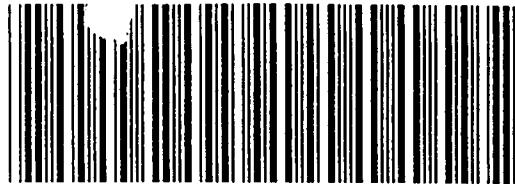


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MARIA 1 OF 3

**DECLARATION**

**OF**

**COVENANTS, CONDITIONS, RESTRICTIONS  
ASSESSMENTS, CHARGES, SERVITUDES, LIENS,  
RESERVATIONS AND EASEMENTS**

**FOR  
POWER RANCH**

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

THIS DECLARATION of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (hereinafter termed the "Declaration") is made this 1<sup>st</sup> day of October, 1999, by SUNPOWER PROPERTIES L.L.C., an Arizona limited liability company (hereinafter sometimes termed "Declarant").

**BACKGROUND**

A. Declarant is the owner of certain real property located in the Town of Gilbert, Maricopa County, Arizona, known as Power Ranch, as legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

B. Declarant may, but without any obligation to do so, either annex additional property to the Property, to become a part thereof and subject to this Declaration (hereinafter referred to as the "Additional Property"), or deannex one or more portions of the Property; and

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

D. 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 Power Ranch to the public for streets, roadways, drainage, flood control, and general public use; and to Record various Tract Declarations covering portions of Power Ranch, which Tract Declarations will designate the purposes for which such portions of Power Ranch may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of Power Ranch; and

E. Declarant desires to form a nonprofit corporation for the social and recreational purposes of benefiting Power Ranch, the Owners and Residents (as said terms are defined hereinbelow), which nonprofit corporation (hereinafter termed the "Association") will (i) acquire, construct, operate, manage and maintain a variety of Common Areas upon Power Ranch; (ii) establish, levy, collect and disburse the Assessments, fees and other charges imposed hereunder; and (iii) as the agent and representative of the Members of the Association and Residents of Power Ranch, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of Power Ranch; and

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

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

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

NOW, THEREFORE, DECLARANT AND ATI TITLE hereby declare, covenant and agree as follows:

## **ARTICLE 1** **DEFINITIONS**

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

1.1     **Additional Property** shall mean real property situated in the Town of Gilbert, County of Maricopa, State of Arizona, and the Improvements located thereon, which is contiguous to or in the vicinity of any real property previously subjected to this Declaration. For purposes of this section, property shall be contiguous if only separated by a public street or road. All or part of the Additional Property may be added to the Property in one or more additional phases by the Recording of a Supplemental Declaration pursuant to the provisions of Article 13 hereof.

1.2     **Annual Assessment** shall mean the charge levied and assessed each year against each Lot and Parcel pursuant to Section 7.2 hereof.

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

1.4     “Articles” shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

1.5     “Assessable Property” shall mean any Lot or Parcel, except: (i) such part or parts thereof as may from time to time constitute Exempt Property.

1.6     “Assessment” shall mean an Annual Assessment, Special Assessment, Special Service Area Assessment, and/or Maintenance Charge.

1.7     “Assessment Lien” shall mean the lien created and imposed by Section 7.1 hereof.

1.8     “Assessment Period” shall mean the time period set forth in Section 7.9 hereof.

1.9     “Association” shall mean the Arizona nonprofit 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 “Power Ranch Community Association,” and hereby reserves the right to use any similar name if, for any legal or other reason, “Power Ranch Community Association” cannot or should not be used.

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

1.11    “Board” shall mean the Board of Directors of the Association.

1.12    “Bylaws” shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

1.13    “Cluster Residential Development” shall mean Lots with Dwelling Units intended for Single-Family occupancy, including, but not limited to, types of residential housing arrangements known as 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.

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

1.15    “Common Area and Common Areas” shall mean (i) all Association Land and the Improvements thereon; (ii) all land within the Property which the Declarant, by this Declaration or

other Recorded instrument, makes available for use by Members of the Association and evidences its intent to convey to the Association at a later date; (iii) all land within the Property which the Declarant indicates in a Recorded subdivision plat, Tract Declaration or other Recorded document or instrument is to be used for landscaping, water retainage, drainage, and/or flood control for the benefit of Power Ranch and/or the general public and is to be dedicated to the public or the Town upon the expiration of a fixed period of time, but only until such land is so dedicated; and/or (iv) all land within Power Ranch which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance as reflected in a Recorded document, plat or other Recorded instrument, and for which the Association benefits by limited use, full use, or aesthetic consistency, for the benefit of the Members; and/or (v) any easement areas situated in the vicinity of the Property which are for the benefit of the Association and its Members and for which the Association has accepted responsibility for maintenance as reflected in a recorded document, plat or other instrument.

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

1.17    **“Condominium Unit”** shall mean a unit, together with any appurtenant interest in all common elements, within a condominium which is created under Arizona law. Such term shall not include a Rental Apartment in an Apartment Development.

1.18    **“County”** shall mean and refer to the County of Maricopa, State of Arizona.

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

1.20    **“Declarant”** shall mean SunPower Properties L.L.C., an Arizona limited liability company, and the successors and assigns of Declarant’s rights and powers hereunder, and any person or persons to whom any part or all of Declarant’s rights reserved to the Declarant hereunder are assigned by a written, Recorded instrument expressly assigning those rights.

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

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

1.23    **“Design Guidelines”** shall mean the architectural guidelines and standards promulgated by the Design Review Committee as provided in Section 11.1 hereof.

1.24    **“Design Review Committee”** shall mean the committee of the Association to be created and appointed pursuant to Article 11 hereof.

1.25 “Developer” shall mean a person or entity who is engaged in residential or commercial real estate development and who purchases one or more Lots or Parcels from the Declarant for the purpose of constructing Improvements thereon for sale or lease.

1.26 “Development Master Plan” shall mean the Power Ranch General Development Plan approved by the Town as the same may be amended from time to time.

1.27 “Dwelling Unit” shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

1.28 “Exempt Property” shall mean the following parts of Power Ranch: (i) all land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, Maricopa County, the Town, or any political subdivision, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective; and (ii) all Association Land, for as long as the Association is the owner thereof.

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

1.30 “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.

1.31 “Land Use Classification” shall mean the classification to be established by the Declarant pursuant to Section 4.1 hereof, which designates the type of Improvements which may be constructed on a Lot, Parcel or Association Land and the purposes for which such Improvements and surrounding land may be utilized.

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

1.33 “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.

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

1.35 “Maintenance Charges” shall mean any and all costs assessed pursuant to Section 10.2 hereof.

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

1.37 “Membership” shall mean a Membership in the Association and the corresponding rights, privileges and responsibilities of the Owners and Declarant pursuant to Article 6 hereof.

1.38 “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 of a Lot or Parcel. Owner shall not include (i) persons having an interest in a Lot or Parcel merely as security for the performance of an obligation, or (ii) a Lessee or Tenant. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of Arizona Revised Statutes § 33-741 *et seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instruction or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots or Parcels subject to the lien or a deed of trust pursuant to Arizona Revised Statutes § 33-801, *et seq.*, the Trustor shall be deemed to be the Owner.

In the case of Lots or Parcels, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.39 “Parcel” shall mean an area of real property within the Property which (i) is not included within the boundaries of any Recorded plat which establishes one or more Lots; (ii) is subject to a Tract Declaration; and (iii) is not Association Land.

1.40 “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.

1.41 “Power Ranch” shall mean the Property.

1.42 “Power Ranch Rules” shall mean the rules for Power Ranch adopted by the Board pursuant to Section 5.3 hereof.

1.43 “Property” shall mean the real property situated in the Town of Gilbert, Maricopa County, Arizona, described on Exhibit “A” attached hereto, and the Improvements to be completed thereon, and any part of the Additional Property added pursuant to Article 13 hereof.

1.44 “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.

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

1.46 “Resident” shall mean each natural person residing in a Dwelling Unit.

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

1.48 “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.

1.49 “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 residential use by a Single Family.

1.50 “Special Assessment” shall mean any assessment levied and assessed pursuant to Section 7.5 hereof.

1.51 “Special Service Area” shall mean any part of Power Ranch designated in a Tract Declaration, Recorded subdivision plat approved and signed by Declarant or the Association, or any other Recorded instrument approved and signed by Declarant or the Association, as an area within which certain services are to be provided for the primary benefit of the Owners of less than all of the Lots and Parcels in Power Ranch.

1.52 “Special Service Area Assessment” shall mean an Assessment levied against less than all of the Lots and Parcels in Power Ranch pursuant to Section 7.7 of this Declaration. Each Lot and Parcel shall be subject to a separate Special Service Area Assessment for each Special Service Area within which such Lot or Parcel is located.

1.53    "Special 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 Assessments imposed or payable hereunder.

1.54    "Sub-Association" shall mean an owners association created within Power Ranch other than the Association and subject to this Declaration. Each Owner who is a member of a Sub-Association shall also hold membership in the Association.

1.55    "Supplemental Declaration" shall mean a written instrument Recorded pursuant to Article 13.

1.56    "Telecommunication System" shall mean any telecommunications system that serves all or any portion of Power Ranch as described in Article 15.

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

1.58    "Town" shall mean the Town of Gilbert, Arizona.

1.59    "Tract Declaration" shall mean a declaration Recorded pursuant to Section 4.1 of this Declaration.

1.60    "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 Lot, Parcel or Common Area which adjoins the Lot or Parcel on which such object is located.

## ARTICLE 2

### PROPERTY SUBJECT TO THE POWER RANCH DECLARATION

2.1    General Declaration Creating Power Ranch. Declarant intends to develop Power Ranch and to sell and convey Lots and Parcels. As portions of Power Ranch owned by Declarant are developed, Declarant intends, with respect to particular property, to Record one (1) or more Tract Declarations covering Lots and Parcels and designating Common Areas 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 Power Ranch is, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Recorded Tract Declarations applicable thereto, as amended or modified from time to time; provided, however, that 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, Tenants and

Residents concerning the use and maintenance of such public areas shall at all times apply to the Owners, Lessees, Tenants 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 Power Ranch, and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Power Ranch and every part thereof. All of this Declaration shall run with the Property and with all Lots, Parcels and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Lessees Tenants 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 Power Ranch owned by the Declarant or from dedicating or conveying portions of Power Ranch owned by the Declarant, including streets or roadways, for uses other than as a Lot, Parcel or Association Land. Tract Declarations may be amended by approval of the Board and the Owners of all Lots and Parcels subject to the Tract Declaration. As long as the Declarant owns any Lot or Parcel, Declarant's approval is also required for any amendment to a Tract Declaration.

2.2 **Association Bound.** Upon the date of filing the Articles with the Arizona Corporation Commission, the Covenants shall be binding upon and shall benefit the Association.

2.3 **Sub-Associations Bound.** Any and all Sub-Associations shall be bound by and, to the extent specifically set forth in this Declaration or the applicable Tract Declaration, benefitted by the Covenants.

### ARTICLE 3 EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

3.1 **Easements of Enjoyment.** Declarant and every Owner, Lessee, Tenant, Resident 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 suspend the voting rights and right to use of the recreational facilities and other Common Areas by any Member (i) for any period during which any Assessment against his Lot or Parcel remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Tract Declaration or the Power Ranch Rules, and (iii) for successive 60-day suspension periods if any such infraction is not corrected during any prior 60-day suspension period.
- (b) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or other agreements with the Town ~~effective~~ prior to the date hereof or ~~specified~~ on a ~~Recorded~~

subdivision plat, no such dedication or transfer shall be effective unless approved by the Owners representing at least seventy-five percent (75%) 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 Power Ranch and which do not have any substantial adverse affect on the enjoyment of the Common Areas by the Members.

- (c) The right of the Association to regulate the use of the Common Areas through the Power Ranch Rules and to prohibit access to those Common Areas, such as landscaped rights-of-way, not intended for use by the Members. The Power Ranch 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.
- (d) The right of the Association to change the use of the Common Areas in accordance with this Declaration.
- (e) The right of the Association to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common Areas and to abandon or otherwise transfer Common Areas so long as, in each case, either (i) the Board determines that the Members are not materially or adversely affected, or (ii) Declarant or, if Declarant no longer possesses a Class B Membership, the President of the Association, after obtaining the consent of two-thirds (2/3) of the total of all Class A and Class C Memberships, has/have executed an instrument agreeing to such change in size, shape or location, exchange, abandonment or transfer.

3.2 **Delegation of Use.** Any Member may, in accordance with the Power Ranch Rules and the limitations therein contained in this Declaration (i) 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 (ii) 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 (i) of this section.

## ARTICLE 4

### LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTION

4.1 **Land Use Classifications.** As portions of Power Ranch 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 Power Ranch. 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 Sections 4.2 or 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 Condominium Development Use upon approval by the Board;
- (c) 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) Commercial Office Use;
- (f) Business Park Use;
- (g) General Commercial Use;
- (h) Research and Development Park Use;
- (i) Association Use, which may include Common Areas;
- (j) Low Intensity Resort Use;
- (k) Cluster Residential Use, which shall consist of Lots with Dwelling Units intended for Single-Family occupancy and may include those types of residential housing arrangements known as townhouses, clustered housing, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the cluster development;
- (l) Clubhouse Use;
- (m) Telecommunications Site Use;
- (n) School;

- (o) Church;
- (p) Shopping Center;
- (q) Public/Private Recreation; and
- (r) General Public Use.

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.

**4.2 Declarant's Right to Change Land Use Classifications.** Unless the applicable Tract Declaration provides to the contrary, for so long as the Class B Membership exists, Declarant (if Declarant is the Owner of said Lot or Parcel) or Declarant and the Owner(s) of said Lot or Parcel (if Declarant is not the Owner or the sole Owner of said Lot or Parcel), without the approval of the Board or any other Owner, shall have the right to change the Land Use Classification of a Lot or Parcel as established in a Recorded Tract Declaration by Recordation of an amendment to the applicable Tract Declaration executed by Declarant and, if applicable, the Owner(s) of said Lot or Parcel.

**4.3 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, Tenants and Residents thereof, regardless of Land Use Classifications.

**4.3.1 Architectural Control.** No excavation or grading work shall be performed on any Lot or Parcel without the prior written approval of the Design Review Committee. No Improvements 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 the Lot or Parcel, or any Improvements located thereon which are Visible From Neighboring Property, from their appearance on the date this Declaration is Recorded 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 Design Review 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 connection with the consideration of any submittal. If the Design Review Committee fails to approve or disapprove an application for approval, or fails to request additional information in connection with any incomplete submittal, within forty-five (45) days after its receipt of a properly submitted application together with all supporting plans, specifications and other information as requested by the Committee, any fee payable pursuant to this Section 4.3.1, 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 have been complied with by the Owner who had requested approval of such plans. In reviewing each submission, the Design Review Committee may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of any particular Improvements. 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, the Owner who had requested such approval shall proceed to perform construct or made the 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 of 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 Design Review Committee to assist the Design Review Committee in performing such duties. The Design Review Committee may also impose reasonable conditions and stipulations in connection with issuing any approval contemplated by this Section 4.3.1, including, without limitation, requiring the Owner to post a bond or other financial assurances to protect the Association from the risk of any damage to any Common Area which might arise from the activities of such Owner and its contractors and agents. The approval of the Design Review Committee required hereby shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinance or rules and regulations of any county or municipality having jurisdiction over the applicable Lot or Parcel.

4.3.2 **Animals**. No animal, bird, fowl, reptile, poultry, swine, 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, reptile, poultry, swine 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, ~~reptile~~, poultry, swine 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, reptile, poultry, swine or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animal or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein. The Board shall also have the authority to exempt from the foregoing restrictions, or portions thereof, (i) a pet shop or veterinary office in a General Commercial Land Use Classification, or (ii) horses and horse stables and corrals in areas designated on a Recorded subdivision plat, and permitted under a Tract Declaration or in any other Recorded instrument signed by the Declarant as being suitable for the maintenance of horses and horse stables and corrals.

4.3.3 **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 Unit or other structure on any property shall be removed immediately after the completion of construction.

4.3.4 **Landscaping; Maintenance**. Unless a written variance is obtained from the Design Review Committee, or unless otherwise set forth in an applicable Tract Declaration each Owner of a Lot or Parcel shall be required to complete the landscaping (including all related irrigation systems) of the front yard and all areas visible from the street adjacent to the Lot or Parcel within three (3) months following the issuance of the certificate of occupancy for the Dwelling Unit or building constructed on such Lot or Parcel, or such shorter time period as may be provided for in any other covenants, conditions or restrictions affecting the Lot or Parcel or any portion thereof. If any Owner fails to landscape its Lot or Parcel in accordance with the requirements of this Section 4.3.4, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot or Parcel to install such landscaping improvements as the Association deems appropriate. The cost of any such installation by the Association shall be paid to the Association by the Owner of the Lot or Parcel upon demand by the Association. Any amount payable to the Association by an Owner pursuant to this Section 4.3.4(a) shall be secured by the Assessment Lien, and the Association may enforce collection of such amount in the same manner and to the same extent as provided herein for the payment of Assessments. 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), (ii) planted public right-of-way areas between sidewalks (or bike paths) 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, bike path or similar area, and (iv) any non-street public right-of-way, neatly trimmed and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area which (1) the Association assumes the responsibility in writing; (2) the Association has been given such responsibility by a Recorded instrument as provided in Section 10.1 of this Declaration; (3) the Town or other public agency assumes responsibility, for so long as the Association or the Town 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. Notwithstanding the foregoing, the Board having jurisdiction, or Declarant, may require the Owner of any Lot or Parcel adjacent to the areas described in subsections (ii), (iii) and (iv) above to install and maintain landscaping in such areas on such terms and conditions established by the Design Review Committee or Declarant, as the case may be. The Board may impose such conditions as may be determined to be reasonably necessary (including, without limitation, the requirement that certain improvements be constructed or that any landscaping be installed and maintained by the Owner for a sufficient grow-in period) prior to accepting any portion of a Lot or Parcel intended to be dedicated for use as Common Area or prior to accepting any maintenance responsibility. Each Owner understands and acknowledges that it is subject to a potential fine to be imposed and established by the Board, and payable to the Association, for any violation of the provisions of this Section 4.3.4. Any such fine shall be considered a Maintenance Charge imposed pursuant to Section 10.2 hereof.

**4.3.5 Nuisances; Construction Activities.** No rubbish, debris, petroleum products or similar products, 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 used exclusively for security purposes, shall be located, used or placed on any such Lot or Parcel. 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, together with any construction equipment stored on a Lot or Parcel, may be kept only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of Improvements may be kept only in areas approved by the Design Review 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.

4.3.6 **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.

4.3.7 **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 Section 4.3.1 above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

4.3.8 **Antennas, Poles and Towers.** The Design Review Committee may regulate, to the maximum extent permitted under federal, state and local law, any antenna, aerial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, proposed to be erected, used or maintained outdoors on any portion of any Lot or Parcel, whether attached to a Dwelling Unit, or other Improvement or structure or otherwise. To the extent permitted by applicable, law, the prior approval of the Design Review Committee may be required for the installation, use or maintenance of any such device, which approval the Design Review Committee may condition upon the satisfaction of certain conditions including, but not limited to, the size, placement, height, means of installation and screening of such devices, with the intent of assuring the minimal visual intrusion possible to adjacent property as a result of the existence of any such device.

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

4.3.10 **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 in compliance with the Power Ranch Rules or as may be specified in the Design Guidelines. All rubbish, trash, or garbage shall be removed form the Lots and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Parcel.

4.3.11 **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.

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

4.3.13 **Signs**. No signs which are not owned or maintained by the Association, the Town or any other applicable governmental agencies (including, but not limited to, commercial, political and similar signs) shall be erected or maintained on any portion of the Common Areas or within any area in the Property that is not a Lot or Parcel. 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:

- (a) Signs required by legal proceedings.
- (b) No more than two (2) identification signs for individual residences, each with a face area of seventy-two (72) square inches or less, the nature and location of which have been approved in advance and in writing by the Design Review Committee;
- (c) No more than one (1) "For Sale" or "For Lease" sign and no more than one (1) "Open House" sign, the nature, number, location, size, color, design, message content and type of which are in compliance with the Design Guidelines and Power Ranch Rules and which are placed only on the Lot or Parcel to which such sign pertains;
- (d) Promotional and advertising signs of builders on any Lot or Parcel, approved from time to time in advance and in writing by the Design Review Committee as to number, size, color, design, message content, location and type; and
- (e) Such other signs (including, but not limited to, construction job identification signs, builder identification signs, and subdivision, shopping center, apartment and business identification signs) which are in conformance with the applicable requirements of the Town, County or other applicable governmental agencies and which have been approved in advance and in writing by the Design Review Committee as to size, color, design, message content and location.

4.3.14 **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 Declarant, and no portion less than all of any such Lot or Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner other than Declarant, without the prior written approval of the Board, which approval must be evidenced on the Recorded plat or other Recorded instrument creating the subdivision, easement or other interest. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots or Parcels any property at any time owned by Declarant. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee or other person against any Lot or Parcel without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void. Except as set forth in Section 4.2 above, any rezoning or change of use of Lots or Parcels covered by a Tract Declaration must first be approved in writing by the Board or Design Review Committee as appropriate. For so long as Declarant is the Owner of any Lot or Parcel in Power Ranch, this Section 4.3.14 shall not be applicable to or binding upon Declarant with respect to any such Lot or Parcel.

**4.3.15 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, sewer, gas, telephone, electricity, television cable or communication lines and systems, etc., as such utilities are installed in connection with the initial development of each Lot and Parcel and the construction of the first Dwelling Unit or other building thereon. Pursuant to this easement, a providing utility or service company may install and maintain, upgrade or modify facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots and Parcels.

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

(a) The Owners of contiguous Lots or Parcels who have a Party Wall or Party Fence shall both equally have the right to use such wall or fence, provided that such use by one (1) Owner does not interfere with the use and enjoyment of same by the other Owner.

(b) If 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. Any dispute over an Owner's liability for such damage shall be resolved as provided in subparagraph (e) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(c) 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.

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

(e) 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.

(f) Anything in the foregoing to the contrary notwithstanding: (i) in the case of Party Fences (a) between Common Areas and Lots or Parcels, or (b) constructed by Declarant or the Association on Common Areas, the Association, only following its approval of the construction of such Party Fence and acceptance of the maintenance thereof, shall be responsible for all maintenance thereof, subject to the provisions of Sections 10.2 and 10.3, except that each Owner of a Lot or Parcel shall be responsible for painting the portion of the Party Fence facing his Lot or Parcel or the portion thereof which is not a portion of the Common Area, and responsible for any repairs, replacements and maintenance resulting from the improper or defective construction of such Party Fence; and (ii) the provisions of this section 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 any covenants, conditions and restrictions to be Recorded by the Developer of the Dwelling Units on the real property on which the Dwelling Units are located.

**4.3.17 Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television and radio signs, 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, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by Declarant or as may be otherwise approved by the Design Review Committee. No provision hereof shall be

deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Committee.

**4.3.18 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.

**4.3.19 Vehicles and Parking**. The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

No vehicle may be left upon any portion of Power Ranch except in a garage, driveway, parking pad, or other area designated by the Board. Commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles, and unlicensed vehicles or inoperable vehicles shall only be parked within Power Ranch consistent with Power Ranch rules. This Section shall not apply to emergency vehicle repairs.

**4.3.20 Motor Vehicles**. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street in Power Ranch, 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 subsection shall not apply to (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved in writing by the Design Review Committee; or (ii) any automobile repair business which may be permitted in any General Commercial Land Use Classification.

**4.3.21 Parking**. Vehicles of all Owners, Lessees, Tenants and Residents, and of their employees, guests and invitees, are to 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 subsection shall not be construed to permit the parking in the above described areas of any vehicle whose parking at Power Ranch is otherwise prohibited or the parking of any inoperable vehicle. Notwithstanding the foregoing, vehicles may not be parked on the streets overnight. This section shall not preclude occasional, temporary overflow parking in a street right-of-way for guests or other reasonable purposes, provided that no inconvenience is imposed on the owners or other occupants of other Lots or Parcels.

**4.3.22 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 either of them, shall have the right, without

any obligation, 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 or the Power Ranch Rules have been, or are being, complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

**4.3.23 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 Property and to maintain one (1) or more advertising signs on the Common Area while the Declarant is selling Lots, Parcels and other property in the Property. Declarant reserves the right to place models, management offices and sales and 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 so long as Declarant 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 other engaged in sales, leasing maintenance, construction or management activities.

**4.3.24 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, Tenants and Residents, the Board may make rules restricting or regulating their presence on Power Ranch as part of the Power Ranch Rules, or may direct the Design Review Committee to make rules governing their presence on Lots or Parcels as part of the Design Guidelines.

**4.3.25 Model Homes; Sales Offices.** The provisions of this Declaration and of Tract Declarations which prohibit non-residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes and sales offices by a Developer and parking incidental to the visiting of such model homes or sales offices so long as the location of such model homes or sales offices are approved in writing by the Design Review Committee, and the construction, operation and maintenance of such model homes or sales offices otherwise comply with all of the provisions of this Declaration. The Design Review Committee may also permit other areas to be used for parking in connection with the showing of model homes or the visiting of sales offices provided such parking and parking areas are in compliance with the ordinances of the governing municipality, 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 Dwelling Units at Power Ranch, and no model home or sales office shall be used as a model home or sales office for the sale of homes not located on Power Ranch.

**4.3.26 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 Power Ranch 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, recreational facilities intended for usage by the Residents or Owners of more than a single Lot or Parcel within any area classified for residential use, and a sales, information and marketing center operated by Declarant.

**4.3.27 Towing of Vehicles**. The Board shall have the right, but not the obligation, 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 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.

**4.3.28 Environmental Protections**. No Lot or Parcel, nor any facilities on the Lot or Parcel, shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste in violation of any Environmental Law. As used in this paragraph, "Hazardous Substances" means any substances, water, pollutants, contaminants or materials which pose a risk of injury or threat to health or the environment or becomes regulated under any Environmental Law including, without limitation, petroleum and petroleum derivatives and asbestos; "Environmental Law" means any federal, state or local law, including statutes, ordinances, rules, common law and guidelines now in effect and hereinafter enacted which pertains to, or is applicable to, or governs: hazardous materials or substances, or the use, permitting and/or environmental condition of real property, or which pertains to health, industrial hygiene or the regulation or protection of the environment including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Superfund Amendments and Recovery Act, the Toxic Substances Control Act, the Superfund Amendments and Reauthorization Act, the Clean Air Act, the Clean Water Act, the Safe Water Drinking Act and Solid Waste Disposal Act.

**4.3.29 Drainage**. All drainage plans for Lots and Parcels shall be subject to the approval of the Design Review Committee. No Owner or other occupant of a Lot or Parcel shall interfere with the drainage established for his Lot or Parcel, or any other property within Power Ranch.

4.3.30 **Window Coverings**. In no event shall the interior or exterior of any windows be covered with reflective material, such as foil, or with paper, bed sheets or other temporary coverings.

4.3.31 **Solar Collection Panels or Devices**. Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power. At the same time, Declarant desires to promote and preserve the attractive appearance of Power Ranch and the Improvements thereon, thereby protecting the value generally of Power Ranch and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefor by the Design Review Committee, solar collecting panels and devices may be placed, constructed or maintained upon any Lot or Parcel within Power Ranch (including upon the roof of any structure upon any Lot or Parcel), so long as either: (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be Visible From Neighboring Property; or (b) such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Design Review Committee may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a person six feet tall standing at ground level on adjacent properties. The restrictions in this Section 4.3.31 shall be subject to any limitations imposed by law.

4.4 **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, Condominium Development Use or Cluster Residential Use.

4.4.1 **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 Property; (iii) the business activity does not involve the door-to-door solicitation of Owners or other Residents in the Property; (iv) the business activity does not violate any provision of this Declaration, the Design Guidelines, or the Power Ranch Rules; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the 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 (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) 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.

4.4.2 **Tenants**. No portion of a Dwelling Unit but for the entire Dwelling Unit on a Lot may be rented, and then only to a Single Family Lessee from time to time by the Owner, subject to the provisions of this Declaration, the Power Ranch Rules, and the Design Guidelines.

4.5 **Declarant's Exemption**. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs deemed necessary or convenient by Declarant, in its sole discretion, to the development or sale of Lots and Parcels within Power Ranch.

4.6 **Waivers**. The Board, in its good-faith discretion, may grant such waivers of the restrictions contained in this Article 4 as it shall deem appropriate, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of development contemplated by this Declaration.

## **ARTICLE 5** **ORGANIZATION OF ASSOCIATION**

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. The Association's powers shall include ownership, maintenance, management and operation of property and facilities, as well as service provision and creation. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

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 may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager 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.

5.3 **The Power Ranch Rules**. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Power Ranch Rules 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; or (iii) the

health, safety or welfare of the Owners and Residents; provided, however, that the Power Ranch Rules shall not be inconsistent with this Declaration, the Articles, the Bylaws or any applicable Tract Declaration. Upon adoption, the Power Ranch Rules shall have the same force and effect, and shall be enforceable in the same manner and to the same extent, as if they were set forth in and were a part of this Declaration.

**5.4 Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or 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, the manager, 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.

**5.5 Sub-Associations.** In the event any homeowners or similar association is to be formed by the Developer (other than the Declarant) of a Parcel or number of Lots in Power Ranch, the covenants, conditions and restrictions, the articles of incorporation and bylaws or other governing documents for such Sub-Association shall not be effective unless the contents thereof have been approved by the Board and the governing documents specify that such Sub-Association and the rights of its members are subject and subordinate to this Declaration, the Articles and Bylaws of the Association, any applicable Tract Declaration and the Power Ranch Rules.

## ARTICLE 6 MEMBERSHIPS AND VOTING

**6.1 Owners of Lots and Parcels.** Each Owner (including the Declarant) of a Lot or Parcel which is Assessable Property and which is subject to a Recorded Tract Declaration establishing a Land Use Classification 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 (1) Membership for each Lot owned by the Member;
- (b) One (1) Membership for each four (4) completed Rental Apartments owned by a Member;
- (c) In the case of (i) the Owner of a Parcel, or portion thereof, restricted by a Tract Declaration to Apartment Development Use, but as to which construction has not been completed, one (1) Membership for each four (4) Rental Apartments permitted under the Development Master Plan, or (ii) the

Owner of a Parcel, or portion thereof, restricted by a Tract Declaration to Condominium Development Use, but as to which a condominium plat and declaration has not been Recorded, one (1) Membership for each Dwelling Unit permitted upon the Parcel, or portion thereof, 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, or portion thereof, is subsequently approved by the Design Review Committee and the Town for a number of Dwelling Units or Rental Apartments different from the number of Dwelling Units or Rental Apartments 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 or Rental Apartments authorized by the site plan; and

- (d) In the case of the Owner of a Parcel restricted by a Tract Declaration to Single Family Residential Use or Cluster Residential Use, one (1) Membership for each Dwelling Unit permitted upon the Parcel under the Development Master Plan as reflected in the Tract Declaration. 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 become 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 unplat Single Family Residential or Cluster Residential Development area remains within the Parcel.
- (e) One Memberships for each subdivided Lot or Condominium Unit which is restricted by a Tract Declaration to commercial or office use.
- (f) In the case of a Parcel, or portion thereof, restricted by a Tract Declaration to a Land Use Classification other than Single-Family Residential Use, Cluster Residential Development Use, Apartment Development Use or Condominium Development Use, the number of Memberships and Assessments shall be determined by Declarant and included in the applicable Tract Declaration. If only part 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 Condominium Development Use is subdivided or is subjected to a condominium plat or condominium declaration, then the number of Memberships attributable to the part of the Parcel which is not subdivided or

subjected to a condominium plat and condominium declaration shall be the number of Memberships allocated to all of the property subject to such Tract Declaration less the number of subdivided Lots and Condominium Units within such property. In determining any such allocation of Memberships, Declarant may consider such factors as Declarant, in its sole and absolute discretion, determines appropriate, including without limitation, the proposed density for such property, the burdens on the Common Area of the property's proposed development, the benefits anticipated to be derived by such property from the Common Area and Improvements pertaining thereto, the location and use of the property.

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. No Memberships shall be attributable to any Lot or Parcel which is not subject to a Recorded Tract Declaration establishing a Land Use Classification therefor.

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 Property.

6.3 **Voting**.

6.3.1 **Memberships**. The Association shall have two classes of voting Memberships:

- (a) **Class A**. Class A Memberships shall be all Memberships, except the Class B Membership held by the Declarant, and each Owner shall be entitled to one (1) vote for each Class A Membership held by such Owner and for which such Owner is paying a full Assessment. Until such time as an Owner (other than Declarant) is required to pay a full Assessment, such Owner shall not possess any voting rights in the Association.
- (b) **Class B**. Class B Memberships shall be all Memberships held by Declarant. At the time of any vote by the Members of the Association, the Declarant shall be entitled to the number of votes equal to seventy-five hundred (7,500) minus the total number of outstanding votes then held by the Owners who hold Class A Memberships and for which such Owners are required to pay a full Assessment. The Class B Membership shall cease and be converted to Class A Memberships on the happening of the first of the following events:
  - (i) Within ninety (90) days after the total votes outstanding in the Class A Memberships required to pay a full Assessment equal the total votes outstanding in the Class B Membership; or

- (ii) The first day of January, 2025; or
- (iii) At any time by notice to the Association that Declarant wishes to convert all Class B Memberships to Class A Memberships.

6.4 **Residential Subdivisions.** With respect to residential subdivisions containing Lots, Declarant expressly reserves the right to require the establishment, in accordance with the applicable terms of this Declaration, of a Sub-Association for one or more of such subdivisions. Declarant further reserves the right to require, through the terms of the applicable Tract Declaration, that the votes of all Memberships held by Owners of Lots within any such residential subdivision be cast only by the Sub-Association designated in the applicable Tract Declaration as entitled to cast the votes of the Members. In such event, the Sub-Association's board of directors shall cast such votes in accordance with the Tract Declaration and the Sub-Association's articles of incorporation and bylaws.

6.5 **Right to Vote.** Until such time as an Owner (other than Declarant) is required to pay a full Assessment, such Owner shall not possess any voting rights in the Association. 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 with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the 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 such Member 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. If 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.

6.6 **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, Power Ranch Rules and Design Guidelines as the same may be amended from time to time.

6.7 **Transfer of 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 and then only to the transferee of ownership of the Lot or Parcel. A transfer of ownership to a Lot or Parcel may be effectuated by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Parcel to the new Owner thereof.

6.8 **Suspension of Voting Rights.** Any Member who fails to pay the Annual Assessments, Special Assessments, Special Service Area Assessments, Maintenance Charges or Special Fees 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, late charges, attorneys' fees and/or collection costs are paid in full.

## **ARTICLE 7** **COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

7.1 **Creation of Lien and Personal Obligation of Assessment and Maintenance Charges.** Declarant, for each Lot and Parcel now or hereafter established within Power Ranch, hereby covenant and agree, 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, fees and charges:

- (a) Annual Assessments established by this Article 7;
- (b) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article 7;
- (c) Special Service Area Assessments for expenses incurred in providing improvements or services that benefit Lots or Parcels in a Special Service Area as established by this Article 7;
- (d) Maintenance Charges established by Sections 10.2 and 10.3; and
- (e) Special Fees (including any System Fees established by Article 15).

The Annual Assessments, Special Assessments, Special Service Area Assessments, Maintenance Charges and Special Fees together with interest, late charges, incidental and taxable costs, and reasonable attorneys' 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, Special and Special Service Area Assessments against each Lot or Parcel shall be based on the number of Memberships appurtenant to the Lot or Parcel (including, without limitation, Memberships attributable to Dwelling Units, Condominium Units and/or Rental Apartments located on such Lot or Parcel). Each such Annual Assessment, Special Assessment, Special Service Area Assessment, Maintenance Charge and Special Fees, together with interest, late charges, costs and reasonable attorneys' 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, Maintenance Charge or Special Fee fell due. The personal obligation for delinquent Assessments, Maintenance Charges and Special Fees 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 Power Ranch Rules, or the Design Guidelines by the Owner pursuant to Section 16.16; however, 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. No Assessment shall be levied against any portion of the Property until a Tract Declaration establishing a Land Use Classification has been Recorded with respect to that portion of the Property.

**7.2 Annual Assessments.** To provide for the uses and purposes specified in Article 9 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. 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 9.

**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 Parcels covered by Section 7.3(d), and except for Lots and Parcels owned by the Declarant which are exempt from Assessment under Paragraph (h) of this Section 7.3, and except as otherwise may be set forth in the applicable Tract Declaration, each Parcel shall be assessed an Annual Assessment or Special Assessment, as the case may be, in an amount equal to the number of Memberships attributable to such Parcel as established in that Parcels Tract Declaration as described in Section 6.1 of this Declaration.
- (c) The Owner of a Lot shall be assessed twenty-five percent (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) six (6) months from the commencement of construction of the first Dwelling Unit on the Lot, or (iii) two (2) years from the date the title is first transferred from Declarant to an Owner.
- (d) The Owner of a Parcel restricted by a Tract Declaration to Single Family Residential Use or Cluster Residential Use but for which a subdivision plat has not yet been Recorded shall be assessed twenty-five percent (25%) of the number of Memberships attributable to the Parcel multiplied by the Membership Assessment.

- (e) Reduced Assessments referred to in this Article 7, Paragraphs (c) and (d) 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.
- (f) So long as there is a Class B Membership, Lots and Parcels owned by the Declarant shall not be subject to Assessment, but Declarant shall be required to pay to the Association the difference between the cost of operating and administering the Association and the income from Assessments. When the Class B Membership ceases in accordance with Section 6.3 hereof, Declarant shall no longer be required to subsidize the cost of operating and administering the Association but 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 any 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, 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.

**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, 2000, the Maximum Annual Assessment against each Owner shall be Four Hundred Twenty Dollars (\$ 420.00) per Membership.
- (b) From and after January 1, 2000, the Maximum Annual Assessment may be increased by an amount that is not more than 20% greater than the Annual Assessment for the immediately preceding fiscal year, except for assessment increases necessary for emergency situations as described below.
- (c) From and after January 1, 2000, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment other determined under Paragraph (b) above by a vote of two-thirds (2/3) the votes entitled to be cast by each class of Members who are voting in person or by proxy at a meeting

duly called for such purpose. Any Member who is not required to pay an full Annual Assessment shall not possess any voting rights in the Association.

(d) An emergency situation is any one of the following:

(i) an extraordinary expense required by an order of a court;

(ii) an extraordinary expense necessary to repair or maintain Power Ranch or any part thereof for which the Association is responsible where a threat to personal safety is discovered; or

(iii) an extraordinary expense necessary to repair or maintain Power Ranch or any part thereof for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing a budget for the fiscal year. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment.

#### 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 Assessment 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 Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this section shall not preclude or limit the assessment, collection or use of the Annual Assessments for the aforesaid purposes.

7.6 Special Service Area Assessments. If the Board determines, in its sole, absolute and arbitrary discretion, that certain services provided, or to be provided, by the Association benefit any Lots or Parcel in a disproportionate manner (e.g., maintenance of private streets, electronic gates or certain Common Area, or providing guard service or sanitation services), or if a Member or Members owning one or more Parcels or Lots contract with the Association for the Association to provide particular services with regard to such Lots, Parcel or Parcels, the Board shall be entitled to assess Special Service Area Assessments against the Memberships appurtenant to the Lots or Parcels benefited by such services as determined by this Board. Owners receiving benefits in a disproportionate manner may be located in more than one Special Service Area, and thus subject to more than one Special Service Area Assessment. If a Tract Declaration or Recorded subdivision plat approved and signed by Declarant any Special Service Area Assessment Areas, the Tract Declaration or Recorded subdivision plat approved and signed by Declarant also designate the Lots and Parcels which solely or primarily benefit from the Special Service Area Assessment Area and which shall

be subject to Special Service Area Assessment shall adopt a separate budget for all Special Service Area Expenses pertaining to that Special Service Area. The Special Service Area Expenses pertaining to a specific Special Service Area shall be assessed solely against the Lots and Parcels which are benefitted by services provided to Lots and Parcels located in that Special Service Area. No Special Service Area Expense shall be used in computing the Annual Assessments to be levied pursuant to Section 7.2 of this Declaration. Special Service Area Assessments shall be levied against the Lots and Parcels located in the particular Special Service Area at a uniform amount per Membership determined in the sole discretion of the Board, with the objective of providing to the Association all funds required to pay all Special Service Area Expenses incurred by the Association in providing the operational, maintenance and other services to the particular Special Service Area. Special Service Area Assessments shall commence upon the date established by the Board. If the Board determines during any Assessment Period that Special Service Area Assessments with respect to any Special Service Area are, or will become, inadequate to meet all Special Service Area Expenses pertaining to that Special Service Area for any reason, including, without limitation, non-payment of Special Service Area Assessments by Members, the Board may increase that Special Service Area Assessment for that Assessment Period and the revised Special Service Area Assessment shall commence on the date designated by the Board. The amount of any Special Service Area Assessments shall be determined in a manner consistent with the Board's determination of the respective benefits each Parcel receives from such services.

**7.7 Special Fees.** All costs in connection with any Telecommunication System (as defined in Article 15) shall be funded by Special Fees payable by each Owner as further set forth in Article 15. In addition, the Association shall be authorized to charge Special Fees for such other or additional services or facilities that may from time to time be provided or made available by the Association. All Special Fees shall be subject to the provisions of Section 9.4 herein, and the Board shall have the sole discretion to specify the amount of and method of determining the Special Fee with respect to such services. Declarant expressly intends that no cost or expense for which a Special Fee is charged shall be used in computing the Annual Assessments to be levied pursuant to Section 7.2 of this Declaration. The Board of Directors shall set the Special Fee each year and shall give notice to the Association Members in the same manner as for the Annual Assessment. If there are ~~insufficient funds in the Special Fee account to cover the costs associated with providing the services for any reason~~, the Association shall advance the necessary funds to cover such costs and will be reimbursed within a reasonable period of time as determined by the Board. Non-use of services provided to all Owners in Power Ranch shall not exempt any Owner from the obligation to pay Special Fees for such services. In any contracts or agreements with third parties for the provision of services within Power Ranch, the Board may assign to the service provider the right to bill Owners directly and to pursue all legal and equitable remedies otherwise available to the Board in the collection of such bills.

**7.8 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) and 7.5 of this Article shall be sent to all Members subject to such Assessment no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such

meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes then entitled to be cast (i.e., exclusive of suspended voting rights and voting rights that do not exist for Members not required to pay a full Annual Assessment) 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 ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.9 **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.

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 Annual Assessments, Special Assessments, Special Service Area Assessments, Special Fees and the Maintenance Charges imposed pursuant to Sections 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 foreclose 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 on a prorated basis for prepayments made by prior Owners. If the owner of a Membership becomes liable for payment of an increased sum pursuant to this Article during the Assessment Period, he shall notify the Master Association, but his failure to notify the Master 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 not be liable for any previously levied Special Assessment or Special Service Area Assessment if such Assessments are paid in installments. Members must notify Association of a change in mailing address when applicable. Declarant expressly reserves the right to provide in the applicable Tract Declaration that it shall have the right to assess a Sub-Association for all Assessments attributable to Members whose Lots or Parcels are located within the Sub-Association.

7.11 **Collection of Costs and Interest on Delinquent Assessments.** Any Assessment or installment thereof not paid within fifteen (15) days when due (or such longer period as may be required by Arizona law) shall be deemed delinquent and shall bear interest from the due date until paid at a rate equal to the greater of (i) twelve percent (12%) per annum or (ii) the then prevailing

interest rate on loans insured by the FHA, or (iii) the then prevailing interest rate on loans guaranteed by the VA, and the Member whose Assessment is delinquent shall be liable for all taxable and incidental costs, including attorneys' 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, the amount of which shall be determined by the Board from time to time and which shall not exceed the maximum permitted under Arizona law, may be assessed for each late occurrence. 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.

#### **7.12 Evidence of Payment of Annual and Special Assessments and Maintenance Charges.**

Upon receipt of a written request by a Member or any other interested person, the Association, within a reasonable period of time thereafter, subject to and in accordance with applicable law, shall issue to such Member or other interested person a written certificate stating (i) that all Annual, Special and Special Service Area Assessments and Maintenance Charges (including interest, costs and attorneys' fees, if any, as provided in Section 7.10 above) have been paid with respect to any specified Lot or Parcel as of the date of such certificate, or (ii) if all Annual, Special and Special Service Area Assessments and Maintenance Charges have not been paid, the amount of such Annual, Special and Special Service Area Assessments, and Maintenance Charges (including interest, late charges, costs and attorneys' fees, if any) due and payable as of such date. Upon receipt of a written request therefor, the Association shall issue, or cause an appropriate officer to issue, to a lienholder, Member or Person designated by a Member, a statement setting forth the amount of any unpaid Assessment against the specified Lot or Parcel. 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.

#### **7.13 Property Exempted from Assessments, Fees and Assessment Lien.**

Exempt Property shall be exempted from the assessment of the Annual, Special and Special Service Area Assessments, and Special Fees, and except as provided in 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, Special and Special Service Area Assessments and Special Fees, and if theretofore exempt therefrom, Maintenance Charges (prorated as of the date such Exempt Property became Assessable Property) and the Assessment Lien.

#### **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 or entity who purchases a Lot which is restricted by a Tract Declaration to Single-Family Residential Use, Cluster Residential Use or Condominium Development Use from a Developer shall pay to the Association

immediately upon becoming the Owner of the Lot an amount established from time to time by the Board, and each person or entity who purchases a Parcel, or portion thereof, restricted by a Tract Declaration to a use other than Single-Family Residential Use, Cluster Residential Use or Condominium Development Use from the Declarant shall pay to the Association at the time such Parcel, or portion thereof, no longer qualifies for a reduced rate of Assessment pursuant to Section 7.3 of this Declaration an amount established from time to time by the Board. 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. Payments made pursuant to this Section shall be nonrefundable and shall not be offset or credit against or considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.15 **Transfer Fee**. Each person or entity 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 8

### **ENFORCEMENT OF PAYMENT OF ASSESSMENTS**

### **AND OF ASSESSMENT LIEN**

8.1 **Association as Enforcing Body**. The Declarant, for so long as it holds a Class B Membership, and the Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration and the Tract Declarations. However, if the Declarant and Association shall fail or refuse to enforce this Declaration, the Tract Declarations or any provision hereof or thereof for an unreasonable period of time after written request to do so, then any Member may enforce the provisions thereof on behalf of the Association, by any appropriate action, whether in law or in equity but not at the expense of the Association.

8.2 **Association's Remedies to Enforce Payment of Annual, Special and Special Service Area Assessments and Maintenance Charges**. If any Member fails to pay the Annual, Special or Special Service Area Assessments or any installments thereof when due, or the Maintenance Charges assessed pursuant to Section 10.2 and 10.3 the Association may enforce the payment of the Annual, Special or Special Service Area Assessments, 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 judgment against the Member personally obligated to pay the Assessments or Maintenance Charges;

(b) Foreclose the Assessment Lien against the Lot or Parcel in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency) and the Lot or Parcel may be redeemed after foreclosure sale as provided by law. The Association shall have the right to bid at any foreclosure sale.

**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 liens and encumbrances Recorded prior to the Recordation of this Declaration, any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot or Parcel as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to: (a) liens and encumbrances recorded prior to the Recordation of this Declaration, (b) consensual mortgages or deeds of trust recorded before the date on which the Assessment became delinquent, and (c) liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot or Parcel, specifically including, but not limited to, the assessment lien of any Sub-Association. The 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, Special and Special Service Area Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except such prior liens and encumbrances, 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, Special and Special Service Area Assessments, Maintenance Charges, Special Fees, and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

**8.4 Costs to be Borne by Member in Connection with Enforcement of Payment of Annual, Special and Special Service Area Assessments, 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, Special and Special Service Area Assessments, and Maintenance Charges together with interest and the Association's incidental and taxable costs including collection costs and attorneys' fees, including those costs and fees specified in Section 7.10. 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 9

### USE OF FUNDS: BORROWING POWER

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 Assessments 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 Power Ranch and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, management, 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 Power Ranch, which may be necessary, desirable or beneficial to the general common interests of Power Ranch, 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 and drainage areas within Power Ranch, recreation, obtaining of liability insurance, supplying of utilities and other public services, providing for communication, education and transportation within and dissemination of information concerning Power Ranch, indemnification of, and insurance for the benefit of, officers and directors of the Association and generally protecting the health and safety of the Members and the Residents. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

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

9.3 **Association's Rights to 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, Special and Special Service Area 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.

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

9.5 **Insurance**. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas, with the amount and type of coverage to be determined by the Board.

## **ARTICLE 10** **MAINTENANCE**

10.1 **Common Areas and Public Right of Way**. The Association, or its duly delegated representative, 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; 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 the 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 Power Ranch; and (ii) the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth in a Recorded instrument as hereinafter provided. The Association shall not maintain areas which (i) the Town or other governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot or Parcel pursuant to Section 4.3.4 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.

10.1.1 The Board shall use a standard of reasonable care in providing for the repair, management and maintenance of the Common Area so that the Power Ranch 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.

10.1.2 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 rights-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 Power Ranch 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 10 and, 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.

10.2 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. If the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests 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. Any charges or fees to be paid by the Owner of a Lot or Parcel 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.

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 or Parcels or other areas of Power Ranch which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Parcel is being used in a manner which violates this Declaration or any Tract Declaration applicable thereto, or in the event the Owner of any Lot or Parcel is failing to perform any of its obligations under this Declaration, any Tract Declaration or the Design Guidelines, standards and

rules and regulations of the Design Review Committee, as applicable, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered, but shall not be required, to cause such action to be taken and the cost thereof (together with a fee determined by the Board in its sole discretion on a case by case basis to compensate the Association for its overhead and supervision relating to such action) 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 11 DESIGN REVIEW COMMITTEE

11.1 **Establishment**. 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 Design Guidelines and 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. 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, in accordance with its procedural rules and regulations. A quorum for such meetings, which shall consist of a majority of the members, shall be necessary for any decision of the Design Review Committee. A duly appointed 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 Power Ranch, including, but not limited to, architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials, signage, wall design and similar matters. Subject to the provisions of Section 11.4 of this Article, the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration. Declarant, at its option, may establish a separate design review committee (the "**Residential Design Review Committee**") which shall exercise all powers of the Design Review Committee with regard to all Lots and Parcels limited by the applicable Tract Declaration to Single Family Residential Use, Residential Condominium Development Use, Cluster Residential Use and similar residential use (but specifically excluding Apartment Development Use), and a separate design review committee for the non-residential Parcels (the "**Commercial Design Review Committee**") which shall exercise all powers of the Design Review Committee not specifically delegated to the Residential Design Review Committee by virtue of the foregoing. Each such

separate committee, if established by Declarant, shall consist of such number of members, possess such qualifications and be subject to the requirements otherwise applicable to the Design Review Committee as set forth herein. In the event separate committees are so established by Declarant, Declarant also shall establish and adopt Residential Design Guidelines and procedural rules and regulations to direct the Residential Design Review Committee in the performance of its duties, and similarly shall establish and adopt Commercial Design Guidelines and procedural rules and regulations to direct the Commercial Design Review Committee in the performance of its duties. If separate committees are established, all references herein to "Design Review Committee" and "Design Guidelines" shall be deemed to refer to the applicable committee or rules, as the context requires.

11.2 **Purpose.** The purpose of the Design Review Committee is to maintain uniformity of architectural and landscaping standards throughout Power Ranch and thereby enhance the aesthetic and economic value of Power Ranch. The Design Review Committee is hereby empowered to supplement and amend the Design Guidelines and its procedural rules and regulations to the extent and with the frequency it deems necessary; provided, however, that such modifications are in general conformity with the standards set forth in this Declaration and the applicable Tract Declarations.

11.3 **Operation/Authority.** It shall be the duty of the Design Review Committee to consider and act upon all proposals and plans submitted to it pursuant to this Declaration. The Design Review Committee shall review all applications submitted to it and shall furnish a written decision to the applicant setting forth the reasons for its decision and the nature of any objections. The Design Review Committee shall have broad discretionary powers in determining whether an application is in conformance with the Design Guidelines. In addition, the Design Review Committee may disapprove any application if it, in its discretion, believes the applicant has not supplied sufficient or accurate information for the Design Review Committee to exercise the judgment required by this Declaration. The Design Review Committee has the authority to grant variances to the Design Guidelines in accordance with Section 11.10 hereof by an affirmative vote of the majority of the members of the Design Review Committee. The Design Review Committee shall keep complete written records of all applications for approval submitted to it (including one set of all preliminary sketches and all architectural plans) in connection with all actions taken by it under the provisions of the Design Guidelines. All such records shall be maintained for a minimum of three (3) years after approval or disapproval. If construction does not commence on a project for which plans have been approved within one (1) year after the date of approval, such approval shall be deemed withdrawn and the Owner shall reapply for approval before commencing the proposed work. Any work not completed within the required time shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

11.4 **Appeal.** Any Owner or other Resident aggrieved by a decision of the Design Review Committee may appeal the decision to the Board in accordance with procedures to be established by the Board. 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.

**11.5 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. 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 11, at such time Declarant no longer owns any property at Power Ranch, or when such right is expressly relinquished by Declarant to the Board in writing, whichever condition occurs first; provided, that notwithstanding the foregoing, if Declarant elects pursuant to Section 11.10 above to establish a separate Commercial Design Review Committee, then Declarant may retain the right to appoint the members of the Commercial Design Review Committee until such time as Declarant no longer owns any property at Power Ranch even if Declarant relinquishes its right to appoint the members of the Residential Design Review Committee, or vice versa.

**11.6 Non-Liability for Approval of Plans.** Plans, drawings 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 such plans, drawing or specifications, no member of the Design Review Committee, the Association, any Member, the Board, nor the Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans, drawings 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 (i) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to ~~approved plans, drawings and specifications~~, or (iii) the development, or manner of development, of any property within Power Ranch. 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.

**11.7 Waiver.** Each Owner acknowledges that it may not always be possible to identify objectionable features of proposed activity within the scope of this Article 11 until the work with respect thereto is completed, in which case it may be unreasonable to require changes to the Improvements involved. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the

Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of a similar plan, drawing, specification or matter subsequently submitted for approval.

11.8 **Exemptions.** The Design Review Committee, by resolution, may exempt certain activities from the application and approval requirements of this Article 11, provided such activities are undertaken in strict compliance with the requirements of such resolution. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, pain or redecorate the interior of a Dwelling Unit without approval. Modifications to the interior of screened porches, patios, and similar portions of a Dwelling Unit visible from outside the structure shall be subject to approval.

11.9 **Variances.** The Design Review Committee may, in its sole and absolute discretion, authorize variances from compliance with any guidelines and procedures (i) in narrow circumstances where the design meets the intent of the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require, but only in accordance with duly adopted rules and regulations. A variance may be granted only when special circumstances so dictate and no variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration; or (iii) estop the Design Review Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any government agency, issuance of any permit, or the terms of any financing shall not constitute hardships.

## **ARTICLE 12** **RIGHTS AND POWERS OF ASSOCIATION**

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 Power Ranch Rules by the Owner, a Lessee or Tenant of the Owner or by any Resident or occupant of the Owner's Lot or Parcel.

**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 the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. Notwithstanding the foregoing, Declarant expressly intends that neither the foregoing nor anything else in this Declaration shall obligate or be construed to obligate Declarant or the Association, or their respective agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, any Tract Declaration or any provision hereof or thereof, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

**12.3 Contracts with Other 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 and 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.

**12.4 Change of Use of Association Land and Procedure Therefor.** Upon (i) 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 Area is no longer in the best interests of the Owners and the Common Area is no longer in the best interests of the Owners and Residents, and (ii) 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.

**12.5 Dispute Resolution.** Declarant, each Sub-Association, and each Owner agree that it is in the best interest of all concerned to resolve disputes among and between Sub-Associations and among and between any Sub-Association or Owner and the Board without the emotional and financial costs of litigation. Accordingly, the Board is empowered to impose and enforce procedures

and rules designed to encourage the resolution of disputes, including requiring written notice of claims and the structured negotiation or mediation of disputes. Prior to the initiation of any administrative or judicial proceeding by one Sub-Association against another or by a Sub-Association or any Owner against the Board, the party initiating such action shall comply with the Board's procedures and rules. This Section shall serve as an agreement by the Sub-Associations and the Owner to submit their claims to such procedures or rules and the failure to abide by such requirements shall serve as a defense to any such action. The requirements of this Section shall not apply to any action by the Board to collect assessments or other fees or charges authorized by this Declaration or a Sub-Association declaration, which actions may proceed in the Board's discretion directly without any prior procedure for claims resolution.

## ARTICLE 13

### ANNEXATION AND DEANNEXATION

13.1 **Annexation Without Approval.** All or any part of the Additional Property may be annexed to the 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 or its successors and assigns (and by the fee title holder(s) of the portion of the Additional Property sought to be annexed, in the event Declarant or its successors and assigns does not hold fee title to all of said property), describing the part of the Additional Property to be Annexed. No Supplementary Declaration shall be so executed and Recorded pursuant to this Section more than fifteen (15) years after the later of: (i) the Recording of this Declaration, or (ii) the last Recording of a Supplementary Declaration. Thereafter, or at such earlier time that the Declarant no longer owns any part of the Property or the Additional Property, the Association 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 Property and all of the Owners of Parcels and Lots in said property shall automatically be Members of the Association. Although Declarant, its successors and assigns, or the Association shall have the ability to so annex all or any portion of the Additional Property, neither Declarant, nor its successors and assigns, or the Association shall be obligated to annex all or any portion of the Additional Property, and such Additional Property shall not become subject to this Declaration unless and until a Supplementary Declaration annexing such Additional Property shall have been so executed and Recorded.

13.2 **Deannexation Without Approval.** Any Parcels may be deannexed from the Property and be withdrawn from this Declaration and the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Certificate of Deannexation covering the portion of the Property sought to be deannexed shall be executed and Recorded by Declarant or its successors and assigns, the portion of the Property covered by such Certificate of Deannexation is owned by Declarant or its successors and assigns. No Certificate of

Deannexation shall be so executed and Recorded pursuant to this Section more than fifteen (15) years subsequent to the Recording of this Declaration.

**13.3 Supplemental Declarations and Certificate of Deannexation.** The annexations and deannexations authorized under the foregoing Sections shall be made by Recording in the office of the County Recorder of Maricopa County, Arizona, a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument with respect to the Additional Property which shall extend the plan of this Declaration to such property, or a Certificate of Deannexation which shall remove the portion of the Property covered thereby from the plan of this Declaration. Any Supplemental Declaration may contain such complementary additions and modification 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 Property.

## **ARTICLE 14 TERMS; AMENDMENTS; TERMINATION**

**14.1 Term; Method of Termination.** This Declaration shall be effective upon the date of Recording hereof and, as may be 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 from time to time, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting ninety percent (90%) of the total votes cast at an election held for such purpose in person or by proxy within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may likewise be terminated at any time if ninety percent (90%) of the votes entitled to be 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.

**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, shall certify that, the amendment has been approved by the affirmative vote or written consent, or any combination thereof, of the members entitled to cast at least seventy-five percent (75%) of the votes then entitled to be cast. Unless the Tract Declaration provides otherwise, 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 Power Ranch; 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 Section 8.3 affecting lienholder priority must be approved by the holders of any and all first mortgages and deeds of trust affected thereby.

**14.3 Right of Amendment if Requested by Governmental Agency or Lending Institutions.** Anything in this Article to the contrary notwithstanding, Declarant, so long as the Declarant owns any Lot or Parcel, 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 the FHA or 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 or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Parcel(s) or any 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, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting for the amendatory language requested by such agency or institution. The Recording of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of Power Ranch and all persons having an interest therein.

**14.4 Declarant Approval.** So long as the Declarant owns any Lot or Parcel, or any part of the Additional Property, any amendment of this Declaration must be approved in writing by the Declarant.

**14.5 Declarant's Right of Amendment.** Notwithstanding anything in this Article to the contrary, Declarant shall, for so long as it possesses a Class B Membership, be entitled to unilaterally amend this Declaration to correct minor errors and omissions.

## **ARTICLE 15** **TELECOMMUNICATION SERVICES**

**15.1 Establishment and Management.** As a means of encouraging and facilitating the ability of the Owners, Residents and businesses in Power Ranch to take advantage of the increasing telecommunications technology, opportunities and services, Declarant on behalf of itself and the Board, hereby reserves the right, but not the obligation, to design, create and implement a telecommunications system that may serve as a universal network connecting and benefitting all or portions of Power Ranch, and that may be expanded, reduced, terminated, enhanced, modified, redesigned or replaced as determined from time to time by the Declarant and/or the Board, including when new information and communication technology and services become available that Declarant

or the Board determines would be appropriate or beneficial. Such telecommunications system(s) is hereinafter referred to as the “**Telecommunications Systems**”. The Board expressly reserves the authority to provide different types or levels of connections or services to commercial property Owners (as distinguished from residential property Owners), as determined by the Board in its sole discretion, and to design and implement the Telecommunications System differently for all or some commercial property Owners and tenants as distinguished from some or all residential property Owners and Residents. The Board reserves the authority to implement such rules and regulations concerning all aspects of the use of the Telecommunications Systems as the Board may deem desirable or appropriate in its sole and absolute discretion

**15.1.1 Authority.** The Board shall have the sole authority, but not the obligation, to provide for the establishment, operation, management, maintenance, repair, modification, termination, enhancement, and/or replacement of the Telecommunications Systems, and, in doing so, shall have the sole authority to select the provider(s) and vendor(s) of the particular hardware, software, programming, infrastructure, services, management and administration constituting the Telecommunications Systems (collectively, “**System Components**”). Except as expressly provided in this Article, the Board shall have the sole authority to determine the preferred provider for the Telecommunications Systems and all System Components. The Board further shall have the sole authority to cause the Association to enter into contracts with such vendors (which may include vendors affiliated with Declarant, so long as the terms of the relevant contracts are arms-length and commercially reasonable). The Board shall also have the authority to cause the Association to enter into contracts for the maintenance, management, administration and operation of all or portions of the Telecommunications Systems, and to cause the Association to enter into contracts to modify or enhance the Telecommunications System (which may include contracts with persons affiliated with Declarant, so long as the terms of the relevant contracts are arms-length and commercially reasonable). Depending on the requirements of such contracts, it may be necessary for Owners or Tenants to execute contracts directly with such vendors or other persons as a condition to gaining access to the Telecommunications System, and each such Owner and Tenant, as a condition to the right to use such services, by accepting title to real property (or leasing real property) within Power Ranch, agrees to do so. Subject to the foregoing, such contracts may contain terms and conditions with regard to use of and access to the Telecommunications System in addition to those contained in this Article. Notwithstanding the foregoing, no Owner shall be restricted from obtaining, at such Owner’s sole cost and expense, similar services from such provider(s) as such Owner may select; however, no Owner shall be entitled to claim any exemption from the obligation to pay any of the fees or charges levied pursuant to this Article 15 by reason of non-use of the Telecommunications Systems or any System Components made available for such Owner’s use by the Association.

**15.1.2 Disclaimer.** Neither Declarant, the Board nor the Association make any representation or warranty as to the quality, fitness or performance of the Telecommunications Systems, as to the quality, fitness or performance any of the System Components, or that any particular System Component or type of System Component will be utilized for the Telecommunications Systems, or that any Telecommunications System will be provided or, once

provided, will continue to be provided to Power Ranch or all portions thereof or to all Owners, Tenants, Lessees and Residents.

## 15.2 System Connections; Additional Services.

15.2.1 Required Connections. From time to time, the Board, in its sole and absolute discretion, may require: (i) each Lot restricted to Single Family Residential Use to have at least one connection to the Telecommunications Systems; (ii) each Lot restricted to Cluster Residential Use or Residential Condominium Development Use to have at least one connection to the Telecommunications Systems per residential Dwelling Unit; and (iii) each building constructed on a Parcel restricted to Non-Residential Use to have at least one connection to the Telecommunications Systems connection for each tenant of each such building (and at least one such connection even if the building is owner-occupied or unoccupied).

15.2.2 Additional Connections. Each Owner may obtain additional Telecommunications Systems connections, or obtain any available additional or enhanced Telecommunications Systems services, at such Owner's own expense, subject to availability and the requirements of the Board and the particular vendor of the relevant System Components or services, and upon such additional terms and conditions and upon the payment of such additional fees as the Board or such vendor (or both) may require. Neither Declarant, the Board nor the Association make any representation or warranty that additional Telecommunications Systems connections or additional or enhanced services will be provided, nor, once provided, will remain available.

15.3 Governmental Regulations. The Telecommunications Systems, and the providers, managers and operators of the Telecommunications Systems, may be subject (currently or in the future) to federal, state or municipal regulations, laws and ordinances, which may have a significant impact on certain aspects of the Telecommunications Systems including, but not limited to, the fees charged, the method of delivery, and the rights of the users, providers, managers or operators of the Telecommunications Systems, which regulations, laws and ordinances, and their impact, are beyond the control of Declarant, the Board and the Association. The Board may at any time impose additional obligations on Owners and Tenants in Power Ranch (in addition to those contained in this Article or any contracts pursuant to Sections 7.1(b) and 7.2, as well as any other rules and regulations that may be adopted by the Board), if the Board determines that such additional obligations are necessary or appropriate due to such regulations, laws and ordinances.

## 15.4 Special Telecommunications Fees.

15.4.1 Determination of Fees. The Telecommunications Systems shall be funded through the collection from each Owner of (i) a one-time charge levied with respect to each connection to the Telecommunications Systems (the "Connection Fee") and (ii) a separate periodic fee (the "Periodic Fee"), which collectively are referred to herein as the "System Fees", and which shall be considered Special Fees for purposes of this Declaration. Except as may be determined or required by the terms of any contracts entered into by the Association or by any governmental

regulations (which may dictate, in whole or in part, the amount of the System Fees), the amount of the System Fees will be determined in the sole discretion of the Board. The System Fees may vary among Owners in the discretion of the Board depending on the different types or levels of connections or services as may be provided from time to time, or the Board may, in its discretion, establish reduced System Fees, or, in its discretion, establish rules whereby all or a portion of the System Fees are waived for certain Owners.

**15.4.2 Obligation of All Owners**. Each Owner shall be obligated to pay the System Fees for each Telecommunications Systems connection that is installed at its property or, if greater, for each connection required to be included pursuant to Section 15.2 above. The levying of the Connection Fee shall occur, and the levying of the Periodic Fee shall commence, upon the later to occur of: (x) the commencement of operation of the Telecommunications Systems, or (y) issuance of a certificate of occupancy (or equivalent governmental approval) for the relevant Dwelling Unit or building. In the case of System Fees imposed upon a commercial property Owner by reason of the existence of a particular tenant in such Owner's building, the levying of the System Fees with respect to such tenant shall occur and commence upon the later to occur of: (w) the commencement of operation of the Telecommunications Systems, or (z) the issuance of a certificate of occupancy (or equivalent governmental approval) for the relevant leased premises.

**15.4.3 No Exemption**. The Declarant or the Board may declare the System Fees to be mandatory fees; and if so, no Owner may avoid the obligation for payment of the System Fees through a claim of nonuse of the Telecommunications Systems or any other claim, excuse or exception, unless otherwise approved by the Board in its sole and absolute discretion. The System Fees are separate and apart from, and shall be in addition to, and not in lieu of, any Assessment or other charge or fee provided for under this Declaration.

**15.4.4 System Fees Are Not Assessments**. The Declarant expressly intends that the System Fees are not "regular assessments" as that term is used in A.R.S. §§ 33-1801 through 33-1807, as amended from time to time, and that the System Fees are not subject to the twenty percent (20%) ~~maximum annual increase~~ limitations set forth in A.R.S. § 33-1803, as amended from time to time.

**15.4.5 Collection**. The System Fees shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of the System Fees at the closing of the transfer of title to a Lot or Parcel and may impose special requirements for Owners with a history of delinquent payment. Subject to any governmental regulations and/or contract provisions, the Association may collect the System Fees (directly or through any other person designated by the Board), or the Association may cause a third party provider, manager or operator of the Telecommunications Systems to collect the System Fees (directly or through any other person designated by such third party provider, manager or operator). In the collection of System Fees, the Association shall have all of the rights and remedies available to the Association for the collection

of Assessments provided in this Declaration, including, but not limited to, all lien rights hereunder. To the extent permitted under any applicable governmental regulations and any applicable contract provisions with any third party provider, manager or operator of the Telecommunications Systems: in addition to any other action it may take, the Association may act as the agent for any third party provider, manager or operator of the Telecommunications Systems, for the purpose of collecting any unpaid System Fees, and in such capacity, the Association may utilize all methods of enforcement available by law or contract to such third party provider, manager or operator, and if any third party provider, manager or operator seeks to collect unpaid fees on its own behalf, or engages the services of another person for the purpose of collection, the Association shall have the authority for this purpose to assign its enforcement rights under this Declaration (including, but not limited to, its lien rights) to such third party provider, manager or operator or such other agent.

## ARTICLE 16 GENERAL PROVISIONS

16.1 **Interpretation of the Declaration.** Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Covenants and provisions hereof. When used herein, the terms "include" or "including" shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate or any other entity. The words "herein," "hereof," "hereunder," and other similar compounds of the word "here" when used in this Declaration, unless otherwise expressly stated, shall refer to the entire Declaration and not to any particular provision, section or exhibit.

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.

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

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

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.

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 to warranties or representations whatsoever that the plans presently envisioned for the complete development of Power Ranch can, or will be, carried out, or that any land now owned or hereafter acquired by it is, or will be, subjected by 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. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a Deed to a Lot or Parcel agrees that Declarant shall have no liability with respect thereto.

16.7 **References to the Covenants in Deeds.** Deeds to, and instruments affecting, any Lot or Parcel or any part of Power Ranch 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.

16.8 **Successors and Assigns of Declarant.** Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder, provided that Declarant's rights and powers may only be assigned by a written, Recorded instrument expressly assigning such rights and powers.

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

16.10 **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.

16.11 **Notices**. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board, to be given to any Owner, Lessee 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 Town or Power Ranch. 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.

16.12 **FHA/VA Approval**. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B Membership, the following actions will 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 of Common Areas (except where such dedication is required as of the date hereof to the Town, County or other applicable government subdivision); annexation of additional property and amendment of this Declaration.

16.13 **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 Memberships.

16.14 **Attorneys' Fees**. In addition to any other remedies set forth in this Declaration regarding costs and attorneys' 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, Power Ranch Rules or Design Guidelines, the offending Owner or other person or entity 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.

16.15 **Remedies Cumulative**. Each remedy afforded the Association herein is cumulative and not exclusive.

16.16 **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 this Declaration or the Design Guidelines by any preceding Owner of the Lot or Parcel.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the day and year first above written.

**SUNPOWER PROPERTIES L.L.C.**, an Arizona limited liability company

By: **SUNBELT/ACACIA L.L.C.**, an Arizona limited liability company, its Manager

By: **SUNBELT HOLDINGS II L.L.C.**, an Arizona limited liability company, its Manager

By: **SUNBELT HOLDINGS MANAGEMENT, INC.**, an Arizona corporation, its Manager

By: Curtis E. Smith  
Curtis E. Smith, its  
Executive Vice President

STATE OF ARIZONA      )  
                            )  
County of Maricopa      )

The foregoing was acknowledged before me this 1<sup>ST</sup> day of OCTOBER, 1999, by Curtis E. Smith, the Executive Vice President of Sunbelt Holdings Management, Inc., an Arizona corporation, the Manager of Sunbelt Holdings II L.L.C., an Arizona limited liability company, the Manager of Sunbelt/Acacia L.L.C., an Arizona limited liability company, the Manager of SUNPOWER PROPERTIES L.L.C., an Arizona limited liability company, for and on behalf thereof.

Christie Petersen  
Notary Public

My Commission Expires:

December 1, 2000

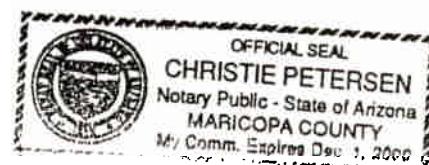


EXHIBIT A

(PARCEL 11) PARCEL NO. 304-51-001A

THE SOUTHEAST QUARTER OF SECTION TWO (2), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THAT PART WHICH LIES NORTHWESTERLY OF A LINE PARALLEL TO AND 350 FEET SOUTHEASTERLY (MEASURED AT RIGHT ANGLES AND RADIALLY) FROM THE CENTERLINE OF ROOSEVELT WATER CONSERVATION DISTRICT MAIN CANAL.

(PARCEL NO. 12) PARCEL NO. 304-51-003E

ALL THAT PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION TWO (2), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING SOUTH AND EAST OF THAT PART ACQUIRED BY MARICOPA COUNTY FLOOD DISTRICT FOR ROOSEVELT WATER CONSERVATION DISTRICT FLOOD CONTROL PROJECT, AS RECORDED IN DOCKET 10237, PAGE 1168, RECORDS OF MARICOPA COUNTY, ARIZONA;

EXCEPT THAT PART WHICH LIES NORTHWESTERLY OF A LINE PARALLEL TO AND 350 FEET SOUTHEASTERLY (MEASURED AT RIGHT ANGLES AND RADIALLY) FROM THE CENTERLINE OF ROOSEVELT WATER CONSERVATION DISTRICT MAIN CANAL.

(PARCEL NO. 13) PARCEL NO. 304-49-022E

THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION THIRTY-SIX (36), TOWNSHIP ONE (1) SOUTH, RANGE SIX (6) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING SOUTH AND EAST OF THE MAIN CANAL OF THE ROOSEVELT WATER CONSERVATION DISTRICT AND SOUTH OF THE RIGHT OF WAY OF THE ARIZONA EASTERN RAILROAD;

EXCEPT THAT PART WHICH LIES NORTHWESTERLY OF A LINE PARALLEL TO AND 350 FEET SOUTHEASTERLY (MEASURED AT RIGHT ANGLES AND RADIALLY) FROM THE CENTERLINE OF ROOSEVELT WATER CONSERVATION DISTRICT MAIN CANAL AND SOUTHERLY OF THE SOUTHWESTERLY RIGHT OF WAY LINE OF RITTENHOUSE ROAD; AND

EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION;

THENCE ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER NORTH 00 DEGREES 43 MINUTES 21 SECONDS WEST 286.89 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF RITTENHOUSE ROAD (80 FEET WIDE);

THENCE ALONG SAID SOUTHERLY LINE NORTH 53 DEGREES 34 MINUTES 03 SECONDS WEST 380.52 FEET TO THE EXISTING EASTERLY RIGHT OF WAY LINE OF THE R.W.C.D. FLOODWAY (300 FEET WIDE) AND THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID EXISTING EASTERLY LINE SOUTH 41 DEGREES 55 MINUTES 28 SECONDS WEST (SOUTH 41 DEGREES 54 MINUTES 00 SECONDS WEST RECORDED) 70.00 FEET;

THENCE LEAVING SAID EXISTING EASTERLY RIGHT OF WAY LINE NORTH 60 DEGREES 53 MINUTES 42 SECONDS EAST 76.55 FEET TO SAID SOUTHERLY LINE OF RITTENHOUSE ROAD;

THENCE ALONG SAID LINE NORTH 53 DEGREES 34 MINUTES 03 SECONDS WEST 25.00 FEET TO THE TRUE POINT OF BEGINNING.

(PARCEL NO. 14) PARCEL NOS. 304-60-004C; 004F, 005C AND 005D THE SOUTHEAST QUARTER OF SECTION ONE (1), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA. (3)

EXCEPTING THEREFROM THE SOUTH 331.47 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 1;

THENCE NORTH 0 DEGREES 52 MINUTES 24 SECONDS WEST, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 1, A DISTANCE OF 33.00 FEET TO A POINT;

THENCE SOUTH 88 DEGREES 13 MINUTES 35 SECONDS WEST, A DISTANCE OF 33.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 33 FEET WEST OF THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 1, AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 88 DEGREES 13 MINUTES 35 SECONDS WEST, ALONG A LINE PARALLEL WITH AND 33 FEET NORTH OF THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 1, A DISTANCE OF 657.08 FEET

THENCE NORTH 00 DEGREES 52 MINUTES 24 SECONDS WEST A DISTANCE OF 1639.90 FEET TO A POINT;

THENCE NORTH 89 DEGREES 07 MINUTES 36 SECONDS EAST, A DISTANCE OF 657.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 33 FEET WEST OF THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION

THENCE SOUTH 00 DEGREES 52 MINUTES 24 SECONDS EAST, ALONG SAID LINE, A DISTANCE OF 1629.57 FEET TO THE TRUE POINT OF

(PARCEL NO. 15) PARCEL NO. 304-60-002A

LOTS THREE (3), FOUR (4) AND THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION ONE (1), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA

EXCEPT THAT PART WHICH LIES NORTHWESTERLY OF A LINE PARALLEL TO AND 350 FEET SOUTHEASTERLY (MEASURED AT RIGHT ANGLES AND RADIALLY) FROM THE CENTERLINE OF ROOSEVELT WATER CONSERVATION DISTRICT MAIN CANAL.

(PARCEL NO. 16) PARCEL NO. 304-60-006B

THE SOUTHWEST QUARTER OF SECTION ONE (1), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPTING RIGHT OF WAY 33 FEET IN WIDTH AS CONVEYED TO THE ROOSEVELT WATER CONSERVATION DISTRICT BY THAT CERTAIN DEED RECORDED IN BOOK 280 OF DEEDS, PAGE 298, RECORDS OF MARICOPA COUNTY, ARIZONA; AND

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 1, THENCE NORTH 1 DEGREES 04 MINUTES 33 SECONDS WEST, ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 66.00 FEET TO A POINT; THENCE NORTH 88 DEGREES 13 MINUTES 35 SECONDS EAST, ALONG THE NORTH LINE OF A RIGHT OF WAY DESCRIBED IN BOOK 280 OF DEEDS, PAGE 298, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 33.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 33 FEET EAST OF THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 1, AND THE TRUE POINT OF BEGINNING;

THENCE NORTH 01 DEGREES 04 MINUTES 33 SECONDS WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 300.02 FEET TO A POINT;  
THENCE NORTH 88 DEGREES 13 MINUTES 35 SECONDS EAST, A DISTANCE OF 758.06 FEET TO A POINT;

THENCE SOUTH 01 DEGREES 04 MINUTES 33 SECONDS EAST, A DISTANCE OF 300.02 FEET TO A POINT ON THE NORTHERLY LINE OF THE RIGHT OF WAY DESCRIBED IN BOOK 280 OF DEEDS, PAGE 298, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 88 DEGREES 13 MINUTES 35 SECONDS WEST, ALONG LAST SAID LINE, A DISTANCE OF 758.06 FEET TO THE TRUE POINT OF BEGINNING.

(PARCEL NO. 17) PARCEL NOS. 304-60-001L AND 001P

THE NORTHEAST QUARTER OF SECTION ONE (1), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

EXCEPT THAT PORTION IN FINAL ORDER OF CONDEMNATION NO. CV 95-01700 RECORDED NOVEMBER 17, 1995 AT RECORDERS NO. 95-0709200; AND

EXCEPTING THE FOLLOWING COMMERCIAL PARCELS:  
(FIRST EXCEPTION) PARCEL NO. 304-60-001K  
COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 1;

THENCE SOUTH 0 DEGREES 52 MINUTES 00 SECONDS EAST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 1, A DISTANCE OF 758.03 FEET TO A POINT;

THENCE SOUTH 89 DEGREES 08 MINUTES 00 SECONDS WEST, A DISTANCE OF 80.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 80 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 1, AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 08 MINUTES 00 SECONDS WEST, A DISTANCE OF 325.00 FEET TO A POINT;

THENCE NORTH 00 DEGREES 52 MINUTES 00 SECONDS WEST, A DISTANCE OF 726.66 FEET TO A POINT ON A LINE PARALLEL WITH AND 33 FEET SOUTH OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 1;

THENCE NORTH 89 DEGREES 21 MINUTES 48 SECONDS EAST, ALONG SAID LINE, A DISTANCE OF 325.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 80 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 1;

THENCE SOUTH 00 DEGREES 52 MINUTES 00 SECONDS EAST, ALONG SAID LINE, A DISTANCE OF 725.35 FEET TO THE TRUE POINT OF BEGINNING, AND EXCEPT

(SECOND EXCEPTION) PARCEL NO. 304-60-001M

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 1;

THENCE NORTH 0 DEGREES 52 MINUTES 00 SECONDS WEST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 1, A DISTANCE OF 479.05 FEET TO A POINT;

THENCE SOUTH 89 DEGREES 08 MINUTES 00 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 40 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 1, AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 08 MINUTES 00 SECONDS WEST, A DISTANCE OF 650.00 FEET TO A POINT;

THENCE NORTH 00 DEGREES 52 MINUTES 00 SECONDS WEST, A DISTANCE OF 965.91 FEET TO A POINT ON A LINE PARALLEL WITH AND 40 FEET SOUTHWEST OF THE MONUMENT LINE OF RITTENHOUSE ROAD;

THENCE, SOUTH 53 DEGREES 38 MINUTES 01 SECONDS EAST, ALONG SAID LINE, A DISTANCE OF 816.40 FEET TO A POINT ON A LINE PARALLEL WITH AND 40 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 1;

THENCE SOUTH 00 DEGREES 52 MINUTES 00 SECONDS EAST, ALONG SAID LINE, A DISTANCE OF 471.94 FEET TO THE TRUE POINT OF BEGINNING.

(PARCEL NO. 18) PARCELS NOS. 304-60-022A, 022B AND 022D

THE NORTHWEST QUARTER OF SECTION TWELVE (12), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

EXCEPT ANY PORTION LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

A PARCEL OF LAND LOCATED IN AND BEING A PART OF THE NORTHEAST QUARTER OF SECTION ELEVEN (11) AND PART OF SECTION TWELVE (12), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 11, BEING COMMON WITH THE WEST QUARTER CORNER OF SAID SECTION 12;

THENCE SOUTH 89 DEGREES 41 MINUTES 33 SECONDS WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 11, 1315.46 FEET, TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11;

THENCE NORTH 00 DEGREES 15 MINUTES 39 SECONDS WEST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11, 1332.77 FEET, TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11;

THENCE NORTH 89 DEGREES 28 MINUTES 57 SECONDS EAST, ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11, 1313.73 FEET TO THE EAST LINE OF SECTION 11, BEING COMMON WITH THE WEST LINE OF SECTION 12;

THENCE SOUTH 00 DEGREES 20 MINUTES 08 SECONDS EAST, ALONG THE EAST LINE OF SECTION 11, BEING COMMON WITH THE WEST LINE OF SECTION 12, 1179.36 FEET;

THENCE NORTH 88 DEGREES 01 MINUTES 10 SECONDS EAST 5250.92 FEET, TO A POINT 33.00 FEET WEST OF THE EAST LINE OF SECTION

THENCE SOUTH 00 DEGREES 38 MINUTES 06 SECONDS EAST, ALONG A LINE PARALLEL WITH AND 33.00 FEET WEST OF THE EAST LINE OF SECTION 12, 1158.85 FEET;

THENCE SOUTH 89 DEGREES 21 MINUTES 54 SECONDS WEST 7.00 FEET;

THENCE SOUTH 00 DEGREES 38 MINUTES 06 SECONDS EAST, ALONG A LINE PARALLEL WITH AND 40.00 FEET WEST OF THE EAST LINE OF SECTION 12, 610.00 FEET;

THENCE SOUTH 44 DEGREES 21 MINUTES 54 SECONDS WEST 56.57 FEET;

THENCE SOUTH 89 DEGREES 21 MINUTES 42 SECONDS WEST, ALONG THE NORTHERLY RIGHT OF WAY LINE OF QUEEN CREEK ROAD, 184.93 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT ON SAID RIGHT OF WAY LINE, 935.65 FEET, RADIUS 2331.83 FEET, CENTRAL ANGLE 22 DEGREES 59 MINUTES 24 SECONDS, WHOSE LONG CHORD BEARS SOUTH 77 DEGREES 52 MINUTES 00 SECONDS WEST, 929.39 FEET;

THENCE SOUTH 66 DEGREES 22 MINUTES 18 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, 1128.80 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT ON SAID RIGHT OF WAY LINE, 834.02 FEET, RADIUS 2251.83 FEET, CENTRAL ANGLE 21 DEGREES 13 MINUTES 15 SECONDS, WHOSE LONG CHORD BEARS SOUTH 76 DEGREES 58 MINUTES 55 SECONDS WEST 829.26 FEET;

THENCE SOUTH 87 DEGREES 35 MINUTES 33 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, 1910.16 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT ON SAID RIGHT OF WAY LINE, 244.02 FEET, RADIUS 5689.65 FEET, CENTRAL ANGLE 2 DEGREES 27 MINUTES 26 SECONDS, WHOSE LONG CHORD BEARS SOUTH 88 DEGREES 49 MINUTES 16 SECONDS WEST 243.99 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 01 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, 123.84 FEET, TO THE WEST LINE OF SECTION 12;

THENCE NORTH 00 DEGREES 11 MINUTES 29 SECONDS WEST, ALONG THE WEST LINE OF SECTION 12, 2391.38 FEET, TO THE POINT OF BEGINNING;

(PARCEL NO. 19) PARCEL NOS. 304-60-017C; 017D; 017E; 017L; 107N; 017M; 017P; 017K; 017J; 018A AND 018B

THE NORTHEAST QUARTER OF SECTION TWELVE (12), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT ANY PORTION LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

A PARCEL OF LAND LOCATED IN AND BEING A PART OF THE NORTHEAST QUARTER OF SECTION ELEVEN (11) AND PART OF SECTION TWELVE (12), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 11, BEING COMMON WITH THE WEST QUARTER CORNER OF SAID SECTION 12;

ALONG THE  
315.46  
QUARTER OF THE

ALONG THE  
1/4 QUARTER OF THE  
SECTION 11;  
ALONG THE  
1/4 QUARTER

ALONG THE  
LINE OF

50.92  
ON

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FEET;

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FEET;

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SOUTH 77

NG SAID

DEGREES 41 MINUTES 33 SECONDS WEST, ALONG THE  
NORTHEAST QUARTER OF SECTION 11, 1315.46  
WEST CORNER OF THE SOUTHEAST QUARTER OF THE  
1/4 QUARTER OF SECTION 11;

DEGREES 15 MINUTES 39 SECONDS WEST, ALONG THE  
OUTHEAST QUARTER OF THE NORTHEAST QUARTER OF  
FEET, TO THE NORTHWEST CORNER OF THE  
1/4 QUARTER OF THE NORTHEAST QUARTER OF SECTION 11;

DEGREES 28 MINUTES 57 SECONDS EAST, ALONG THE  
1/4 SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF  
FEET TO THE EAST LINE OF SECTION 11, BEING  
1/4 WEST LINE OF SECTION 12;

DEGREES 20 MINUTES 08 SECONDS EAST, ALONG THE  
1/4 LINE 11, BEING COMMON WITH THE WEST LINE OF  
FEET;

DEGREES 01 MINUTES 10 SECONDS EAST 5250.92  
3.00 FEET WEST OF THE EAST LINE OF SECTION

DEGREES 38 MINUTES 06 SECONDS EAST, ALONG A  
1/4 MILE AND 33.00 FEET WEST OF THE EAST LINE OF  
5 FEET;

DEGREES 21 MINUTES 54 SECONDS WEST 7.00 FEET;

DEGREES 38 MINUTES 06 SECONDS EAST, ALONG A  
1/4 MILE AND 40.00 FEET WEST OF THE EAST LINE OF  
1/4 FEET;

DEGREES 21 MINUTES 54 SECONDS WEST 56.57 FEET;

9 DEGREES 21 MINUTES 42 SECONDS WEST, ALONG THE  
1/4 MILE LINE OF QUEEN CREEK ROAD, 184.93 FEET;

THE ARC OF A CURVE TO THE LEFT ON SAID RIGHT OF  
FEET, RADIUS 2331.83 FEET, CENTRAL ANGLE 22  
UTES 24 SECONDS, WHOSE LONG CHORD BEARS SOUTH 77  
UTES 00 SECONDS WEST, 929.39 FEET;

66 DEGREES 22 MINUTES 18 SECONDS WEST, ALONG SAID  
LINE, 1128.80 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT ON SAID RIGHT OF WAY LINE, 834.02 FEET, RADIUS 2251.83 FEET, CENTRAL ANGLE 21 DEGREES 13 MINUTES 15 SECONDS, WHOSE LONG CHORD BEARS SOUTH 76 DEGREES 58 MINUTES 55 SECONDS WEST 829.26 FEET;

THENCE SOUTH 87 DEGREES 35 MINUTES 33 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, 1910.16 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT ON SAID RIGHT OF WAY LINE, 244.02 FEET, RADIUS 5689.65 FEET, CENTRAL ANGLE 2 DEGREES 27 MINUTES 26 SECONDS, WHOSE LONG CHORD BEARS SOUTH 88 DEGREES 49 MINUTES 16 SECONDS WEST 243.99 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 01 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, 123.84 FEET, TO THE WEST LINE OF SECTION 12;

THENCE NORTH 00 DEGREES 11 MINUTES 29 SECONDS WEST, ALONG THE WEST LINE OF SECTION 12, 2391.38 FEET, TO THE POINT OF

(PARCEL NO. 20) PARCEL NOS. 304-60-009A, 009B AND 009D

THE NORTHEAST QUARTER OF SECTION ELEVEN (11), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THAT PART WHICH LIES NORTHWESTERLY OF A LINE PARALLEL TO AND 350 FEET SOUTHEASTERLY (MEASURED AT RIGHT ANGLES AND RADIALLY) FROM THE CENTERLINE OF ROOSEVELT WATER CONSERVATION DISTRICT MAIN CANAL; AND

EXCEPT THE SOUTHEAST QUARTER OF SAID NORTHEAST QUARTER.

(PARCEL NO. 21) PARCEL NO. 304-60-009E AND 019A

A PARCEL OF LAND LOCATED IN AND BEING A PART OF THE NORTHEAST QUARTER OF SECTION ELEVEN (11) AND PART OF SECTION TWELVE (12), TOWNSHIP TWO (2) SOUTH, RANGE SIX (6) EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 11, BEING COMMON WITH THE WEST QUARTER CORNER OF SAID SECTION 12;

THENCE SOUTH 89 DEGREES 41 MINUTES 33 SECONDS WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 11, 1315.46 FEET, TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11;

THENCE NORTH 00 DEGREES 15 MINUTES 39 SECONDS WEST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11, 1332.77 FEET, TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11; THENCE NORTH 89 DEGREES 28 MINUTES 57 SECONDS EAST, ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11, 1313.73 FEET TO THE EAST LINE OF SECTION 11, BEING COMMON WITH THE WEST LINE OF SECTION 12;

THENCE SOUTH 00 DEGREES 20 MINUTES 08 SECONDS EAST, ALONG THE EAST LINE OF SECTION 11, BEING COMMON WITH THE WEST LINE OF SECTION 12, 1179.36 FEET;

THENCE NORTH 88 DEGREES 01 MINUTES 10 SECONDS EAST 5250.92 FEET, TO A POINT 33.00 FEET WEST OF THE EAST LINE OF SECTION

THENCE SOUTH 00 DEGREES 38 MINUTES 06 SECONDS EAST, ALONG A LINE PARALLEL WITH AND 33.00 FEET WEST OF THE EAST LINE OF SECTION 12, 1158.85 FEET;

THENCE SOUTH 89 DEGREES 21 MINUTES 54 SECONDS WEST 7.00 FEET;

THENCE SOUTH 00 DEGREES 38 MINUTES 06 SECONDS EAST, ALONG A LINE PARALLEL WITH AND 40.00 FEET WEST OF THE EAST LINE OF SECTION 12, 610.00 FEET;

THENCE SOUTH 44 DEGREES 21 MINUTES 54 SECONDS WEST 56.57 FEET;

THENCE SOUTH 89 DEGREES 21 MINUTES 42 SECONDS WEST, ALONG THE NORtherly RIGHT OF WAY LINE OF QUEEN CREEK ROAD, 184.93 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT ON SAID RIGHT OF WAY LINE, 935.65 FEET, RADIUS 2331.83 FEET, CENTRAL ANGLE 22 DEGREES 59 MINUTES 24 SECONDS, WHOSE LONG CHORD BEARS SOUTH 77 DEGREES 52 MINUTES 00 SECONDS WEST, 929.39 FEET;

THENCE SOUTH 66 DEGREES 22 MINUTES 18 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, 1128.80 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT ON SAID RIGHT OF WAY LINE, 834.02 FEET, RADIUS 2251.83 FEET, CENTRAL ANGLE 21 DEGREES 13 MINUTES 15 SECONDS, WHOSE LONG CHORD BEARS SOUTH 76 DEGREES 58 MINUTES 55 SECONDS WEST 829.26 FEET;

THENCE SOUTH 87 DEGREES 35 MINUTES 33 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, 1910.16 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT ON SAID RIGHT OF WAY LINE, 244.02 FEET, RADIUS 5689.65 FEET, CENTRAL ANGLE 2 DEGREES 27 MINUTES 26 SECONDS, WHOSE LONG CHORD BEARS SOUTH 88 DEGREES 49 MINUTES 16 SECONDS WEST 243.99 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 01 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, 123.84 FEET, TO THE WEST LINE OF SECTION 12;

THENCE NORTH 00 DEGREES 11 MINUTES 29 SECONDS WEST, ALONG THE WEST LINE OF SECTION 12, 2391.38 FEET, TO THE POINT OF BEGINNING;