforded the Association herein is cumulative and not exclusive.

Section 16.17. Responsibility of Successors in Interest to Owner's Violations. Successors in title of an Owner to a Lot or Parcel are obligated to correct any violation of the Declaration, the Association Rules, the Surprise Farms II Rules, or the Design Guidelines by any preceding Owner of the Lot or Parcel.

Section 16.18. Indemnification/Acknowledgement. The Owners, as defined herein, acknowledge that: (1) the property subject to this Declaration contains Common Areas; (2) the Common Areas are intended solely for aesthetic purposes and limited recreational use; (3) the Common Areas possess certain inherent dangers from which the Owners must take precautions to protect themselves, their families, invitees, guests and others; (4) no safety personnel will patrol the Common Areas and

the Owners assume the risk and the responsibility of protecting themselves, their families, invitees, guests or others; and (5) the Owners will indemnify, defend and hold harmless the Declarant, the Association, the Developer(s) and their successors and assigns from and against any claims, liabilities, injuries, damages, expenses and costs, including interest and attorneys' fees, incurred by or claimed against the Declarant, the Association, the Developer(s) and their successors and assigns under any laws arising in any way from or in connection with the Common Areas.

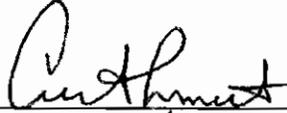
IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed:

SURPRISE VILLAGE COMPANY L.L.C., an Arizona limited liability company

By: CAREFREE SUNBELT I L.L.C., an Arizona limited liability company, its Manager

By: SUNBELT HOLDINGS II L.L.L.P., an Arizona limited liability limited partnership, its Member

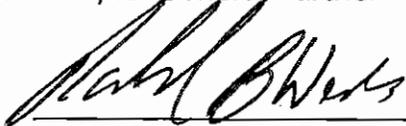
By: SUNBELT HOLDINGS MANAGEMENT, INC., an Arizona corporation, its General Partner

By: 
Its: COOL/EVP

By: CAREFREE PARTNERS, L.L.C., an Arizona limited liability company, its Member

By: WEST MANAGEMENT LIMITED PARTNERSHIP, an Arizona limited partnership, its Manager

By: THE RICHARD WEST COMPANY, an Arizona corporation, its General Partner

By: 
Richard B. West III, President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 24th day of January, 2003, by Richard B. West III, the President of The Richard West Company, an Arizona corporation, the General Partner in West Management Limited Partnership, an Arizona limited partnership, the Manager of Carefree Partners, L.L.C., an Arizona limited liability company, a Member in Carefree Sunbelt I L.L.C., an Arizona limited liability company, the Manager of Surprise Village Company L.L.C., an Arizona limited liability company, on behalf thereof.

Cristine Davis

Notary Public

My Commission Expires:

Nov 5, 2004



STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was executed and acknowledged before me this 27th day of January, 2003, by Cliff Smith, the COO/EVP of Sunbelt Holdings Management, Inc., an Arizona corporation, the General Partner in Sunbelt Holdings II L.L.P., an Arizona limited liability limited partnership, a Member in Carefree Sunbelt I L.L.C., an Arizona limited liability company, the Manager of Surprise Village Company L.L.C., an Arizona limited liability company, on behalf thereof.

Cristine Davis

Notary Public

My Commission Expires:

Nov 5, 2004



EXHIBIT A

Covered Property

Lots 1 through 190, inclusive, and Tracts D1 through D9, inclusive, of SURPRISE FARMS PHASE 1B-SOUTH, PARCEL 9, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 598 of Maps, page 50.

Lots 1 through 112, inclusive, and Tracts A through L, inclusive, of SURPRISE FARMS PHASE 1B-SOUTH, PARCEL 10, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 600 of Maps, page 16.

Lots 1 through 137, inclusive, and Tracts A through M and O, inclusive, of SURPRISE FARMS PHASE 1B SOUTH, PARCEL 11, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 600 of Maps, page 17.

Lots 1 through 113, inclusive, and Tracts A through M and O, inclusive, of SURPRISE FARMS PHASE 1B- NORTH AND SOUTH, PARCEL 12, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 599 of Maps, page 1.

Lots 1 through 86, inclusive, and Tracts A through K and P, inclusive, of SURPRISE FARMS PHASE 1B- SOUTH, PARCEL 13, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 599 of Maps, page 6.

Lots 1 through 172, inclusive, and Tracts 14A through 14J, Q, R, and S, inclusive, of SURPRISE FARMS PHASE 1B- NORTH, PARCEL 14, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 599 of Maps, page 5.

Lots 1 through 148, inclusive, and Tracts A through N, T, U, V and W inclusive, of SURPRISE FARMS PHASE 1B- NORTH, PARCEL 15, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 599 of Maps, page 4.

Lots 1 through 115, inclusive, and Tracts A through O, inclusive, of SURPRISE FARMS PHASE 1B- NORTH, PARCEL 16, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 599 of Maps, page 7.

EXHIBIT "B"
DESCRIPTION
SURPRISE FARMS WEST OF PHASE 1B

THAT PART OF SECTIONS 2, AND 3, TOWNSHIP 3 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 2;

THENCE SOUTH 89 DEGREES 35 MINUTES 32 SECONDS EAST ALONG THE NORTH LINE OF SAID SECTION 2, A DISTANCE OF 32.93 FEET;

THENCE SOUTH 00 DEGREES 24 MINUTES 21 SECONDS WEST, A DISTANCE OF 734.11 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING SOUTH 00 DEGREES 24 MINUTES 21 SECONDS WEST, A DISTANCE OF 78.98 FEET

THENCE SOUTH 00 DEGREES 24 MINUTES 13 SECONDS WEST, A DISTANCE OF 933.66 FEET;

THENCE SOUTH 45 DEGREES 24 MINUTES 13 SECONDS WEST, A DISTANCE OF 35.40 FEET;

THENCE SOUTH 00 DEGREES 24 MINUTES 13 SECONDS WEST, A DISTANCE OF 80.00 FEET;

THENCE SOUTH 44 DEGREES 35 MINUTES 47 SECONDS EAST, A DISTANCE OF 35.45 FEET;

THENCE SOUTH 00 DEGREES 24 MINUTES 13 SECONDS WEST, A DISTANCE OF 603.28 FEET;

THENCE SOUTH 45 DEGREES 33 MINUTES 05 SECONDS WEST, A DISTANCE OF 35.26 FEET;

THENCE SOUTH 00 DEGREES 24 MINUTES 13 SECONDS WEST, A DISTANCE OF 90.00 FEET;

THENCE SOUTH 44 DEGREES 26 MINUTES 55 SECONDS EAST, A DISTANCE OF 35.45 FEET;

THENCE SOUTH 00 DEGREES 24 MINUTES 13 SECONDS WEST, A DISTANCE OF 1025.95 FEET;

THENCE SOUTH 45 DEGREES 32 MINUTES 18 SECONDS WEST, A DISTANCE OF 35.27 FEET;

THENCE SOUTH 00 DEGREES 24 MINUTES 13 SECONDS WEST, A DISTANCE OF 80.00 FEET;

THENCE SOUTH 44 DEGREES 27 MINUTES 42 SECONDS EAST, A DISTANCE OF 35.44 FEET;

THENCE SOUTH 00 DEGREES 24 MINUTES 13 SECONDS WEST, A DISTANCE OF 480.01 FEET;

THENCE SOUTH 45 DEGREES 32 MINUTES 18 SECONDS WEST, A DISTANCE OF 35.27 FEET;

THENCE SOUTH 00 DEGREES 40 MINUTES 24 SECONDS WEST, A DISTANCE OF 60.00 FEET;

THENCE SOUTH 89 DEGREES 19 MINUTES 36 SECONDS EAST, A DISTANCE OF 169.28 FEET;

THENCE SOUTH 00 DEGREES 24 MINUTES 13 SECONDS WEST, A DISTANCE OF 870.37 FEET;

THENCE SOUTH 44 DEGREES 19 MINUTES 10 SECONDS EAST, A DISTANCE OF 63.68 FEET;

THENCE SOUTH 00 DEGREES 41 MINUTES 15 SECONDS WEST, A DISTANCE OF 55.00 FEET;

THENCE NORTH 89 DEGREES 18 MINUTES 45 SECONDS WEST, ALONG THE SOUTH LINE OF SECTION 2, A DISTANCE OF 260.98 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 2;

THENCE NORTH 89 DEGREES 19 MINUTES 05 SECONDS WEST, ALONG THE SOUTH LINE OF SAID SECTION 2, A DISTANCE OF 2609.37 FEET;

THENCE NORTH 00 DEGREES 51 MINUTES 22 SECONDS EAST, A DISTANCE OF 33.00 FEET, TO THE SOUTHWEST CORNER OF THAT CERTAIN PROPERTY SET FORTH IN THE 5TH PARAGRAPH OF LEGAL DESCRIPTIONS IN BOOK 605 OF DEEDS, PAGE 407;

THENCE ALONG THE SOUTH LINE OF SAID PROPERTY SOUTH 89 DEGREES 19 MINUTES 05 SECONDS EAST, A DISTANCE OF 60.00 FEET;

THENCE ALONG THE EAST LINE OF SAID PROPERTY NORTH 00 DEGREES 51 MINUTES 22 SECONDS EAST, A DISTANCE OF 75.00 FEET;

THENCE ALONG THE NORTH LINE OF SAID PROPERTY NORTH 89 DEGREES 19 MINUTES 05 SECONDS WEST, A DISTANCE OF 60.00 FEET, TO A POINT ON THE EAST LINE OF THAT PROPERTY DESCRIBED AS PARCEL NO. 2 IN BOOK 562 OF DEEDS, PAGE 269;

THENCE NORTH 00 DEGREES 51 MINUTES 22 SECONDS EAST, A DISTANCE OF 2519.05 FEET;

THENCE NORTH 89 DEGREES 09 MINUTES 35 SECONDS WEST, A DISTANCE OF 20.00 FEET;

THENCE SOUTH 00 DEGREES 51 MINUTES 22 SECONDS WEST, A DISTANCE OF 2594.10 FEET;

THENCE NORTH 89 DEGREES 19 MINUTES 05 SECONDS WEST, A DISTANCE OF 13.00 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 2;

THENCE NORTH 89 DEGREES 49 MINUTES 31 SECONDS WEST, PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 3, A DISTANCE OF 2645.55 FEET TO THE NORTH-SOUTH MID-SECTION LINE;

THENCE NORTH 89 DEGREES 48 MINUTES 26 SECONDS WEST, PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 3, A DISTANCE OF 1454.80 FEET;

THENCE NORTH 01 DEGREES 11 MINUTES 34 SECONDS EAST, A DISTANCE OF 7.00 FEET;

THENCE NORTH 89 DEGREES 48 MINUTES 26 SECONDS WEST, A DISTANCE OF 140.95 FEET TO A POINT ON THE EASTERLY LINE OF THAT CERTAIN STRIP OF LAND 30.00 FEET WIDE, IMMEDIATELY ADJOINING AND PARALLEL TO THE EASTERLY RIGHT-OF-WAY LINE OF THE MAIN CANAL OF THE MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NO 1;

THENCE NORTHERLY ALONG SAID EAST RIGHT-OF-WAY LINE THE FOLLOWING COURSES;

THENCE NORTH 08 DEGREES 39 MINUTES 57 SECONDS EAST A DISTANCE OF 633.61 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 466.31 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48 DEGREES 11 MINUTES 03 SECONDS AN ARC LENGTH OF 392.16 FEET;

THENCE NORTH 39 DEGREES 31 MINUTES 06 SECONDS WEST A DISTANCE OF 338.10 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 413.84 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 38 DEGREES 39 MINUTES 03 SECONDS AN ARC LENGTH OF 279.17 FEET;

THENCE NORTH 00 DEGREES 52 MINUTES 07 SECONDS WEST A DISTANCE OF 289.69 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 278.34 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34 DEGREES 24 MINUTES 53 SECONDS AN ARC LENGTH OF 167.19 FEET;

THENCE NORTH 33 DEGREES 32 MINUTES 50 SECONDS EAST A DISTANCE OF 544.63 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 897.59 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11 DEGREES 51 MINUTES 03 SECONDS AN ARC LENGTH OF 185.65 FEET;

THENCE SOUTH 69 DEGREES 53 MINUTES 58 SECONDS EAST A DISTANCE OF 12.20 FEET;

THENCE NORTH 20 DEGREES 06 MINUTES 02 SECONDS EAST A DISTANCE OF 50.00 FEET;

THENCE NORTH 69 DEGREES 53 MINUTES 58 SECONDS WEST A DISTANCE OF 12.20 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE WEST THE CENTER OF WHICH BEARS NORTH 71 DEGREES 53 MINUTES 10 SECONDS WEST A DISTANCE OF 897.59 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01 DEGREES 29 MINUTES 22 SECONDS AN ARC LENGTH OF 23.33 FEET TO A POINT OF TANGENCY;

THENCE NORTH 17 DEGREES 00 MINUTES 55 SECONDS EAST A DISTANCE OF 71.64 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 710.37 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26 DEGREES 37 MINUTES 52 SECONDS AN ARC LENGTH OF 330.18 FEET;

THENCE NORTH 09 DEGREES 36 MINUTES 57 SECONDS WEST A DISTANCE OF 1298.67 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 149.88 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85 DEGREES 22 MINUTES 37 SECONDS AN ARC LENGTH OF 223.34 FEET;

THENCE NORTH 75 DEGREES 45 MINUTES 40 SECONDS EAST A DISTANCE OF 549.66 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 578.03 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 56 DEGREES 40 MINUTES 09 SECONDS AN ARC LENGTH OF 571.71 FEET;

THENCE NORTH 19 DEGREES 05 MINUTES 31 SECONDS EAST A DISTANCE OF 74.74 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BELL ROAD;

THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID "BELL ROAD" THE FOLLOWING COURSES;

THENCE SOUTH 89 DEGREES 18 MINUTES 23 SECONDS EAST, A DISTANCE OF 20.37 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTH WITH A RADIUS OF 6865.00 FEET;

THENCE CONTINUING EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06 DEGREES 41 MINUTES 56 SECONDS AN ARC LENGTH OF 802.64 FEET TO A POINT OF TANGENCY;

THENCE NORTH 83 DEGREES 59 MINUTES 41 SECONDS EAST, A DISTANCE OF 500.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTH WITH A RADIUS OF 6735.00 FEET;

THENCE CONTINUING EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06 DEGREES 42 MINUTES 15 SECONDS AN ARC LENGTH OF 788.06 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 89 DEGREES 18 MINUTES 04 SECONDS EAST, PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER SECTION OF SAID SECTION 3, A DISTANCE OF 1056.14 FEET;

THENCE SOUTH 44 DEGREES 14 MINUTES 20 SECONDS EAST, A DISTANCE OF 28.25 FEET;

THENCE SOUTH 89 DEGREES 18 MINUTES 04 SECONDS EAST, A DISTANCE OF 100.62 FEET;

THENCE SOUTH 89 DEGREES 34 MINUTES 31 SECONDS EAST, A DISTANCE OF 9.18 FEET;

THENCE NORTH 45 DEGREES 24 MINUTES 25 SECONDS EAST, A DISTANCE OF 28.27 FEET;

THENCE SOUTH 89 DEGREES 34 MINUTES 31 SECONDS EAST, A DISTANCE OF 1993.46 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTH WITH A RADIUS OF 6735.00 FEET;

THENCE CONTINUING EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02 DEGREES 09 MINUTES 02 SECONDS AN ARC LENGTH OF 252.80 FEET TO THE NORTHWEST CORNER OF THAT PROPERTY DESCRIBED IN DOCUMENT 98-0452501, M.C.R.;

THENCE ALONG THE WEST LINE OF SAID PROPERTY SOUTH 00 DEGREES 25 MINUTES 30 SECONDS WEST, A DISTANCE OF 664.49 FEET;

THENCE ALONG THE SOUTH LINE OF SAID PROPERTY SOUTH 89 DEGREES 35 MINUTES 39 SECONDS EAST, A DISTANCE OF 399.92 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT A PARCEL OF LAND LYING WITHIN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 3 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ANY PORTION OF THE FOLLOWING DESCRIBED WELL SITE LYING WITHIN THE ABOVE DESCRIBED PROPERTY:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 2;

THENCE NORTH 00 DEGREES 51 MINUTES 22 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF SECTION 2 A DISTANCE OF 1963.84 FEET;

THENCE SOUTH 89 DEGREES 08 MINUTES 38 SECONDS EAST A DISTANCE OF 28.74 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING SOUTH 89 DEGREES 08 MINUTES 38 SECONDS EAST A DISTANCE OF 60.00 FEET;

THENCE SOUTH 00 DEGREES 51 MINUTES 22 SECONDS WEST A DISTANCE OF 75.00 FEET;

THENCE NORTH 89 DEGREES 08 MINUTES 38 SECONDS WEST A DISTANCE OF 60.00 FEET;

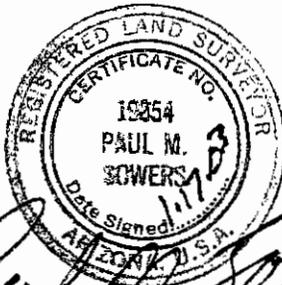
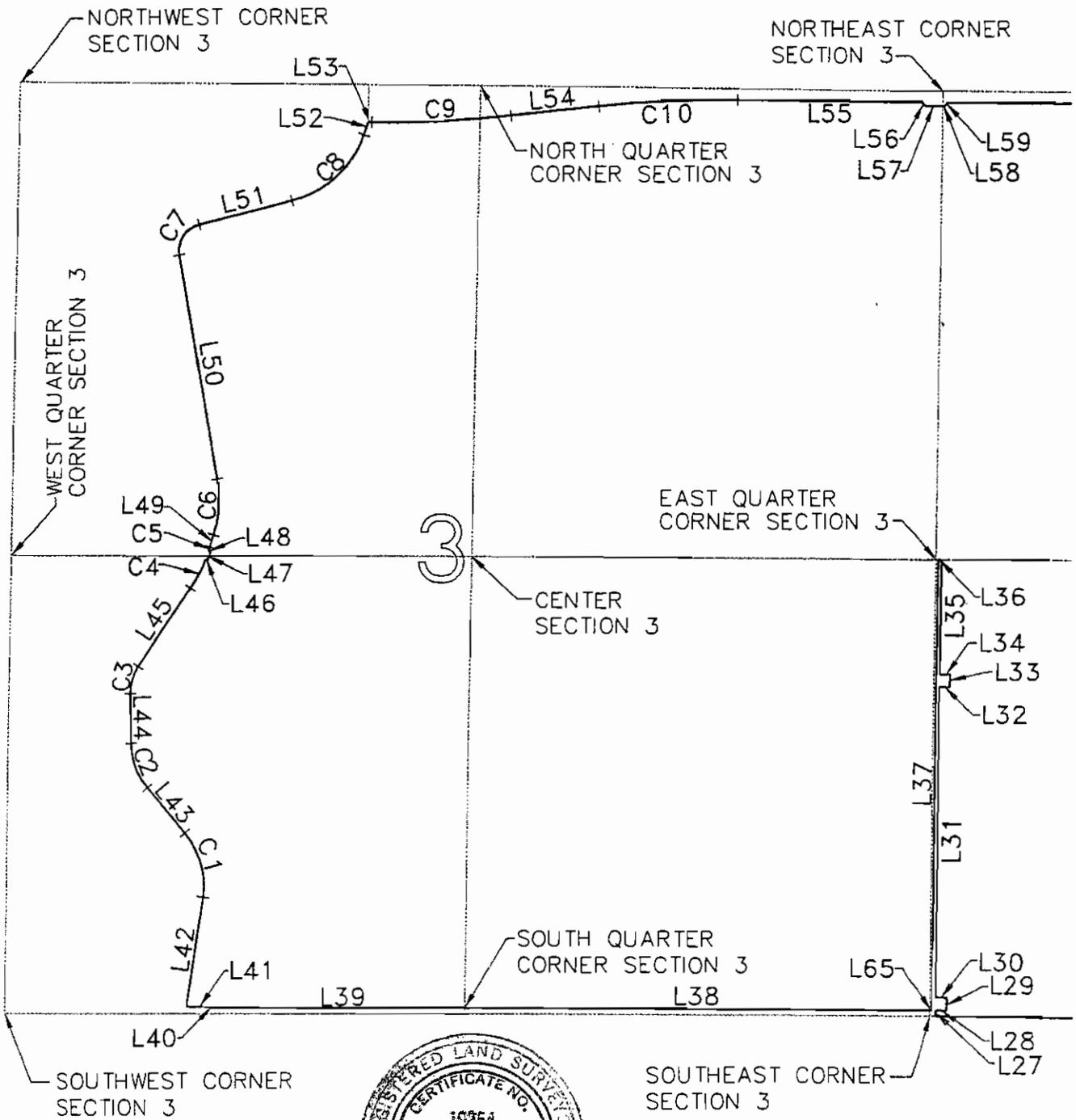
THENCE NORTH 00 DEGREES 51 MINUTES 22 SECONDS EAST A DISTANCE OF 75.00 FEET TO THE **POINT OF BEGINNING**.

The above described parcel contains 35,552,791 S.F. (816.18 Acres) more or less

Prepared by: CMX L. L. C.
PROJECT NO. 5542.01A
JANUARY 17, 2003



19954
PAUL M.
SOWERS
Date signed: 1-17-03
ARIZONA, U.S.A.



Paul M. Schwers

SHEET 2 OF 3



CMX GROUP INC.
 1515 E. MISSOURI, #115
 PHOENIX, AZ 85014
 PH (602)279-8436
 FAX (602)265-1191

EXHIBIT " B "

SURPRISE FARMS
 S.R. 303 & W. BELL ROAD
 SURPRISE, ARIZONA

CMX JOB NO.	5542.01
DATE:	01/16/03
SCALE:	N.T.S.
DRAWN BY:	SKF
CHECKED BY:	KCO

