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Document

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Name: Cooks Tierney, PA

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HUNTER FIELD ESTATES**

THIS INSTRUMENT, made on the date hereinafter set forth,

WITNESSETH

WHEREAS, the Declarant is the owner of all Lots comprising Hunter Field Estates as depicted on the Plat, recorded on August 13, 2001 at Book 569, Page 50, Document 2001-0740767, Maricopa County Recorder; and

WHEREAS, this Instrument is intended to provide a means to equitably maintain certain open space and other improvements for the benefit of Declarant and future owners of the Property; and

WHEREAS, this instrument is further intended to provide a means for maintaining, controlling, and preserving the Property as a residential community desirable for residential living for all present and future Owners; and

WHEREAS, it is intended that all the Property shall be acquired, held, sold, and conveyed subject to the provisions of this Declaration, which are for the purposes of protecting the value and desirability of the Property, ^{and that} _{Unofficial Document} these conditions shall run with the Property and be binding on all parties having or hereafter acquiring any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner, Mortgage Holder, Occupant and other Persons now or hereafter acquiring any interest in the Property.

NOW, THEREFORE, the undersigned declares that:

1. DEFINITIONS as used herein, unless the context otherwise requires:

a. "Association" means Hunter Field Estates Homeowners Association, Inc., an Arizona nonprofit corporation, its successors and assigns, formed or to be formed by the Declarant, and, unless otherwise provided, shall mean and include its Board of Directors (the "Board"), officers and other authorized agents.

b. "Border Landscaping" means any and all landscaping now or hereafter put in by Declarant or the Association that borders the Property but is not located on the Property.

c. "City" means the City of Peoria, Arizona.

d. "Common Elements" means the real property owned or to be owned by the Association for the common benefit of the Owners, which real property may be used and maintained for drainage and/or water retention purposes and is more particularly depicted on the Plat as Tracts A, B, and C, and including, but not limited to, all Improvements now or

hereafter constructed on such Common Elements, or any Improvement or easements as elsewhere erected by the Members for the mutual benefit of all Members.

e. "Declarant" means Valencia Homes, Inc., an Arizona corporation, or Declarant's successors and assigns, in the ownership of the Property for the purpose of the original development and sale thereof.

f. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Hunter Field Estates, as amended from time to time.

g. "Eligible Mortgage Holder" means the holder of a First Mortgage against a Lot who has in writing informed the Association of such holder's address and requested notification of or the right to participate in (if applicable) any action to be taken by the Association pursuant to paragraphs 7 and 20 hereof. "Eligible Mortgage" is a Mortgage held by an Eligible Mortgage Holder.

h. "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a First Mortgage on a Lot which has informed the Association of such insurer's or guarantor's address and requested notification of or the right to participate in (if applicable) any action to be taken by the Association pursuant to paragraphs 7 and 20 hereof.

i. "Improvements" mean all buildings, fences, walls, roads, drives, parking areas, landscaping, water retention areas, lighting systems, sidewalk areas, water, sewer, gas, electric or telephone facilities or any other structures or apparatus located in Hunter Field Estates.

j. "Lot" means any of the subdivided residential lots numbered 1 through 22, inclusive, as depicted on the Plat and shall not include any of the tracts or public roadways depicted on the Plat.

k. "Majority" or "Majority of Members" means the Members holding more than fifty percent (50%) of the total voting rights of all the Members. Any specified fraction or percentage of the Members means the Members holding that fraction or percentage of the voting rights. The voting rights are described in Section 3, and voting rights may differ from the number of total Members, as the Class B Members shall have three (3) votes for each Lot owned.

l. "Member" means Owner, as hereinafter defined. Further provisions respecting the Members are contained in paragraph 3 hereof.

m. "Mortgage" means any recorded, filed or otherwise perfected instrument covering any Lot given in good faith and for valuable consideration, which is not a fraudulent conveyance under Arizona law, as security for the performances of an obligation including, without limitation, deeds of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "Mortgagee" means a Person secured by a Mortgage, including the trustee and beneficiary under any deed of trust. "Mortgagor" means the party executing a mortgage. "First Mortgage" means a Mortgage that is the first and most senior of all Mortgages upon the same lot.

n. "Occupant" means a Person or Persons, other than an Owner, in rightful possession of any Lot.

o. "Owner" means the Record Owner, whether one or more Persons or entities, of fee simple title, whether or not subject to any Mortgage, of any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case of a Lot, the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., legal title shall be deemed to be in the trustor.

p. "Person" means a natural individual corporation, partnership, trustee or other entity capable of holding title to real property.

q. "Plat" means the plat of the Property attached hereto as Exhibit A and incorporated fully herein by this reference, as recorded at recording number 2001-0740767, records of Maricopa County, Arizona.

r. "Property" means the parcel of real property shown and described on the Plat.

s. "Record" or "Recording" refers to record or recording in the office of the County Recorder of Maricopa County, Arizona.

2. PROPERTY RIGHTS IN COMMON ELEMENTS

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a. Owner's Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement to use the Common Elements in common with all other Owners for purposes which are not inconsistent with the intended purposes of the Common Elements as stated in the definition of Common Elements set forth in paragraph 1.d hereof and are not in violation of any rules or regulations governing the use of the Common Elements promulgated by the Association pursuant to paragraph 2.a.4 hereof. The easements of the Owners under this paragraph shall be appurtenant to and shall pass with the title to any Lot and shall be subject to the following:

(1) Suspension of Rights. The Association shall have the power to suspend the right to vote or to use the Common Elements if such Owner has not paid any assessment of Common Expenses (as defined in paragraph 4.a) which is due, or is otherwise in breach of its obligations hereunder.

(2) Dedication of Common Elements. The Association shall have the power to dedicate or transfer all or any part of the Common Elements or easements thereon to any public agency authority or utility for such purposes, and subject to such conditions as the Association may deem appropriate, if such transfer or dedication is approved by not less than two-thirds (2/3) of the votes, including Class A and Class B votes.

(3) Easements and Prior Recorded Instruments. The rights of all Persons hereunder shall be subject to all easements reserved or created herein or in any and all prior Recorded instruments.

(4) Rules and Regulations. The Association shall have power to promulgate reasonable and uniformly applicable rules and regulations governing the use of and conduct of all Persons upon the Common Elements.

b. Delegation of Use. Any Owner may delegate his right to use the Common Elements to the members of his family and guests and to his tenant; provided, however, that any Owner who has delegated all of his rights to any tenant or lessees shall not be entitled to further delegate or exercise the same to himself until the term of such lease or other agreement has expired.

3. THE ASSOCIATION, MEMBERSHIP, AND VOTING RIGHTS

a. Membership. Membership shall be appurtenant to and may not be separated from ownership of the Lot. When any Lot is owned by more than one Person, all such Persons shall be Members, but they shall be entitled to cast only one undivided vote on any matter, as hereinafter provided. When any Member ceases for any reason to be an Owner, his Membership shall automatically terminate, and the new Owner shall automatically succeed to such Membership in the Association. A Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of the Lot to which such Membership appertains (and then only to such purchaser) or by intestate succession, testamentary disposition, foreclosure of a Mortgage of Record or other legal process transferring fee simple title to such Lot (and then only to the Person to whom such fee simple title is transferred). In the event that more than one such instrument has been filed, the Board of Directors shall recognize the rights of the ^{Official Document} First Mortgagee to so file regardless of the priority of the Mortgages themselves. Any attempt to make a prohibited transfer of a Membership is void and will not be recognized by or reflected upon the books and records of the Association.

b. Voting Rights. The Association shall have two classes of Members:

Class A - Class A Members shall be all Members with the exception of the Declarant.

Class B - The Class B Member shall be the Declarant; provided, however, that the Class B Membership shall cease and the Declarant shall become a Class A Member with respect to all Lots then owned by the Declarant, if any, on the first to occur of the following:

(1) The date upon which the Declarant is an Owner of, or holds equitable or beneficial title (through a trust or otherwise) to, no more than five (5) Lots; or

(2) The date upon which Declarant by a recorded declaration, expressly relinquishes such Class B Membership; or

(3) Upon the expiration of five (5) years after the date of Recording of this Declaration.

c. Relative Voting Rights. Each Class A Member shall be entitled to one (1) vote for each Lot owned by such Member. The Class B Member shall be entitled to three (3) votes for each vote held by Class A Members.

d. The Association. The Association has been or will be formed to serve as the governing body of the Property for the ownership, protection, improvement, maintenance, repair, administration, and operation of the Common Elements, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds and other matters as provided in this Declaration, in the Articles of Incorporation of the Association (hereinafter called the "Articles"), in the By-Laws of the Association (hereinafter called the "By-Laws"), or rules or regulations. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for its Members in accordance with the provisions of this Declaration, the Articles and the By-Laws.

e. Qualifications of Directors. Each director of the Association elected by Class A Members shall be an Owner or the spouse of an Owner (if an Owner is a corporation, partnership or trust, a director, officer, partner, or beneficiary of such Owner). If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director, and his place on the Board shall be deemed vacant. The requirements of this subparagraph shall not apply to directors elected by the Class B Member. Class B Members may elect any Person designated by the Declarant as a director regardless of whether or not such Person is an Owner.

f. Additional Provisions in Articles of Incorporation and By-Laws of the Association. The Articles of Incorporation and By-Laws of the Association may contain any provision not inconsistent with law or with this Declaration relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and Members.

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4. COMMON EXPENSES

a. Covenant to Pay Common Expenses. Each Owner of a Lot shall pay its Proportionate Share (as hereinafter defined in paragraph 4.c) of the expenses (1) of the administration and operation of the Common Elements, (2) for so long as the Association elects or is so obligated, of the maintenance of the Border Landscaping, and (3) of any other expenses incurred in conformance with this Declaration, the Articles and the By-Laws (which expenses are herein sometimes referred to as "Common Expenses"), including specifically, but not by way of limitation, operating costs (including premiums for fidelity bonds), all taxes on and utilities for the Common Elements, the maintenance and repair of the Common Elements and the Border Landscaping and any and all replacements and additions thereto, and reasonable reserves for contingencies, replacements and other proper purposes, including an adequate reserve fund for replacement of those Common Elements which must be replaced on a periodic basis. The Common Expenses shall be assessed, as nearly as possible, in regular installments, rather than by special assessments. The amount of all assessments and the times for payment thereof shall be fixed by the Board from time to time. In addition to such regular assessments, the Board may levy special assessments only for the purpose of defraying in whole or in part the cost of (1) any construction, reconstruction, repair or replacement of any Improvement upon the Common Elements, and then only upon the vote of a majority of each class of Members voting in person or by proxy at a meeting duly called for this purpose, or (2) any action taken by the Association pursuant to paragraph 14 necessary to correct a breach of this Declaration.

b. Maximum Annual Assessment. The Board may not increase the regular assessments levied in any fiscal year of the Association by more than twenty-five percent (25%) over the regular assessments levied in the immediately preceding fiscal year, except upon the vote of a majority of each class of Members voting in person or by proxy at a meeting called for this purpose.

c. Allocation of Common Expenses among Members. Common Expenses shall be allocated equally among the Lots, and the "Proportionate Share" of the Common Expenses payable by each Lot Owner shall be equal to the Common Expenses multiplied by a fraction of the numerator which is one (1) and the denominator of which is the total number of Lots subject to assessment under this Declaration. The Association shall bill the Owners for and shall collect from such Owners the portion of the Common Expenses which are payable by such Owners.

d.

(1) Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree to pay assessments to the Association in accordance with this Declaration. All assessments shall be established and collected as provided in this Declaration. The assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent assessments, whether or not suit is filed, shall be a charge Unofficial Document upon the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

(2) Rules Regarding Billing and Collection Procedures. Regular assessments shall be collected on an annual basis or such other basis as may be selected by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making assessments and for the billing and collection of the assessments provided that the procedures are not inconsistent with the provisions of this Declaration and are not inconsistent with applicable Arizona law. 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 until the Member has been given not less than thirty (30) days' written notice prior to such foreclosure 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 Lot changes during an assessment period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

(3) Effect of Non-Payment of Assessments; Remedies of Association.

(a) In the event any assessment or any installment of an assessment is not paid within fifteen (15) days after the assessment or the installment of the assessment first became due, the Board of Directors may establish a late fee to be charged to the Owner who has failed to pay said assessment or the installment of an assessment, which late fee shall not exceed the greater of fifteen dollars (\$15) or ten percent (10%) of said delinquent assessment or installment of an assessment.

(b) The Association shall have a lien on each Lot for: (i) all assessments levied against the Lot; (ii) all lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all fines levied against the Owner of the Lot; (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect assessments or other amounts due to the Association by the Owner of a Lot; (v) any amounts payable to the Association pursuant to paragraph 5.d of this Declaration; and (vi) any other amounts payable to the Association pursuant to the project documents. The recording of this Declaration constitutes record notice and perfection of the assessment lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent assessments, together with interest, late charges and reasonable attorneys' fees, if any. The Unofficial Document shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot.

(c) The assessment lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; (iii) the lien of any First Mortgage; and (iv) the liens and encumbrances recorded before the recordation of this Declaration. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

(d) The Association shall not be obligated to release the assessment lien until all delinquent assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.