

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: J_V
DEPUTY RECORDER
4437 PE3



DOCKET: 12590
PAGE: 3562
NO. OF PAGES: 26
SEQUENCE: 20051310876
07/08/2005
REST 16:12

W
TUCSON CITY CLERK
PICK UP

PICKUP

AMOUNT PAID \$ 30.00

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SAN MARCOS TERRACE**

Whereas, Fidelity National Title Agency, Inc., an Arizona corporation, as trustee of Trust 60,184 (the "Declarant"), holds legal title to parcel of real estate which is located in Pima County, State of Arizona; and which is legally described as follows:

SEE EXHIBIT ONE ATTACHED HERETO

AND INCORPORATED HEREIN BY REFERENCE

WHEREAS, the Declarant desires to establish a "Single Family Home" community on the property.

NOW, THEREFORE, the real property as described herein will be held, sold and conveyed subject to the following Assessments, restriction, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions and conditions will run with the property and will be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof and will inure to the benefit of each such party.

1-10-00 0-10-00

26

ARTICLE I

DEFINITIONS

Section 1.01 "Additional Property" means any property which may be annexed pursuant to the Declaration and become a part of the Property.

Section 1.02 "Annual Assessments" means those Assessments levied by the Association and used to promote the recreation, health, safety and welfare of the Members and their guests and family, for the improvement of the Common Areas and for all other purposes set forth in the Articles, Bylaws and this Declaration.

Section 1.03 "Architectural Review Committee" refers to the Committee established by the Board of Directors pursuant to Section 3.04 of this Declaration.

Section 1.04 "Articles" refer to the Articles of Incorporation of the Association and any amendments which have been filed in the Office of the Arizona Corporation Commission.

Section 1.05 "Association" refers to the San Marcos Terrace Homeowners' Association, Inc., its successors and assigns.

Section 1.06 "Association's Governing Documents" refers to Declaration, the Articles of Incorporation of the Association, the By-laws and any Rules and Regulations adopted by the Association.

Section 1.07 "Board" refers to the Board of Directors of the Association.

Section 1.08 "Bylaws" refer to the Bylaws of the Association, as may be amended from time to time.

Section 1.09 "Common Areas" means all real property, whether improved or unimproved, designated as Common Area on the Plat and owned by the Association for the common use and enjoyment of the owners.

Section 1.10 "Declaration" refers to this Declaration as amended from time to time.

Section 1.11 "Declarant" refers to Fidelity National Title Agency, Inc., an Arizona corporation, as trustee of Trust 60,184, its successors and assigns.

Section 1.12 "Design Guidelines" refers to the architectural standards set by the Association for new home construction, modification to an existing residence, and landscaping of a lot.

Section 1.13 "Developer" shall mean AmericaBuilt Communities, Inc.

Section 1.14 "Dwelling Unit" means the real property and improvements placed within the boundary of any Lot.

Section 1.15 "Lot" refers to any numbered plot of land shown contained in the "Property", as amended from time to time, with the exception of the Common Areas.

Section 1.16 "Member" means the owner of a Lot who is entitled to membership in the Association, who is entitled to use and enjoy any Common Areas if such are added to the Property, and who is obligated to pay Assessments to Association, as more fully set forth herein.

Section 1.17 "Mortgage" means any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

Section 1.18 "Owner" refers to the record owner, whether one or more persons, of the fee simple title to any Lot which is part of the Property, including a buyer under a contract for the sale of real estate, but excluding persons holding an interest merely as security for the performance of an obligation.

Section 1.19: "Person" includes a corporation, company, partnership, trust, firm, association or society, as well as natural person.

Section 1.20 "Plat" refers to the map of record in the Office of the Pima County Recorder which is legally described in Book _____, of Page _____.

Section 1.21 "Property" and "Subdivision" shall be synonymous and shall refer to that certain real property described as follows:

Lots 1 through 33, and Common Areas "A," "B" and "C" of San Marcos Terrace.

Section 1.22 "Rules and Regulations" means those policies and procedures adopted by the Board of Directors to govern the conduct and actions of Owners, tenants, visitors, contractors, and guests on the Lots and any Common Areas annexed hereto not otherwise covered in this Declaration.

Section 1.23 "Single Family" refers to a group of one or more persons each related to the other by blood, marriage or legal adoption; or a group of three or less persons who are not related, but who maintain a common household in one Dwelling Unit.

Section 1.24 "Single Family Dwelling" means a home erected and maintained in conformance with the requirements of this Declaration for private residential purposes and designed for occupancy by a single family.

12000 00001

Section 1.26 "Visible from Neighboring Lots" with respect to any object, that such object is, or would be, visible to a person six (6) feet tall, standing on any part of a neighboring Lot, or the Common Areas, at an elevation no greater than the elevation of the base of the object being viewed.

All property within the Subdivision will be held, used and enjoyed subject to the following limitations and restrictions.

Section 2.02 Signs. Without the approval of the Board, or to the extent allowed by the Design Guidelines, no Owner may display any signs of any kind which are visible from neighboring properties, except signs which may be required by legal proceedings.

A. No animals of any kind will be raised, bred, or kept on any Lot. However, a reasonable number of generally recognized house or yard pets may be kept on the Lot so long as they are not kept, bred or maintained for any commercial purpose. Chickens, other fowl, goats, swine, and cattle are not considered house or yard pets and are specifically prohibited on any Lot.

Section 2.04 Trash Containers. No garbage or trash will be kept on any Lot in the Subdivision except in closed containers of a type, size and style which has been approved by the Board. All trash containers will, at all times, be hidden from view except on the day of trash pick-up (within the exception of recyclables). All rubbish, trash or garbage, including but not limited to building materials, inoperable appliances and furniture, will be removed from Lots and will not be allowed to accumulate thereon. No incinerators will be allowed. The Board of Directors, in its sole discretion, may limit trash collection to one service provider to be used by all of the Members of the Association. The cost of such services will be borne by the Members. The purpose of contracting with one service

provider is to limit the number of days on which the trash will be collected in the Subdivision to maximize the aesthetic appearance of the community.

Section 2.05 Vehicles. No truck classified by manufacturer rating as exceeding one-ton carrying capacity, recreational vehicle, motor home, travel trailer, tent trailer camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked or maintained on any Lot or street for more than one week so as to be Visible from Neighboring Lots, or the streets unless same is parked in a garage or carport. Attempts to manipulate this one-week grace period will not be tolerated. No motor home, boat recreational vehicle, trailer of any kind truck, camper, permanent tent, or similar structure will be kept, placed, maintained, constructed, reconstructed or repaired, nor will any motor vehicle be constructed, reconstructed, or repaired upon any portion of the Lot except a garage or carport. Garages and carports will be used for parking vehicles and storage purposes only and will not be converted to living quarters. Except as provided above, only vehicles belonging to the residents, and where possible, vehicles belonging to guests, must only be parked in the garage or carport or the area designated as the driveway only. If parking is not available in the garage, in the carport, or on the driveway, guests may park on the streets within the Subdivision for visits of a temporary nature only. For purpose of this Section "Temporary Visits" will be defined as visits to the Owner which are limited in time and not on a regular basis. No overnight parking on the streets is allowed. No vehicle may be parked or stored on any portion of a Lot except in the garage, in the carport, or the driveway.

Section 2.06 (intentionally omitted")

Section 2.07 Garage doors. All garage doors must remain full lowered and closed at all times when the garage is not in use.

Section 2.08 Antennas. No aerial, antenna or satellite dish to be used for television, radio or other form of communication reception, of temporary or permanent character, will be erected on any Lot or attached to the Dwelling Unit unless approved by the Board of Directors and the Architectural Review Committee prior to installation, subject to reasonable restrictions regarding screening of the antennas. All antennas must be roof mounted and may not exceed the Dwelling Unit's roof line by more than four (4) feet. All satellite dishes must be fully screened from the View of Neighboring Lots, and the streets within the Subdivision and be in accordance with standards set by the Design Guidelines.

Section 2.09 Nuisances. After completion of any construction on any Dwelling Unit, whether new construction or remodeling of existing improvements, or the landscaping of Lots, no rubbish or debris of any kind will be allowed to accumulate or be placed on any Lot, so as to render any Lot or any portion of the Lot, unsanitary, unsightly offensive or detrimental to any other Lot or its occupants. No noise or other nuisance will be permitted on any Lot at any time which is offensive or detrimental to the Owner of adjacent Lots. The Board, in its sole discretion, has the right to determine the existence of any such nuisance and to require its removal.

ՀԱՅԱՍՏԱՆԻ ՕՐԱՊԱՏԻ

00000000000000000000

00000000000000000000

00000000000000000000

00000000000000000000

00000000000000000000

00000000000000000000

Section 2.21 Sale of Lots. Each Owner will promptly notify the Board of Directors of any sale or transfer of his/her Lot and will provide the Board with the name and address of the subsequent Owner and any other information which is reasonably required by the Association. The Association may charge a reasonable transfer fee to any subsequent Owner.

Section 2.22 Association Rules and Regulations. The Board is empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules") which are binding on all Persons subject to this Declaration, and which govern the use and/or occupancy of the Lots or the Property subjected to this Declaration. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules will govern such matters as the Board deems to be in furtherance of the purposes of the Association. The Association Rules will have the same effect as if they were set forth in, and were part of, this Declaration and will be binding on all Owners, their guests, tenants, and invitees. The Association Rules will be available for review at the principal office of the Association by each Person subject to such Rules. The Board of Directors shall provide notice to each Owner and resident of its adoption or modification of any Rule. It will be the responsibility of each Person subject to the Association Rules to review and keep abreast of any changes in the provisions thereof. In the event any conflict between any provisions of Association Rules and any provisions of this Declaration, or the Articles, Bylaws or Design Guidelines, the provisions of the Association Rules will be superseded by the provisions of this Declaration, the Articles, Bylaws or Design Guidelines to the extent of any such conflict.

Section 2.23 Garage Sales. Garage sales or any similar type of sales are allowed provided that there is no more than one sale per Lot per quarter.

Section 2.24 Windows. No reflective materials including, but not limited to, aluminum foil, reflecting screens or glass, mirrors, or similar items will be permitted on any Lot of Dwelling Unit so as to be visible from outside the Dwelling Unit or in any matter which creates a nuisance to other occupants in the Subdivision.

ARTICLE III OWNERS' PERMITTED USES, RESTRICTIONS AND RIGHTS OF DWELLING UNITS AND LOTS

Section 3.01 Private Residential Purposes. Except as provided for elsewhere in this Declaration, Lots will be occupied and used solely as private residence for a Single Family by the Owner, his/her family, tenants and social guests and for no other purpose.

A. An Owner or occupant residing in a Dwelling Unit may operate a "Home Occupation" solely within the private confines of the Dwelling Unit so long as: a) the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit, and there is no sound or smell detectable from the outside of the Dwelling Unit indicating the conduct of business; b) the business activity conforms to all zoning

requirements for the Property; c) the business activity does not involve frequent or annoying traffic, as determined by the Board of Directors, by persons coming on the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and d) the business activity is consistent with the residential character of the property and does not constitute a nuisance of hazardous or offensive use, nor threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

B. No Home Occupation may involve equipment or machinery, manufacturing, drilling, burning, retailing or wholesaling of services or products, or conversion of any garage into a business office or room.

C. "Home Occupation," as permitted by this Section, means private consultation and advice in trades and professions. The Board of Directors has the power, notwithstanding the foregoing, to prohibit any Home Occupation or business activity which in its judgment involves excessive noise, traffic which poses a nuisance within in its judgment involves excessive noise, traffic, which poses a nuisance within the Property or causes disharmony with respect to the overall design and peacefulness of the Property.

D. No business conducted upon the Property or in any Dwelling Unit will result in any change in the exterior appearance of any Dwelling Unit or Lot, and no business will involve signs, buildings, structure in addition to the Dwelling Unit.

Section 3.02 Renting. Each owner has the right to lease or rent his/her Dwelling Unit. However, all leases must be in writing and must provide that the tenant or lessee will abide by the Rules, Bylaws, Articles, and the provisions of this Declaration. In the event any lease does not contain this provision, such lease will, at the option of the Board, be null and void. All leases must be for a term of one month or longer. The Owner or Owner's rental agent will provide the Association with the name; telephone number, number of people residing in the Dwelling Unit, the number of pets, and any other information reasonably desired by the Association concerning the lessee.

Section 3.03 Common Walls. The rights and duties of the Owners with respect to common walls will be as follows:

A. Any wall placed on the dividing line between two (2) lots will constitute a common wall.

B. With respect to any such wall, each of the adjoining Owners will assume the burden and be entitled to the benefits recited in this Section 3.03, and to the extent it is consistent with this Section, the general rules of law regarding common wall will be applied.

1-10-00
0-10-00
0-10-00

C. The Owners of Lots who share a common wall will have reciprocal easements for support and an equal right to use such wall provided that the use by one Owner does not interfere with the use and enjoyment of the wall by the other Owner.

D. Unless other provisions of this Section 3.03 are applicable, the costs of reasonable repair and maintenance of a common wall will be shared equally by the Owners using the common wall.

E. In the event that any common wall is damaged or destroyed by the act of one of the adjoining Owners, his/her agents, guests or family (whether or not such act is negligent or otherwise culpable) so as to deprive the Owner of the full use and enjoyment of such wall, then the first of such Owners will forthwith proceed to rebuild and repair the wall to its former condition without cost to the other Owner.

F. In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his/her agents, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both Owners will promptly rebuild or repair the wall to its former condition, the cost of which shall be equally shared by the Owners.

G. Notwithstanding anything to the contrary contained in this Declaration and in addition to meeting the other requirements of these restrictions and of any building code or similar regulation or ordinance, any Owner proposing to modify, make additions to or rebuild his/her Dwelling Unit in any manner which requires the extension or other alteration of any common wall will first obtain the written consent of the Board. The Board will consult with the adjoining Owners concerning the proposed modification, extension or alteration of the common wall prior to giving regardless of whether the adjoining Owner disapproves of the modification, extension or alteration.

H. In the event of a dispute between Owners regarding the repair or rebuilding of a common wall or regarding the sharing of costs for such wall, upon the written request of such Owners delivered to the Association, the matter will be heard and determined by the Board whose decision will be final and binding.

Section 3.04 Architectural Review.

A. General. No building, paving, wall, antenna, satellite dish, or other structure will be commenced, erected or maintained on a Lot, nor will any exterior addition to, or change in, or alteration of a Dwelling Unit or the exterior color scheme, roof or finish thereof, nor will any addition to, or change in, or alteration of the landscaping, be made until the plans and specifications showing the nature, kind, shape height, materials, and location have been submitted to and approved in writing by the Board of Directors in accordance with the Design Guidelines. In approving such construction, the Board shall consider the harmony of external design and location in relation to the surrounding structures and topography. The Board of Directors may delegate its authorization to an Architectural Review Committee composed of three (3) or more representatives appointed by the Board. In the event the Board or its designated committee fails to approve or

10000 OWN-1

disapprove the design and location of the improvement within forty-five (45) days after the plans and specifications have been submitted to it, approval will automatically be deemed as given. No awnings, covers or shades will be allowed either temporarily (other than for the purpose to protect the painting improvement) or permanently fastened to or suspended from the exterior of any Dwelling Unit without the written consent of the Board. As will be further outlined in the Design Guidelines, it is the intent of the Association to encourage and require the use of natural desert colors on Dwelling Units and the use of natural desert landscaping material on the Lots.

B. Guidelines. The Board of Directors and Architectural Design Committee may establish standards and design guidelines relating to the construction of the improvements on the Lots (the "Design Guidelines") which the Architectural Review Committee and Board of Directors may from time to time in their sole discretion, amend, repeal or augment. Such Design Guidelines are incorporated by reference in this Declaration and are binding on all Members, Owners, Occupants or other Persons in the same manner as the provisions of this Declaration. A copy of the current Design Guidelines will be a part of the Association's Governing Documents. The Design Guidelines may include, among other things, restrictions and limitations regarding:

a) Site planning and site development including, but not limited to, rules, regulations and restrictions on grading, leveling, transplanting and preserving native vegetation, construction and maintenance of drainageways and structures and other modifications to the natural environment;

b) Landscaping including, but not limited to, rules and regulations regarding acceptable plant materials, minimum coverage requirements and maintenance requirements;

c) Architectural design and maintenance of any or all structures including rules, regulations, and restrictions pertaining to building materials, exterior appearances, architectural styles, exterior colors, height restrictions, setback requirements, set up requirements, allowable age and style of relocated improvements and similar restrictions;

d) Time limitations of the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Design Guidelines;

e) The designation of a "building envelope" within a Lot outside of which improvements will not be permitted;

f) Procedural rules and regulations governing the manner in which the Architectural Review Committee will operate, the types of submittals to be required in connection with the requests for development or architectural approvals, and the manner in which the Architectural Review Committee will process such submittals. The Architectural Review Committee will have the right to establish and amend from time to time a schedule of fees which the Architectural Review Committee will have to charge in connection with requests for the approval of plans and specifications.

DECLARATION

g) Such other limitations and restrictions as the Board or Architectural Review Committee in its reasonable discretion may adopt.

C. Delegation. The Architectural Review Committee may delegate its plan review responsibilities to one or more of its members or architectural consultants retained by the Architectural Review Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants will be equivalent to approval or disapproval by the entire Architectural Review Committee.

D. Non-Liability for Approval of Plans. Plans and specifications for building and other structures will be reviewed by the Architectural Review Committee as to style, exterior design, appearance and location. Development Plans (including but not limited to grading, drainage and landscaping plans) will be reviewed for appearance, location, conformance with building envelope requirements and impact on other Lots within the Association. Although the Architectural Review Committee has the right to reject plans and specifications because of their failure to comply with zoning or building ordinances, or other governmental regulations or restrictions, or on the basis that such plans and specifications are defective or not prepared in accordance with sound engineering practices, the approval of plans and specifications will not constitute a representation, warranty or guaranty that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations and restrictions. By approving such plans and specifications, neither the Architectural Review Committee, the members thereof, the Association, any Member, or the Board assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the Architectural Review Committee any member thereof, the Association, nor the Board, will be liable to any Member, Owner, Occupant 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 constructions 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 Lot within the Association; provided, however, that such action with the actual knowledge possessed by him/her was taken in good faith.

E. Inspection and Recording of Approval. Any member or authorized consultant of the Architectural Review Committee, or authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot or Parcel after reasonable notice is provided to the Owner or Occupant thereof in order to inspect improvements constructed or being constructed on the Lot and to ascertain that such improvements have been or are being built in compliance with the Design Guidelines and this Declaration. The Architectural Review Committee will cause such an inspection to be undertaken in accordance with the Design Guidelines.

F. Additional Powers of the Board. The Board may promulgate as part of the Design Guidelines such additional architectural and landscape standards, rules and regulations as

12000 00000

it deems are appropriate and are not in conflict with this Declaration. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE BOARD MAY FIX A FINE OF UP TO \$5,000.00 FOR FAILURE TO OBTAIN THE REQUIRED APPROVAL FROM THE ARCHITECTURAL REVIEW COMMITTEE. Such fine will be a Special Assessment and will also be the personal obligation of the Owner of the Lot on which the fine is assessed. The imposition of the fine will not limit the damages any Person, including Declarant, may recover as a result of any violation of the provisions of this Section.

G. Waiver of Design Guidelines. The Architectural Review Committee has the right at any time to amend the Design Guidelines and to waive or modify any rules, regulations or restrictions contained in the Design Guidelines or this Section provided that no such amendment, waiver or modification will be effective unless it is writing and signed on by an officer of the Association after adoption by the Board of Directors. No such waiver or modification will be, or will be deemed to be, a waiver of the right to strictly enforce any such rule, regulation or restriction in the future.

ARTICLE IV OPERATION OF THE SAN MARCOS TERRACE HOMEOWNERS' ASSOCIATION, INC.

Section 4.01 Organization.

A. Association. The Association is a non-profit Arizona corporation charged with the duties set forth in the Articles, Bylaws, and this Declaration.

B. Board of Directors and Officers. The affairs of the Association will be conducted by the Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and Bylaws, as amended from time to time. The composition of the Board will be defined in the Bylaws.

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

Section 4.02 Membership.

A. Qualification. Each Owner of a Lot (which is subject to Assessment) will be a member of the Association. No Owner will have more than one membership for each Lot Owned.

A. Fidelity Insurances. Fidelity Insurance coverage against dishonest acts on the part of the directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity insurance policy must name the Association as the insured.

B. Workers' Compensation. A workers' Compensation policy if necessary to meet the requirements of the law.

C. Other. Such other insurance as the Board determines from time to time to be necessary including, but not limited to, Directors and Officers coverage.

D. Dwelling Units. It will be the individual responsibility of each Owner to provide as he/she sees fit at his/her own expense, insurance for his/her own expense, insurance for his/her Dwelling Unit against loss or damage by fire or other hazards. Owner's liability insurance, theft and other insurance covering personal property damage and loss.

E. Annual Review of Policies. All insurance policies will be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Property which may have been damaged or destroyed.

Section 4.06 Committees. The Association may establish a Landscape Committee, a Covenants Committee, an Architectural Committee, and any other committees the Board of Directors may from time to time deem necessary. By resolution of the Board of Directors shall adopt policies and procedures for the operation of these committees and prescribe the duties of such committees.

ARTICLE V ASSESSMENTS

Section 5.01 Creation of Lien and Personal Obligation to Pay Assessments. Each Owner, upon the recordation of a deed to any Lot, whether or not it is stated in the deed, is deemed to covenant and agree to the Association: (1) Annual Assessments or charges, (2) Reimbursement Assessments, and (3) Special Assessments. Such Assessments will be established and collected as provided in this Article. All Assessments, together with interest, late fees, costs, and reasonable attorneys' fees, will be a charge on the Lot and will be continuing lien upon the late fees, costs, and reasonable attorneys' fees, will be a charge on the Lot and will be continuing lien upon the Property against which each Assessment is made. Delinquent Assessments, together with interest, late fees, costs and reasonable attorneys' fees, will be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment was levied. The personal obligation for delinquent Assessment will not pass to his/her successors in title unless specifically assumed by them.

10000 00000

Section 5.03 Annual Assessment.

B. Actual Annual Assessments. The Actual Assessments will, at the discretion of the Board, be set in an amount equal to, less than, but no greater than, the Annual Maximum Assessment. The effective date of any change in the Actual Annual Assessment will be January 1 of each year. No Actual Annual Assessment will be made until January 1, 2006.

Section 5.04 Special Assessments. Subject to any limitations in the Bylaws, Special Assessments may be levied in addition to Regular Assessments for (1) constructing capital improvements; (2) correcting an inadequacy in the current operating account; (3) defraying, in whole or in part the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Common Areas, if created; (4) paying for such other matters as the Board may deem appropriate for the Project; or (5) if any Owner, his family or any licensee, tenant, lessee or invitee violates the Declaration or the Rules, the Board may impose a Special Assessment solely upon the Owner of not more than Two Hundred Dollars (\$200.00) for each violation. Special Assessments will be approved by the vote of two thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Before invoking a Special Assessment directed solely at an individual lot Owner, the Board will give the Owner notice and an opportunity for hearing before the Board. Any Assessment imposed by the Board which remains unpaid for a period of thirty (30) days or more after its due date will be collectable in accordance with this Article V.

7-15160 031517-1

00-357600 009587-00

00-357600 009587-00

00-357600 009587-00

00-357600 009587-00

00-357600 009587-00

00-357600 009587-00

favor of the Association and will be for the benefit for all the Owners. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages. The lien for Assessments will constitute a lien on each respective Dwelling Unit prior and superior to all other liens, except (1) all taxes, bonds, Assessments and other levies which by law would be superior thereto; and (2) the lien or charge of any first mortgage or deed of trust.

Section 5.10 Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting monies due and delinquent from the Owner. All additional charges will be included in any judgment in any suit or action brought to enforce collection of delinquent Assessments or may be levied against a Dwelling Unit as a reimbursement Assessment. Additional charges will include, but are not limited to, the following:

- A. **Attorneys' Fees.** Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any Assessment or sum due, including the placement of the lien or the filing of a suit or otherwise;
- B. **Late Charges.** A late charge in an amount to be determined by the Board to compensate the Association for additional collection costs incurred in the event any Assessment or other sum is not paid when due; provided, , however, that such late charge will not exceed ten percent (10%) of the delinquent Assessment;
- C. **Cost of Suit.** Costs of suit and court costs incurred as are allowed by the court;
- D. **Interest.** Interest on all sums imposed in accordance with this Article V including the delinquent Assessment, reasonable costs of collection, reasonable attorneys' fees and late charges, at the annual percentage rate of twelve (12%) per year; and
- E. **Other.** Any such other additional costs that are the Association may incur in the process of collecting delinquent Assessments or sums.

Section 5.11 Application of Payments. All payments received by the Association will first be applied to collection costs and attorneys' fees, then to late charges, then to interest and then to delinquent Assessments.

Section 5.12 Release of Lien. Upon payment of delinquent Assessments or other satisfaction thereof, the Association will record a release of any recorded lien.

Section 5.13 Statement of Assessment Lien. Within ten (10) days of request from an Owner liable for Assessments, the Association will furnish to that Owner a written certificates signed by an officer or authorized agent of the Association stating the amount of any outstanding Assessment and any additional charges secured by the lien upon his/her Dwelling Unit. A charge, not to exceed the reasonable cost of preparation and

1-2000-0000-0

production of the certificate, may be levied by the Board for the issuance of such certificate.

Section 5.14 No Exemption of Owner. No Owner is exempt from liability for payment of Assessment by waiver of the use of enjoyment of the Common Area by abandonment of his/her Lot, or for any other reason.

Section 5.15 Subordination of the Lien to Mortgages. The lien for Assessments will be subordinate to the lien of any first mortgage. Sale or transfer of any Lot will not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure, or any proceeding in lieu thereof, will extinguish the lien of such Assessments as to payments which becoming due prior to such sale or transfer. No sale or transfer of any Lot will relieve such Lot from liability for an Assessments thereafter becoming due or from the lien thereof.

Section 5.16 Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provision of this Declaration, or the Association's of Articles or Bylaws or the Rules, the following provisions will apply to and benefit each holder of a first mortgage upon a Lot (called the first mortgagee):

A. The first mortgagee will not in case or manner be personally liable for the payment of any Assessment or charge, nor for the observation or performance of any covenant, restriction, regulation, rule, article or bylaw, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as hereinafter provided.

B. During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to the exclusion of the Owner's exercise of such rights and privileges.

C. At such time as the first mortgagee becomes record Owner of a Lot, said first mortgagee will be subject to all of the terms and conditions of these restrictions, including but not limited to the obligation to pay for all Assessments and charges accruing thereafter in the same manner as any Owner.

Section 5.17 Reserves. The reserves which are collected as part of the Regular Assessments will be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected. Such reserves will be deemed a contribution to the capital account of the Association by the Owners. The responsibility of the Board will be only to budget and provide for such reserves as the Board in good faith deems reasonable, and no member of the Board is liable to any Owner or to the Association if the amount in the reserve account proves to be inadequate.

ENCLOSURE

1400560 0025004

1000

from the receipt of the notice to schedule a meeting with the complainant for the purpose of arriving at a settlement of the controversy with the complainant.

C. Violation of Law. Each and every provision of this Declaration and any amendment hereto will be subject to all applicable state, county municipal or local ordinances and Subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Subdivision is hereby declared to be a violation of these restrictions and subject to any or all of the enforcement procedures set forth or in the Bylaws.

D. Remedies Cumulative. Each remedy provided by these is cumulative and not exclusive.

E. Non Waiver. Failure by the Board, the Association or any Owner to enforce any of the provisions of these restrictions at any time will not constitute a waiver of the right thereafter to enforce any such provisions, or any other provision of these restrictions.

Section 6.05 Attorneys' Fees. In the event the Association incurs attorneys' fees and/or court costs in the enforcement of any of the provisions of this Declaration or the Rules adopted by the Association, regardless of whether a lawsuit is filed, such attorneys' fees and court costs, if any, will be paid by the Owner against who the action is taken. The Association will be entitled to collect such attorneys' fees and court costs in the same manner as Assessments.

Section 6.06 Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment to this Declaration will operate to defeat and render invalid the rights of the beneficiary under any deed of trust or mortgage upon a Lot made in good faith for value and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust or mortgage such Lot will remain subject to this Declaration as amended.

Section 6.07 Annexation of Additional Property.

A. Annexation of Additional Property. Declarant may elect to annex Additional Property to the Subdivision and to subject such Property to the Declaration in increments of any size whatsoever, or to annex more than one such increment at any given time and in given order. This shall include Common Areas for the use and enjoyment of all the Members of the property. Declarant reserves the right, in its sole discretion and without the approval, assent or vote of the association or the Members, to annex Additional Property at any time prior to expiration of fifteen (15) years from the date this Declaration is recorded and to subject all or any portion of such property to the plan of the Declaration. Although Declarant will have the ability to annex Additional Property as provided in this Section, Declarant will not be obligated to annex all or any portion of any property presently contemplated or intended to be included within the Property and such property will not become subject to the Declaration unless and until a Declaration of

COMMON

Annexation will have been recorded as herein provided. In the event the Declaration annexes Common Areas to the Property, it shall be entitled to record concurrently therewith additional covenants and restrictions governing the use, management, maintenance, and control of such Common Areas. These additional restrictions shall be binding on all Owners, their guests or tenants as though fully set forth herein.

B. Annexation Declaration. A Declaration of Annexation will be a writing in recordable form which annexes the Additional Property to the plan of the Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions as are set forth in Declaration relating to Declarations of Annexation. Declarations of Annexation may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in the Declaration as may be necessary to reflect the different characteristics, if any, of the Additional Property and as are not inconsistent with the plan of the Declaration. In no event, however, will any such Declaration of Annexation revoke, modify or add to the covenants established by the Declaration with or respect to the Property already subject to the Declaration. The recordation of the Annexation, together with a plat (the "Annexation Plat") describing the Additional Property will constitute and effectuate the annexation of the Additional Property described therein, making such real property subject to the Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said Additional Property will be part of the Property for all intents and purposes of the Declaration and all of the owners of interests in the Additional Property will automatically be subject to the Declaration as of the effective date of Annexation or such later date as may be specified therein.

Section 6.08 Construction, Sale and Leasing Facilities. During the period when the Lots are being sold and Dwelling Units are being constructed, the Declarant or its agent(s) may maintain such facilities which is believes to be reasonably required, convenient or incidental to the development and sale of the Lots including, but not limited to, a business office, storage areas, construction yards, signs, models, and sales and/or leasing offices.

Section 6.09 Construction.

A. Interpretation. The provisions of this Declaration will be literally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Subdivision. This Declaration will be construed and governed by the laws of the State of Arizona.

B. Restriction Severable. Notwithstanding the provisions of Paragraph A, each of the provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof will not affect the validity or enforceability of any other provision.

C. Rule Against Perpetuities. In the event the provisions of this Declaration are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same will be effective, then in that event said periods of time will be

ENCLOSURE

D. Singular includes plural. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular; and the masculine, feminine or neuter will include the masculine, feminine and neuter.

E. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit or describe the intent and meaning of the provisions hereof.

If to the Association

The San Marcos Terrace Homeowners' Association, Inc.
5255 Williams Circle
Suite 6000 West
Tucson, Arizona 85711

If to an Owner:

To the address of any Lot within the Subdivision or to the last address furnished by an Owner to the Association ; provided, however that any such address may be changed at any time by the Owner by delivering written notice of change of address to the Association. Each Owner of a Lot will promptly provide his/her current mailing address to the Association and will promptly notify the Association in writing of any subsequent change of address.

Section 6.11 Binding Effect. By accepting a deed or acquiring any ownership interest in any of the Property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions rules or regulations contained herein which run with the land and are binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore each such person fully understands and acknowledges that this Declaration will be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

ARTICLE VII

MAINTENANCE

4005760 0905124

Section 7.1 Area of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of the Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance repair and replacement of all Areas of Association Responsibility. The Association shall pay all *ad valorem* taxes on the Common Area prior to delinquency. Notwithstanding the foregoing, the Association may take reasonable steps to appeal or protest any Common Area tax assessments. The Association shall maintain bufferyards, as defined on the Plat, when such bufferyards are outside the walled privacy area of lots.

Section 7.2 Detention/Retention Basins. The owners shall be solely responsible for operation, maintenance, and liability for drainage structures and detention basins. The owners shall have an Arizona Registered Professional Civil Engineer prepare a certified inspection report for the drainage and detention/retention facilities at least once each year and that these regular inspection reports will be on file with the owner for review by City staff, upon written request. The City staff may periodically inspect the drainage and detention/retention facilities to verify that scheduled and unscheduled maintenance activities are being performed adequately, and that the owners agree to reimburse the City for any and all costs associated with maintaining the drainage and detention/retention facilities, should the City find the owners deficient in their obligation to adequately operate and maintain their facilities.

The certified annual inspection report shall contain the following summaries; a) either a statement that no maintenance work is needed at that time, or a list of repairs and work to be done to correct deficiencies or potential problems and/or to restore the aesthetics, followed by a letter of certification from an Arizona Registered Professional Civil Engineer stating that the recommended work has been satisfactorily completed, b) a statement either indicating that watershed conditions have not changed since the previous inspection report, or stating that specific changes have occurred which alter or eliminate some of the design features and affect the level of service of the drainage and detention/retention systems. The City Engineer is to be notified if watershed conditions have changed to the extent that drainage and detention/retention systems no longer satisfy the requirements of the Floodplain Regulations found in the Tucson Zoning Code.

Section 7.3 Assessments of Certain Cost of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guest or invites, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

Section 7.4 Maintenance of Walls other than Boundary Walls.

- A. Walls (other than boundary walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.
- B. Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained and replaced by the Owner of the Lot, except that the Association shall be

EXHIBIT "A" "One"

LEGAL DESCRIPTION

Lots 1 thru 33 and Common Areas "A" (Natural Open Space) "B" (Detention/Retention Area) and "C" (Landscape) of SAN MARCOS TERRACE a subdivision of Pima County, Arizona as recorded in Book 600 Of Maps and Plats at Page 5 .

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100