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Clare H. Abel, Esq.
Burch & Cracchiolo, P.A.
P. O. Box 16882
Phoenix, AZ 85011

**SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR
COOPER COMMONS PARCEL 8
(HERITAGE PARK)**

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THIS SUPPLEMENTAL DECLARATION is made this 11th day of July 2001, by CENTEX HOMES, a Nevada general partnership, as Owner, hereinafter referred to as "Centex" or "Developer," with the approval of Cooper Commons Community Association, an Arizona non-profit corporation, hereinafter referred to as the "Master Association" and with the approval of seventy-five percent (75%) of the Class A Members in Parcel 8 and shall become effective upon recordation in the Office of the Maricopa County Recorder.

WITNESSETH:

WHEREAS, Cooper Commons L.L.C. an Arizona limited liability company, (hereinafter "Declarant") executed and caused to be recorded that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Cooper Commons dated April 28, 1998, and recorded on April 29, 1998 at Instrument No. 98-0346533, Official Records of Maricopa County, Arizona (the "Master Declaration").

WHEREAS, Declarant thereafter executed and caused to be recorded that certain Tract Declaration for Cooper Commons Parcel 8 dated April 30, 1998 and recorded on April 30, 1998 at Instrument No. 98-0358347, Official Records of Maricopa County, Arizona ("Heritage Park Tract Declaration") which encumbered certain real property legally described as follows:

Lots 1 through 298, inclusive, and Tracts T-1 through T-82, inclusive, of Cooper Commons Parcel 8, according to the plat of record thereof, recorded on August 29, 1997, in Book 448 of Maps, on Page 44 thereof, and at Instrument No. 97-0601166, Official Records of Maricopa County, Arizona, hereinafter referred to as "Heritage Park at Cooper Commons" or "Heritage Park" or "Parcel 8."

WHEREAS, the Declarant formed the Cooper Commons Community Association, an Arizona non-profit corporation ("Master Association"), conveyed all of the Common Areas within Cooper Commons to the Master Association and delegated the rights and responsibilities for ownership, management and maintenance of the Common Areas to the Master Association.

WHEREAS, Article XIV, Section 14.2 of the Master Declaration provided for the amendment of Tract Declarations with (i) the approval of the Board of the Master Association; the approval of Declarant; (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.

WHEREAS, the Heritage Park Tract Declaration contemplated and provided for the Developer of Heritage Park at Cooper Commons to record a Supplemental Declaration and create a Sub-Association which would be charged with the care and maintenance of certain Special Use Fee Tracts, Special Use Fee Tract Improvements and Joint Use Driveways, among other things.

WHEREAS, Centex as the Developer of Cooper Commons Parcel 8 has formed Heritage Park at Cooper Commons Homeowners Association, Inc. ("Sub-Association") for the purpose of

providing for the management, maintenance, operation and repair of certain Special Use Fee Tracts within Heritage Park.

WHEREAS, **Centex** (with the required consents of the Declarant, the Master Association and Class A Members within Parcel **8**) has contemporaneously herewith amended the Heritage Park Tract Declaration so that Tract **T-48** of Parcel **8** can be developed and maintained with certain recreational amenities that will be for the exclusive use and enjoyment of the Owners of Lots within Heritage Park provided the cost and expense of construction, operation maintenance, repair and replacement of those recreational amenities shall be borne exclusively by the Owners of Lots within Heritage Park as provided for herein.

WHEREAS, **Centex**, with the consent and approval of the Board of the Master Association, the consent and approval of the Developer, and the consent and approval of not less than seventy-five percent (75%) of the Class A Members within Heritage Park at Cooper Commons now wishes to Record this Supplemental Declaration for The Heritage Park at Cooper Commons.

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

ARTICLE I

DEFINITIONS

Capitalized terms used in this Supplemental Declaration and not otherwise expressly defined herein shall have the same meanings as are set forth for such terms in the Master Declaration and the Heritage Park Tract Declaration.

Section 1.1 "Additional Maintenance" shall mean those portions of a Lot or any areas which are located outside the Property which, pursuant to future action of the Sub-Association, are maintained by the Sub-Association.

Section 1.2 "Articles" shall mean the Articles of Incorporation of Heritage Park at Cooper Commons Homeowners' Association which are, or shall be, filed with the Corporation Commission of the State of Arizona, as said Articles are amended from time to time.

Section 1.3 "Board" shall mean the Board of Directors of the Sub-Association.

Section 1.4 "Building" means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or chattels and located on a Lot and forming a part of such Lot or Special Use Fee Tracts.

Section 1.5 "Bylaws" shall mean the Bylaws of the Sub-Association as such Bylaws may be amended from time to time.

Section 1.6 "Cooper Commons Documents" shall mean the Master Declaration, any Rules promulgated under the Master Declaration (including Cooper Commons Rules, Association Rules and the Design Guidelines, as those terms are defined in the Master Declaration, the Articles of Incorporation and Bylaws for the Cooper Commons Community Association.

Section 1.7 "Covered Property" or "Property" shall mean that real property within Heritage Park described hereinabove.

Section 1.8 "Declarant" herein shall mean and refer to Cooper Commons L.L.C. an Arizona limited liability company, its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development and to whom the rights and responsibilities are assigned by a recorded instrument.

Section 1.9 "Developer" shall mean Centex Homes, a Nevada general partnership, its successors and assigns, to whom the status of Developer has been granted by a recorded instrument.

Section 1.10 "Heritage Park at Cooper Commons Rules" shall mean the reasonable rules and regulations adopted by the Sub-Association pursuant to Section 3.4 of the Declaration.

Section 1.11 "Heritage Park Special Use Fee Tracts" shall mean all real property, including improvements thereon located within Heritage Park at Cooper Commons, owned by the Master Association for the exclusive use and enjoyment of the Heritage Park Owners, their occupants and invitees; such use to be defined in the Heritage Park at Cooper Commons Rules as issued by the Sub-Association Board of Directors. The Heritage Park Special Use Fee Tracts to be owned by the Master Association and maintained by the Sub-Association are described as follows:

Tracts T-2 through T-5, inclusive, T-7, T-8, T-10 through T-56, inclusive, T-58, T-60, T-63 through T-65, inclusive, and T-67 through T-82, inclusive, of Cooper Commons Parcel 8, according to the plat of record thereof, recorded on August 29, 1997, in Book 448 of Maps, on Page 44 thereof, and at Instrument No. 97-0601166, Official Records of Maricopa County, Arizona.

Section 1.12 "Heritage Park Tract Declaration" shall mean and refer to that certain Tract Declaration for Cooper Commons Parcel 8 dated April 30, 1998 and recorded on April 30, 1998 at Instrument No. 98-0358347, Official Records of Maricopa County, Arizona as amended by that certain First Amendment to the Tract Declaration for Cooper Commons Parcel 8 recorded concurrently herewith:

Section 1.13 "Improvement(s)" shall mean buildings, private drives or accessways, garages, carports, private driveways, walkways, parking areas, fences, walls, porches, patios, vertical structures, recreational improvements, including, but not limited to, swimming pools, cabanas, basketball backboards or standards, streetlights, hedges, plantings, planters, planted trees and shrubs,

swimming pools, spas, sports equipment, sport courts, and all other structures or landscaping improvements of every kind, nature or description.

Section 1.14 "Joint Use **Driveway(s)**" shall mean and refer to Tracts T-2, T-4 and T-5, inclusive, Tracts T-7 and T-8, inclusive; Tracts T-10 through T-12, inclusive; Tracts T-14, T-16, T-18, T-21, T-23 through T-28, inclusive; Tract T-30; Tracts T-33 through T-35, inclusive; Tracts T-38 through T-41, inclusive; Tracts T-43 through 44, inclusive; Tract T-47; Tracts T-50 and 51; Tracts T-53 through T-55, inclusive; Tracts T-58 and T-60; Tracts T-63 through T-65, inclusive; Tracts T-67 through T-72, inclusive; Tracts T-74, T-76 and T-78; and Tracts T-80 through T-82, inclusive.

Section 1.15 "Lot" shall mean each of the 298 Lots within Heritage Park, as designated on the Plat (defined below).

Section 1.16 "Owner" shall mean the Owner (as defined in the Master Declaration) of a Lot within Heritage Park. The term "**Owner**" shall not include the Owner (as defined in the Master Declaration) of any other property within Cooper Commons.

Section 1.17 "Master Association" shall mean the Cooper Commons Community Association, an Arizona **non-profit** corporation, its successors and assigns.

Section 1.18 "Master Declaration" shall mean the Declaration of **Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements** for Cooper Commons dated April 28, 1998, and recorded on April 29, 1998 at Instrument No. 98-0346533, Official Records of Maricopa County, Arizona, and subsequent amendments thereto.

Section 1.19 "Member" shall mean any person or entity holding a membership in the Sub-Association pursuant to this Supplemental Declaration.

Section 1.20 "Plat" shall mean and refer to the subdivision map recorded in Book 448 of Maps, Page 44 thereof, and recorded at Instrument No. 97-0601166, Official Records of Maricopa County, Arizona, as it may be amended from time to time.

Section 1.21 "Sub-Association" shall mean and refer to the Heritage Park at Cooper Commons Homeowners' Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

Section 1.22 "Supplemental Declaration" shall mean and refer to this Supplemental Declaration of Covenants, Conditions, Restrictions and Easements as may be amended from time to time.

ARTICLE II

MEMBERSHIP AND VOTING

Section 2.1 The Heritage Park at Cooper Commons Homeowners' Association, Inc. The Sub-Association is a nonprofit Arizona corporation, which corporation shall be the governing body for all of the Owners for the maintenance, repair, replacement, administration and operation of the Heritage Park Special Use Fee Tracts and all other property it is required or permitted to maintain pursuant to this Declaration, and shall have the duties and powers prescribed by law and set forth in the Sub-Association Articles, Sub-Association Bylaws and this Declaration. As provided in Article V, Section 5.5 of the Master Declaration, the Sub-Association and the rights of its Members are subject and subordinate to the provisions of the Cooper Commons Documents. Neither the Sub-Association Articles nor Sub-Association Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Supplemental Declaration or with the Master Documents.

Section 2.2 Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Sub-Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Membership in the Sub-Association shall be in addition to an Owner's Membership in the Master Association.

Section 2.3 Voting: Rights. The Sub-Association shall have two **classes** of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. Class B members shall be the Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of either of the following events:

- (a) When the total votes outstanding in Class A membership is greater than the total votes outstanding in the Class B membership; or
- (b) Within seven (7) years **from** the date of recordation of this Supplemental Declaration; or
- (c) When the Developer voluntarily relinquishes such Class B voting rights by written recorded instrument.

Section 2.4 Default. In the event any Owner is in arrears in the payment of any amount due pursuant to any provisions of this Supplemental Declaration, or shall be in default in the performance of any provision of this Supplemental Declaration for a period of fifteen (15) days, said Owner's right

to vote as a member of the Sub-Association shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

Section 2.5 Powers and Authority of the Sub-Association. The Sub-Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Corporation Law of the State of Arizona, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Sub-Association Articles, the Sub-Association Bylaws or this Supplemental Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Sub-Association by this Supplemental Declaration, the Sub-Association Articles and the Sub-Association Bylaws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Sub-Association, including without limitation:

(a) Assessments. The Sub-Association shall levy assessments against Lots and to enforce payment of such assessments, all in accordance with the provisions of the Article hereof entitled "Covenant for Maintenance Assessments."

(b) Right of Entry and Enforcement. The Sub-Association may enter upon any Lot (excluding the interior of any dwelling thereon), Additional Maintenance Area or any Heritage Park Special Use Fee Tract for the purpose of ascertaining whether the provisions of this Supplemental Declaration and Heritage Park Association Rules have been or are being complied with, for the purpose of enforcing by peaceful means any of the provisions of this Supplemental Declaration or the Heritage Park Association Rules, or for the purpose of maintaining or repairing any such area as required to be maintained or repaired by this Supplemental Declaration or the Heritage Park Association Rules, and such areas as may be maintained or repaired by the Sub-Association. Except for routine landscaping, such entrance shall be after twenty-four (24) hours' prior written notice to the Owner, or such greater notice as may be required by any provision hereof. The Sub-Association shall also have the power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Supplemental Declaration and the Heritage Park Association Rules, and to enforce, by mandatory injunction or otherwise, all of the provisions hereof. In addition, or as an alternative method of enforcing this Supplemental Declaration and the Heritage Park Association Rules, the Board may impose monetary penalties, temporary suspensions of an Owner's rights as a Member or other appropriate discipline for failure to comply with the provisions of this Supplemental Declaration or the Heritage Park Association Rules, provided that the procedures for notice and hearing set forth in the Article titled "Enforcement" are given to the accused Member before a decision to impose discipline is reached.

(c) Easements and Access Areas. The Sub-Association may grant and convey to any third party, easements and access ways in, on, over or under any Heritage Park Special Use Fee Tracts for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder (i) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, security system, telephone, cable television, transformers and other purposes, (ii) public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, (iii) emergency vehicle accessways, (iv) multi-purpose pathways, and (v) any similar public or quasi-public improvements or facilities.

Notwithstanding anything herein contained to the contrary, no such grants or conveyances shall be made with out the written consent of the Master Association.

(d) No Transfer Encumbrance and Dedication of the Heritage Park Svecial Use Fee Tracts. The Sub-Associationshall not sell, transfer or encumber all or any portion of the Heritage Park Special Use Fee Tracts, or any other portion of the Property owned by the Master Association for the exclusive use and enjoyment of the Heritage Park Owners, to a person, firm or entity, whether public or private, or dedicate or transfer all or any portion of the Heritage Park Special Use Fee Tracts or other property owned by the Master Association for the exclusive use and enjoyment of the Heritage Park Owners, to any public agency, authority, or utility for such purposes.

(e) Employment of Agents. The Sub-Association may employ the services of any person or corporation as managers, or other employees to manage, conduct, and perform the business, obligations and duties of the Sub-Association as may be directed by the Sub-Association Board and to enter into contracts for such purpose. Such agents shall have the right to ingress and egress over such portions of the Property as is necessary for the performance of such business, duties and obligations.

(f) Employment of Professional Advisors. The Sub-Association may employ professional counsel and obtain advice **from** such persons or firms or corporations such as, but not limited to, landscape architects, recreation experts, architects, engineers, planners, lawyers and accountants.

(g) Borrowing of Money. The Sub-Association may borrow and repay monies for the purpose of maintaining and improving the Heritage Park Special Use Fee Tracts, provided however, the Sub-Associationshall not to encumber the Special Use Fee Tracts or other property of the Master Association as security for the repayment of such borrowed money.

(h) Hold Title and Make Conveyances. The Sub-Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including, but not limited to, easements.

(i) Adoption and Enforcement of Rules for Special Use Fee Tract Recreation Improvements. The Sub-Association shall adopt, administer and enforce rules and regulations governing the use and operation of all recreational improvements within the Heritage Park Special Use Fee Tracts, **including** the imposition of fines or suspension of an Owner's right to use such recreational facilities for violation of the rules and regulations. Any fines imposed for failure to obey the rules and regulations shall become a part of the Assessment and shall be secured by the Assessment Lien. In the event the Sub-Association fails to administer or enforce such rules and regulations the Master Association may enforce such rules and regulations on behalf of the Sub-Association.

Section 2.6 Personal Liability. No member of the Board or any officer of the Sub-Association, or Declarant, or Developer or the manager, shall be personally liable to any Owner, or to any other party, including the Sub-Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Sub-Association, the Board, the

manager or any other officer of the Sub-Association, or of Declarant, provided that such person has, upon basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct.

Section 2.7 Master Association. The Property is a part of a master planned community known as Cooper Commons. The Property shall be subject to the terms and conditions of the Cooper Commons Documents. All assessments and other amounts payable by Owners to the Master Association, pursuant to the provisions of the Master Association Documents, and all consents required by this Supplemental Declaration or the Board shall be in addition to any consents required under the terms of the Master Declaration or the Master Association Documents.

ARTICLE III

PROPERTY RIGHTS

Section 3.1 Suspension of Voting Rights. The Sub-Association shall have the authority to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

Section 3.2 Transfer by Master Association. Subject to the consent requirements of the Master Declaration, the Master Association shall have the right to dedicate or transfer easements or permits over all or any part of the Heritage Park Special Use Fee Tracts to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Sub-Association Members and the Master Association. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Sub-Association members agreeing to such dedication or transfer has been recorded.

Section 3.3 Approval of Transfer by Lienholders. Except as to the Sub-Association's rights set forth in Section 3.2 above, neither the Heritage Park Special Use Fee Tracts nor improvements located thereon may be alienated, released, transferred, hypothecated, or otherwise encumbered without approval of all holders of first mortgage liens on the Lots described herein.

Section 3.4 Rules and Regulations. The Sub-Associations shall have the right to establish and enforce Rules and Regulations pertaining to the use of the Heritage Park Special Use Fee Tracts.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot 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 Sub-Association: (1) annual assessments or charges; and (2) special assessments

for capital improvements, such assessments to be established and collected as hereinafter provided, all for the benefit of the Owners within Heritage Park at Cooper Commons and the Heritage Park Special Use Fee Tracts.

The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, or unless prior to the transfer of title as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed or recorded with the County Recorder. The assessments authorized herein shall be in addition to those assessments levied by the Master Association.

Section 4.2 Purpose of Assessments. The assessments levied by the Sub-Association shall be used exclusively for the **Improvements** and maintenance of the Heritage Park Special Use Fee Tracts and such Additional Maintenance Areas, if any, as the Sub-Association undertakes to maintain, and the performance of the duties of the Sub-Association as set forth in this Supplemental Declaration.

Section 4.3 Maximum Annual Assessment. Until January 1 of the year immediately following the recording of this Supplemental Declaration, the maximum annual assessment will be collected on a monthly basis and shall be Two Hundred Sixty and No/100 Dollars (\$260.00) per Lot, not including any assessments imposed by the Master Association by virtue of the Property's inclusion in the Cooper Commons Community Association. The Annual Assessment may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment," which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until January 1 of the year following the recordation of this Supplemental Declaration, the Maximum **Annual** Assessment against each Owner shall be determined by the Board.

(b) Commencing with the year immediately following recordation of this Supplemental Declaration and continuing each succeeding year thereafter, the Maximum Annual Assessment shall be increased effective January 1 of each such year without a vote of the Membership by the greater of ten percent (10%) or the percentage increase, if any, of the Consumer Price Index (as hereinafter defined). Any increase in the Maximum Annual Assessment based on the Consumer Price Index shall be computed by reference to the statistics published in the Monthly Labor Review by the United States Department of Labor, Bureau of Labor Statistics, designated "Consumer Price Index for all Urban Consumers (CPI-U)—U.S. City Average (1982-1984 Equals 100)", hereinafter called the "Consumer Price Index." For purposes of identification, the Consumer Price Index for June 1985 was 322.3. An adjustment in the Maximum Annual Assessment based on an increase in the Consumer Price Index shall be computed by the following formula:

$$x = \text{Consumer Price Index for September of the year immediately preceding the year of the first Annual Assessment.}$$

y = Consumer Price Index for September of the year immediately preceding the calendar year for which the Maximum Annual Assessment to be determined.

~~y-x~~

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

If the Bureau of Labor Statistics shall change the method of determining the Consumer Price Index, the formula for determining the Maximum Annual Assessment shall be altered or amended, if possible, so as to continue the base period and base figure, but in the event it shall be impossible to do so, or in the event the Bureau of Labor Statistics shall cease to publish the said statistical information and such information is not available from any other source, public or private, then and in any such event, a new formula for determining the Maximum Annual Assessment shall be adopted by the Board.

(c) From and after January 1 ~~of the~~ year immediately following the recordation of this Supplemental Declaration, the Maximum **Annual** Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subparagraph (b) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

(d) Notwithstanding the foregoing limitations described in (a), (b) and (c) above, in the Board's discretion, the Maximum Annual Assessment may be increased as required by increased utility and water costs charged to the Sub-Association.

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

Section 4.4 Replacement Fund. The annual maintenance assessment shall include an amount for a replacement fund which the Board of Directors determines to be adequate for the maintenance, repair and replacement of Heritage Park Special Use Fee Tracts and improvements, if any, and the Additional Maintenance Areas, if any, and such amount shall be set aside as a pro rata portion of each installment of the maintenance assessments.

Section 4.5 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Sub-Association may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost not covered by the annual assessment of any construction, reconstruction, repair or replacement of a capital improvement upon the Heritage Special Use Fee Tracts, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for that purpose, or at an annual meeting.

Section 4.6 Remedial Assessments. Pursuant to this Supplemental Declaration, the Board may levy an assessment against any Lot to reimburse the Sub-Association for costs incurred in bringing such Lot and its Owner into compliance with the provisions of this Supplemental

Declaration or the Heritage Association Rules. Remedial Assessments shall be due ten (10) days after the Board gives written notice thereof to the Owner subject thereto. The provisions of the Section titled "Notice and Quorum for any Action Authorized Under Paragraphs 4.3 and 4.5" of this Article with respect to approval of Special Assessments and Emergency Assessments shall not apply in the case of Remedial Assessments.

Section 4.7 Reserve Fund. For the purposes of creating reserves to ensure payment when due of the cost of capital expenditures relating to the repair and replacement of the Heritage Special Use Fee Tracts or Additional Maintenance Area, a portion of the annual assessments shall constitute a contribution to the reserve **fund** of the Sub-Association. The specific items for which such contribution shall be made and the amount of such contribution in respect of each such item shall be determined by the Board, acting in its sole discretion, at the time it adopts the budget for the annual assessments in accordance with this Supplemental Declaration. All such contributions shall be collected as provided herein, shall be accounted for separately and shall be held in trust and used to pay for each specific capital expenditure in such a manner and at such times as the Board, acting in its sole discretion, shall determine.

Section 4.8 Notice and Quorum for any Action Authorized Under Sections 4.3 and 4.5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.5 shall be sent to all members not 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 of each class of membership **shall** constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum as the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.9 Rate of Assessment. Subject to Section 4.3 hereof and this Section 4.9, the **amount** of the Annual Assessments and Special Assessments shall be fixed by the Board, in its sole discretion.

(a) Except as set forth herein below, both annual and special assessments must be fixed at a uniform rate for all Lots within Heritage Park and may be collected on a monthly basis.

(b) Notwithstanding anything contained herein to the contrary, Developer shall pay only 25% of the Annual Assessments and Special Assessments for each Lot owned by the Developer which is within the Property until the earliest of:

(i) the initial conveyance of a Lot thereon to a different Owner; or

(ii) completion of a dwelling unit as evidenced by the issuance of a certificate of occupancy therefor.

(c) **Notwithstanding** anything contained herein to the contrary, during any period when Developer is paying reduced Assessments pursuant to this Section, Developer shall contribute to the Sub-Association such funds as may be required from time to time to meet any budget deficit which

results from Developer having paid such reduced Assessments. Further, during any period when Developer is paying reduced Assessments pursuant to this Section, Developer may contribute in-kind materials or services which have a value which is not less than any amount owed by Developer to the Sub-Association in lieu of payments of its reduced Assessments or **funding** of any Sub-Association budget deficit.

Section 4.10 Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the date on which this Supplemental Declaration is recorded. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Sub-Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Sub-Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of Sub-Association as to the status of assessments is binding upon the Sub-Association as of the date of its issuance.

Section 4.11 Effect of Nonpayment of Assessments: Remedies of the Sub-Association. Any assessment on the due date shall bear interest from the due date at the greater of (a) fifteen percent (15%) per annum, or (b) the prevailing rate of interest per annum on single-family residential loans insured by VA or FHA from the date due against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments.

Section 4.12 Enforcement by Suit. The Board may commence and maintain a suit at law or equity against an Owner or prior Owner to enforce said assessment obligation, such suit to be maintained in the name of the Sub-Association. Any judgment rendered in any such action shall include the amount of the delinquency, with interest thereon at the greater of (a) fifteen percent (15%) per annum, or (b) the prevailing rate of interest per annum on single-family residential loans insured by VA or FHA during the period of delinquency, from the date due, and all court costs and reasonable attorneys' fees, in such amount as the court may adjudge against the delinquent Owner.

Section 4.13 Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Sub-Association of any and all assessments or fines levied against any and all Lots under this Supplemental Declaration, together with interest thereon at the greater of (a) fifteen percent (15%) per annum, or (b) the prevailing rate of interest per annum on single-family residential loans insured by VA or FHA during the period of delinquency from the date due, and all costs of collection which may be paid or incurred by the Sub-Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any default in the payment of such assessment or fine, the Sub-Association or any authorized representative may, but shall not be required to make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or at any time after the delinquency if no written demand is made, the Sub-

Association may elect to file and record a notice of assessment or fine and claim of lien on behalf of the Sub-Association against the Lot of the defaulting Owner in the Office of the County Recorder of Maricopa County, Arizona. Such a notice of assessment or fine and claim of lien shall be executed and acknowledged by any officer of the Sub-Association, and shall contain substantially the following information:

- (a) The name of the delinquent Owner;
- (b) The legal description of the Lot against which the claim of lien is made;
- (c) The total amount of the delinquency, interest thereon, collection costs and reasonable attorneys' fees (with any proper offset allowed);
- (d) That the notice of assessment and claim of lien is made by the Sub-Association pursuant to this Supplemental Declaration;
- (e) That a lien is claimed against said Lot in an amount equal to the amount stated.

Section 4.14 Notice of Lien. A copy of the lien shall be mailed to said Owner upon such recordation of a duly-executed original or copy of such a notice of assessment or fine and claim of lien, the lien claimed therein shall immediately attach and become effective.

Section 4.15 Foreclosure of Lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of Arizona may from time to time be changed or amended. The Sub-Association shall have the power to bid in at any foreclosure sale, Trustee's sale or judgment sale and to purchase, acquire, lease, hold, mortgage and convey any Lot. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law and the Owner shall be deemed to have contractually agreed to payment of such costs and expenses upon recordation of this Supplemental Declaration.

Section 4.16 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

MAINTENANCE BY THE SUB-ASSOCIATION

Section 5.1 Heritage Park Special Use Fee Tracts. Sub-Association shall maintain and manage all the Heritage Park Special Use Fee Tracts and Improvements therein, including, but not limited to, the private accessways, security gates and equipment, pools, spas, cabanas, recreation buildings, the portions of the walls half closest to the center of the Heritage Park Special Use Fee Tracts and perimeter landscaping, drainageways, Special Use Fee Tract lights, walls and improvements therein.

Section 5.2 Additional Maintenance Areas. The Sub-Association shall have the right, but not the obligation, to maintain Additional Maintenance Areas. In the event the Sub-Association undertakes to maintain Additional Maintenance Areas, the cost of maintenance shall be **funded** through assessments levied equally on all Lots.

ARTICLE VI

MAINTENANCE BY OWNERS

Section 6.1 Owner's Responsibility. Unless changed pursuant to the **preceding Article**, each Owner shall be responsible for the upkeep and maintenance of the Owner's entire Lot, including Improvements thereon.

Section 6.2 Duty to Other Owners. An Owner shall do no act, nor any work, that will impair any easement or hereditament, nor do any act, nor allow any condition to exist which will adversely affect the other dwellings or their Owners. An Owner shall report promptly to the Sub-Association or its manager, any condition which may affect adversely any other Lot or any property maintained by the Sub-Association.

Section 6.3 Failure to Maintain. In the event any Owner of any Lot shall fail to maintain any portion of his Lot or the Improvements thereon which is Visible **from** Neighboring Property in a manner satisfactory to the Board of Directors, the Sub-Association, **after** approval by two-thirds (2/3) vote of the Board, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and any **Improvements** erected thereon or on the areas of exclusive use. The cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject. No interior maintenance shall be performed, pursuant to this section.

ARTICLE VII

INSURANCE

Section 7.1 By The Sub-Association. The Sub-Association Board of Directors, or its duly authorized agent, shall have the right and duty to obtain insurance for all the Improvements located

on the Heritage Park Special Use Fee Tracts, against loss or damage in an amount sufficient to cover replacement cost of any repair or reconstruction work. In the event of damage or destruction to the Heritage Park Special Use Fee Tracts by fire or other casualty, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Heritage Park Special Use Fee Tracts to as good a condition as formerly existed. The Board of Directors shall contract with any licensed contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed Improvements. In the event the insurance proceeds are **insufficient** to pay all the costs of repairing **and/or** rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all Owners to make up any deficiency. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and Owners as their interest may then appear.

The Sub-Association shall obtain and maintain property and general broad form commercial liability insurance coverage for the Heritage Park Special Use Fee Tracts with limits of not less than \$2 million per occurrence and \$4 million in annual aggregate covering all occurrences commonly insured against for death, bodily injury, personal injury and property damage arising out of or in connection with the use, ownership or maintenance of the Special Use Fee Tracts and any improvements thereto. The Sub-Association shall be primary with respect to the Special Use Fee Tracts and the Master Association shall be included as an additional named insured and certificate holder under such policies. The insurance policies required to be procured by the Sub-Association are to be written by insurance companies permitted by law to transact business in the **State** of Arizona and such insurance companies shall have a rating of "A" Class VII or better by Best's Insurance Key Rating Guide published by A.M. Best Company and shall bear endorsements to the effect that certificate holders shall be notified not less than ten (10) days in advance of modification or cancellation thereof and shall provide contractual liability insurance for the indemnity obligations of the Sub-Association as provided for by this Supplemental Declaration to the extent of the policy limits herein provided. Notwithstanding anything contained herein to the contrary, the **Sub-Association** shall **indemnify**, defend and hold harmless the Master Association from and against any or all liability for any loss or damage to the Special Use Fee Tracts or for any injury or death sustained on the Special Use Fee Tracts. Premiums for such insurance shall be common expenses of the Sub-Association. Each Lot Owner shall insure its own Lot and interests.

Section 7.2 By The Owners. It shall be the individual duty and responsibility of each Owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction from all reasonable hazards. Each Owner shall provide, as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage and loss for upgraded items purchased through the Developer and fixtures not provided by the Developer.

ARTICLE VIII

DAMAGE OR DESTRUCTION OF HERITAGE PARK SPECIAL USE FEE TRACT IMPROVEMENTS

The Owner of each Lot shall be liable to the Sub-Association for all damages to the Heritage Special Use Fee Tracts or Improvements thereon caused by such Owner or any occupant of his Lot or guest, to the extent allowable under the laws of the State of Arizona.

Each Lot Owner **further** agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon said Owner's Lot and shall continue to be such lien until fully paid. Said lien shall be subordinate to any first mortgage or encumbrance on the subject property. Said charges shall bear interest **from** the date of delinquency at the greater of (a) fifteen percent (15%) per annum, or (b) the prevailing rate of interest per annum on single-family residential loans insured by VA or FHA. The amount of principal and interest owed by said Owner to the Sub-Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Sub-Association or its agent the right and power to bring all actions against such Owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such Owner hereby expressly grants to the Sub-Association a power of sale **in** connection with said lien.

Nothing contained in this Article shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies, had not this Article been inserted.

In the event of a dispute between an Owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then, upon written request of the Owner, addressed to the Sub-Association, the matter shall be submitted to arbitration under such rules as may **from** time to time be adopted by the Sub-Association or its Board of Directors. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by the Board of Directors, one chosen by the Owner, and these two arbitrators shall then choose a third arbitrator. If the two arbitrators **cannot** agree as to the selection of the third arbitrator, then by any judge of the Superior Court of the State of Arizona in Maricopa County. A determination by any two of the three arbitrators shall be binding upon the Owner and the **Sub-**Association, who shall share the cost of arbitration equally. In the event one party fails to choose an **arbitrator** within ten (10) days **after** personal receipt of a request in writing for arbitration **from** the other party, then said other party shall have the right and power to choose both arbitrators.

ARTICLE IX

USE RESTRICTIONS

In addition to all other covenants and restrictions contained herein, or in the Master Documents, the following covenants and restrictions shall govern the use and occupancy of the Property:

Section 9.1 Landscaping. Each Lot shall be maintained by the Owner in a tidy manner. No Owner may alter the landscaping in the Heritage Park Special Use Fee Tracts.

Section 9.2 Maintenance By Owner. Except as otherwise provided herein, the Owner of each Lot shall maintain all Improvements on his Lot in a clean and attractive condition, and without limiting the generality of the foregoing, the Owner of each Lot shall:

- (a) keep his Lot free **from** rubbish, litter and noxious weeds;
- (b) install, maintain, cultivate and keep in good condition and repair, shrubs, trees, grass, lawns, plantings and other landscaping located or from time to time placed upon the front, side and rear yards of his Lot;
- (c) trim **and** restrain all trees, shrubs or plantings of any kind so that **they** shall not be allowed to overhang or otherwise encroach upon, above or below any walkway, or adjoining Lot, unless prior approval of the adjoining Lot Owner is obtained;
- (d) maintain in good condition and repair and adequately paint or otherwise finish all Improvements and structures located or from time to time placed upon his Lot;
- (e) maintain all walkway surfaces and keep them clean, reasonably dry and free of oil and other extraneous matter.
- (f) install, maintain, cultivate and keep in good condition and repair, shrubs, trees, grass, lawns and plantings.

Section 9.3 Owners' Noncompliance With Landscaping And Maintenance Requirements. In the event an Owner shall fail to comply with the provisions of the paragraph above titled "Maintenance by Owner," the Sub-Association shall notify such Owner in writing of such specific lack of compliance, which notice shall specify the nature of such lack of compliance. If such Owner fails to remedy such lack of compliance within five (5) days after receipt of such notice (or within such greater time period as may be specified in such notice), or, in the alternative, fails to deliver written notice to the Board within five (5) days from receipt of such notice requesting a hearing before the Board with regard to the matters of noncompliance set forth in such notice, the Sub-Association or its authorized agents shall have the right to enter upon such Owner's Lot for the purpose of remedying the matters set forth in the notice, and shall not be liable for trespass in connection with such entry. If the Owner timely requests a hearing before the Board, the Board shall schedule a hearing and shall provide the Owner with at least seven (7) days' written notice as to the date, time

and place thereof. At the hearing, the Owner will have an opportunity to discuss with the Board the merits of the claims set forth in the Sub-Association's original notice of noncompliance, and the Board will determine what action, if any, need be taken by the Owner and the time within which it must be accomplished. The decision of a majority of the members of the Board present at the hearing will be binding upon the Sub-Association and the Owner, subject only to legal remedies instituted within twenty (20) days of the Board's decision. In the event it is determined that the Owner has not complied with the provisions of the paragraph titled "Maintenance by Owner" of this Article, the Board shall establish a reasonable time within which the Owner shall so comply. The cost to the Sub-Association of remedying such Owner's failure to comply with the provisions of this paragraph shall be assessed to the Owner as a Remedial Assessment, enforceable in the manner provided in the Article of this Supplemental Declaration titled "Assessments."

Section 9.4 Burden on Heritage Park Special Use Fee Tracts. No Lot shall be used in a manner which results in the unreasonable use (quantity of use or otherwise) of any portion of the Heritage Park Special Use Fee Tracts. Nothing herein shall be deemed to prevent the leasing of any Lot from time to time by the Owner thereof for residential purposes, subject only to all of the provisions of this Supplemental Declaration.

Section 9.5 Parking Restrictions. No Owner shall do anything which will in any manner prevent the Joint Use Driveways and the Heritage Park Special Use Fee Tracts from at all times being free and clear of all obstructions and in a safe condition for vehicular use. So that the Sub-Association and Property may function in an orderly manner, it shall be the duty and obligation of every Owner, on behalf of himself, his family, tenants, servants, guests and invitees, to observe and enforce the parking restrictions. It shall further be the duty and obligation of the Board to observe and determine that parking restrictions are followed and enforced:

(a) No Owner shall permit any vehicle, bicycle or other object to be or remain parked on any Joint Use Driveway in such a manner that it interferes with the use of the Joint Use Driveway by any other Owner.

(b) No inoperative motor vehicles of any kind shall be stored or parked on any Lot, Joint Use Driveway or Heritage Park Special Use Fee Tracts. Inoperative vehicle shall be defined as any motor vehicle which does not have current license plates or is not in working order.

(c) No motor homes, trailers of any kind, boats, all terrain vehicles or other recreational means of transportation, commercial vehicles, except those used during construction of the Improvements, trucks, campers, whether attached or detached, shall be kept, placed, maintained, constructed, reconstructed or repaired on the Joint Use Driveways or Heritage Park Special Use Fee Tracts or any driveway.

(d) In addition to the other enforcement provisions contained within this Supplemental Declaration, the Board may have any offending vehicle upon the Property removed from the Property to a commercial storage lot after notice to the Owner, if reasonably possible, or after posting the vehicle for six (6) hours with notice that the vehicle will be towed if it is not brought into compliance, if such notice or posting is consistent with safe practice. The recording of this Supplemental Declaration shall be deemed to put every Owner, guest and invitee on notice of this provision as

though the Heritage Park Special Use Fee Tracts were posted in accordance with applicable statutes of the State of Arizona and ordinances of the City of Chandler or its successor. Any car parked within a posted fire lane may be removed without notice.

Section 9.6 Incorporation of Cooper Commons Use Restrictions. In addition to the provisions of this Article, the provisions of Article IV of the Master Declaration are incorporated herein by this referenced and shall be enforceable by the Sub-Association as though set forth in full herein. Said provisions include, but are not limited to, provisions regarding architectural controls, animals, temporary occupancy and temporary **buildings**, maintenance of lawns and plantings, nuisances and construction activity, diseases and insects, repair of building, antennas, mineral exploration, trash containers and collection, clothes drying facilities, machinery and equipment, and signs.

Section 9.7 Developer Exempt. Notwithstanding anything contained herein to the contrary or otherwise, none of the use restrictions contained in this Article nor any other restriction contained in this Supplemental Declaration shall be construed or deemed to limit or prohibit any act of Developer, or its employees, agents and subcontractors or parties designated by it in connection with the construction, completion, sale or leasing of the dwellings and Lots.

Section 9.8 Enforcement of Use Restrictions; Design Review by Master Association: Exceptions. Notwithstanding anything contained herein to the contrary, responsibility for enforcement of the Use Restrictions contained herein and in the Master Declaration, and review and enforcement of any Design Guidelines shall be the responsibility of the Master **Association** unless such responsibility has been delegated to the Sub-Association by a written instrument executed by the Master Association and the Sub-Association and filed in the offices of each.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 Enforcement. The Cooper Commons Community Association, Sub-Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Supplemental Declaration. Failure by the Sub-Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 10.2 Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in **full** force and effect.

Section 10.3 Duration, Amendment. The covenants and restrictions of this Supplemental Declaration shall run with and bind the land, for a term of twenty **(20)** years **from** the date this Supplemental Declaration is recorded, after which time they shall be extended automatically for successive periods of ten **(10)** years. This Supplemental Declaration **may** be amended by an instrument signed by the Master Association and not less than seventy-five percent **(75%)** of the Lot

Owners. Any amendment must be recorded. (This Supplemental Declaration may be amended by the Developer at any time to meet the requirements of the VA, FHA, FNMA, GNMA, FHLMC or a similar agency or organization, if necessary for financing of any Lot, and each Owner hereby agrees to such necessary amendment.)

Section 10.4 FHA/VA Approval. Providing the Federal Housing Administration or the Veterans Administration has issued commitments to insure one or more mortgages upon the Properties and as long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Heritage Park Special Use Fee Tracts, and amendment of this Supplemental Declaration of Covenants, Conditions, Restrictions and Easements.

Section 10.5 Lease Agreements. Any lease agreement between a Lot Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Supplemental Declaration, Articles of Incorporation and the Bylaws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any Lot Owner to lease his home.

Section 10.6 Mortgagee Protection. The Sub-Association will give ten (10) days' prior written notice to each institutional mortgagee before the Sub-Association or its members take any of the following actions:

(a) Abandonment or termination of the status of the planned development as it presently exists.

(b) Any amendment to the Articles of Incorporation, the Supplemental Declaration of Covenants, Conditions, Restrictions and Easements, or Bylaws (or equivalent documents).

Section 10.7 Condemnation. Proceeds of any condemnation, or settlement in lieu thereof, of the Heritage Common Areas shall be paid to the Board of Directors as Trustee for the Owners and mortgagees. Such funds shall be applied, if possible, to restoring the Heritage Park Special Use Fee Tracts to as near original condition as possible. Any excess shall be distributed to the Owners and mortgagees, as their interests appear.

Section 10.8 Inapplicability to Property of Public Entity. The provisions hereof shall be inapplicable to any property now owned or hereafter acquired by the State of Arizona or a political subdivision thereof.

Section 10.9 Notices. Any notice required to be sent to any Owner under the provisions of the Supplemental Declaration shall be deemed to have been properly sent when mailed postpaid to the last known address of the person who appears as Owner or member on the records of the Sub-Association at the time of such mailing.

Section 10.10 Cooper Commons Documents to Prevail. In the event there is a conflict between or among the Cooper Commons Documents, this Supplemental Declaration, the Articles or

Bylaws, the most restrictive provision shall apply unless such interpretation is clearly contrary to the meaning and intent of the Cooper Commons Documents. In the event of a conflict, the provisions of the various documents shall prevail in the following order: (i) Cooper Commons Documents; (ii) this Supplemental Declaration; (iii) the Articles of Incorporation of the Heritage Park at Cooper Commons Homeowners' Association, Inc.; (iv) the Bylaws of Heritage Park at Cooper Commons Homeowners' Association, Inc., and (v) the Heritage Park Association Rules.

IN WITNESS WHEREOF, this instrument was executed on the date hereinbelow written.

**CENTEX HOMES, a Nevada general
partnership, by: CENTEX REAL ESTATE
CORPORATION a Nevada corporation, its
Managing General Partner**

By: *Michael Traylor*
~~James P. Retzer~~ *MICHAEL TRAYLOR*
~~Controller, Phoenix Division~~
DIVISION RESIDENT

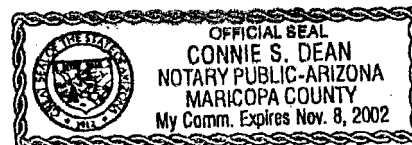
STATE OF ARIZONA)
) s.
County of Maricopa)

The foregoing instrument was acknowledged before me this 11 day of July, 2001,
by ~~JAMES P. RETZER~~, the ~~Controller, Phoenix Div.~~ *Michael Traylor* ~~General Partner of CENTEX REAL ESTATE CORPORATION~~, the ~~Managing General Partner of CENTEX HOMES~~, a Nevada general partnership, for and on behalf thereof.

Connie S. Dean
NOTARY PUBLIC

My Commission Expires:

11-08-02




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CONSENT OF BOARD

In accordance with the Declaration (including but not limited to the consent requirements of Article V, Section 5.5 thereof,) the undersigned being duly authorized so to do, hereby consents to the foregoing Supplemental Declaration for and on behalf of the Board of Directors of the Cooper Commons Community Association.

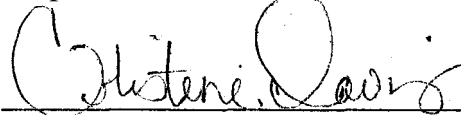
COOPER COMMONS COMMUNITY ASSOCIATION, an
Arizona corporation

By: 

Its: President

STATE OF ARIZONA)
) s.
County of Maricopa)

The foregoing instrument was acknowledged before me is 26 day of June,
by Timothy J. Keeran, the President, of COOPER COMMONS
COMMUNITY ASSOCIATION, an Arizona corporation, for and on behalf thereof.


NOTARY PUBLIC

My Commission Expires:
November 5, 2004



THE COOPER COMMONS COMMUNITY ASSOCIATION

DESIGN GUIDELINES AND ASSOCIATION RULES

Adopted: May 3, 1999

THE COOPER COMMONS COMMUNITY ASSOCIATION

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OVERVIEW

Community Organization

Every resident of Cooper Commons is a member of The Cooper Commons Community Association (the "Association"), the entity responsible for the management of all common areas as well as administration of the affairs of the community. The Association is created by the recording of the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitude's, Liens, Reservations and Easements (the "CC&R's"). The CC&R's set forth procedures, rules and regulations, which govern the community. The Association Rules and Design Guidelines are an extension of the CC&R's and are designed to be used in **harmony**.

The Board of Directors (the "Board") is charged with responsibility for overseeing the business of the Association and has a wide range of powers. The Design Review Committee (the "Committee") is established by the Board to review all improvements within Cooper Commons including new construction and modifications to existing properties. The Committee has adopted design guidelines and standards to evaluate proposed construction activities.

Design Review Process

Any change, addition, or modification to a site or a building exterior of a residential property requires the prior written approval of the Committee. Residents with proposed changes should contact the Management Company, with whom the Association has **contracted** for full Association management, to obtain the necessary architectural guidelines and submittal documentation.

Simply stated, no improvements, alterations, repairs, additions, or other work, including changes **in** exterior color, is to occur on any lot or exterior of any home from its improved state existing on the date such property was **first** conveyed by Builder **to** a purchaser without the prior approval of the Committee. The responsibility of the Committee is to ensure the harmonious, high quality image of Cooper Commons is implemented and maintained. Any owner requesting approval of the Committee shall follow the application procedures listed below. Submittals will be returned to you either approved, denied, or for more information within forty-five (45) days of receipt of your request. Upon receipt of approval from the Committee of any **construction**, installation, addition, alteration, repair, change or other work, the owner requesting such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the 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 time additional period of time as may be approved by the Committee at the time of issuance.

Application Procedure

The following information should be included:

- Application **Form** completed and signed (copy enclosed, additional copies may be obtained from the Association Management Office.
- Plot Plan – A site plan indicating dimensions relating to the existing dwelling and property lines (setbacks, etc) and the improvement to be installed.
- Elevation Plans – Plans showing finished appearance of the improvements in relation to the existing dwelling and property lines.
- Specifications – Description detailing materials to be used with color samples attached; drawing or brochure of structure indicating dimensions and color.

Submit the application and plans to:

THE COOPER COMMONS COMMUNITY ASSOCIATION
C/O KINNEY MANAGEMENT
P.O. BOX **25466**
TEMPE, ARIZONA **85285-5466**

Kinney Management Services – **820-3451**

It is the homeowner's responsibility to ensure that any proposed construction is coordinated with, and where applicable, approved by all counties, local, state and federal government agencies. The Committee, the Management Company and the Association assume no responsibility for obtaining these reviews and approvals.

DESIGN GUIDELINES

General Principles

The purpose of the Committee is to ensure consistent application of the Design Guidelines. The Committee monitors any portion of any lot or parcel which is visible from other lots or parcels, the street, or Association common areas. This would include backyards which are visually open to other lots or Association common areas. The Design Guidelines promote those qualities in Cooper Commons that enhance the attractiveness and functional utility of the community. Those qualities include a harmonious relationship among structures, vegetation, topography and overall design of the community.

Design Compatibility

The proposed construction must be **compatible** with the design characteristics of the property itself, adjoining properties and the neighboring setting. Compatibility is defined as harmony in style, scale, materials, color and construction details.

Workmanship

The quality of workmanship evidenced in construction must be equal to, or better than, that of the surrounding properties. In addition to being visually objectionable, poor construction practices can cause functional problems and create safety hazards. The Association and the Committee assume no responsibility for the safety or livability of new construction by virtue of design or workmanship.

Building Architecture

In general, any exterior addition or alteration to an existing residence shall be compatible with the design character of the original structure.

Building Repair

No building or structure shall be permitted to fall into a state of disrepair. The owner of every home or structure is responsible at all times for keeping the buildings in good condition and adequately painted or **otherwise** finished. In the event any building or structure is damaged or destroyed, the owner is responsible for immediate repair or reconstruction. Roofs must be kept in good repair at all times.

Awnings

All awnings must be approved by the Committee. Awnings over all windows shall be canvas or similar material, of solid color on both sides which match the color of the body of the exterior of the home or roof color and shall be installed only on the side **and/or** rear of the home. All awning submittals must include a drawing with the location of the proposed awning installation. A sample of the material to be used, along with the color and design of the proposed awning is required. Owner is responsible for maintenance and repair of awnings. The Association retains the right to determine when an awning must be repaired and/or replaced due to weathering, fading, tearing, ripping, etc.

Basketball Goals

1. Only pole mounted goals are acceptable. Poles must be set in the ground permanently. Backboards shall not be attached to the house, garage, or roof.

2. Basketball poles must be painted to match the color of the body of the exterior of the home.
3. Backboards must be of a predominantly neutral color (gray, black or white) or match the color of the body of the exterior of the home. Clear Plexiglas backboards are acceptable without painting.
4. All equipment must be constantly maintained. Broken backboards, disfigured or bent rims, ripped or torn nets, chipped **and/or** peeling paint, etc. constitute grounds for fines **and/or** removal.
5. Only nylon or similar cord nets are acceptable. Metal or chain nets are expressly prohibited.
6. Courts may not be painted or **permanently** outlined on the driveway.
7. Lighting for night use of the equipment is prohibited.

Clotheslines

Clotheslines or other outside facilities for drying clothes are not permitted unless they are placed exclusively within a fenced yard and not visible above the top of the block wall or **otherwise** concealed.

Driveway Extensions

Driveway extensions will be reviewed on an individual basis with strong consideration of any impact on the architectural features of the neighborhood. The maximum driveway width (existing **and** addition) shall not exceed a total of thirty (30) feet of **contiguous** area or fifty (50) percent of the lot width as measured at the front yard setback, whichever is less. A minimum two-foot colored paver or landscape separation is required between the driveway **and** any expansion.

All driveways must be kept clean and clear of **debris**, oil, rust and other stains.

Flagpoles

Flagpoles are not allowed in residential areas except for those used temporarily by Homebuilders at the Models. Homeowners are advised to use brackets mounted on the house or garage to display flags.

Fences & Walls

Plans to raise the height of a party wall must be submitted for approval with **written permission** from the adjacent **neighbor(s)**. Plans for new fences or walls must be submitted to the Committee prior to construction. Copies of City Approvals must be submitted with requests. Walls must be stuccoed and painted to match the existing dwelling or wall in texture and color.

Gates

Double gates may be installed to allow wider access to rear yards. All gates (double or single) should be of the same material, design and color as the originally installed single gates. Shrubs, trees and plant material should be installed and maintained between the house and the double gates when possible. Gates located in an NVAE are limited to foot traffic only.

Gutters and Downspouts

Gutters and downspouts will be considered for approval if the finish matches the color of the house. The Association strongly recommends use of high quality materials that offer long life, as the gutters must be maintained in good condition.

HVAC

Except as initially installed by the Declarant, no heating, air conditioning or evaporative cooling unit shall be placed, installed, constructed or maintained upon any lot without the prior approval of the Committee. All units shall be ground mounted, located within the perimeter of the rear yard and screened or concealed from view of non-residential neighboring property.

Outdoor Fireplaces

Installation of outdoor fireplaces requires advance approval by the Committee. Outdoor fireplaces may not exceed fence height.

Outdoor Lighting

Any outdoor lighting installed on a lot or dwelling, subsequent to initial lighting installed by the builder, must receive advance approval by the Committee. Permanent lighting sources shall not be directed toward streets, common areas or neighboring property.

Patio Covers

Roofing materials should **match that** which was installed by the builder on the original roof of the home. Color of supports and material should match the color of the body or trim of the home.

Ramadas and Gazebos

Ramadas and gazebos may be erected in rear yards only subject to prior review and approval by the Committee, subject to the following guidelines:

- 1) Maximum square footage (under roof area) is 120 square feet.
- 2) Maximum roof height is 10 feet at the highest point.
- 3) The structure must be set back a minimum of 7 feet from any perimeter wall.
- 4) The structure must be painted a natural cedar or match the house color and maintained in good condition.
- 5) Any roof tile must also match the tile of the house.
- 6) Lighting of the structure must be approved by the Committee prior to installation.

Play Structures

Play structures may be erected in rear yards only subject to prior review and approval by the Committee, subject to the following guidelines:

- 1) May be erected in rear yards only and structures must be set back a minimum of 7 feet from any perimeter wall.
- 2) **Maximum** height allowed to top support bar or highest point of structure, is 10 feet.
- 3) Maximum height of any **deck/platform** is to be 4 feet above ground.
- 4) The distance from the ground elevation to the top of the perimeter fence must be measured and submitted with plans.
- 5) The Committee will take the appearance, height, and proximity to neighboring property into consideration.
- 6) Any shade canopy must be a solid tan or earthtone color.
- 7) Submit a brochure or picture if possible.

Pools and Spas

Pools and spas do not require approval of the Committee. Perimeter walls on lots bordering common areas and shared Homeowner Association walls may not be torn down to allow access to rear yards. Access must be gained by removing a portion of the front wall on the side of the home. Repairs to the wall must be completed in a timely fashion and include

repairing the wall to match the texture and color of the remaining wall. All pool and spa equipment must be screened from view of neighboring property. Lots with view fencing must submit plan for approval by the Committee. Any pool equipment which may be visible above the fence line (such as slides, etc.) must be approved in advance by the Committee.

Pool Fencing

The specifications for rear yard wrought iron pool fencing installation on a lot with view fencing shall be of neutral earth tone color to match or blend with the existing home color or match the existing wrought iron fencing color.

Satellite Dishes

While the Association does not prohibit the use of satellite dishes, the Association does regulate the size and location of the "dish" on the following basis:

1. Any "dish" larger than one meter (39 inches) that is visible from the street, neighboring property or the common areas is prohibited.
2. All dishes are to be located in rear yards only.
3. Homes with "view" fencing must locate the dish in the most unobtrusive location possible while still receiving a quality signal.
4. All dishes that are visible from neighboring property, streets, or the common areas are to be painted to match the body **color** of the house.
5. All other antennae such as those used to receive signals from multichannel multipoint distribution services and television broadcast stations will be reviewed on a case by case basis.
6. All dishes and antennae are to be submitted to the Committee with a diagram showing the location and size of the device.

Screen Doors

All screen **and/or** security doors must be submitted for approval and should be painted to match the exterior color of the body of the home. Silver-colored aluminum screen doors are prohibited.

Signs

No signs shall be displayed on any lot except the following:

1. Signs used by the **Declarant** to advertise the lots and residence thereon for sale.
2. One temporary "For Sale" or "For Rent" sign with a maximum face area of five (5) square feet.
3. Such signs as may be required by law.
4. One residential identification sign with a maximum face area of eighty (80) square inches.
5. Signs approved by the Committee.

Solar Panels

Except as may be initially installed by the Declarant, no solar energy collecting unit or panels shall be placed, installed, constructed or maintained upon any lot without the prior written approval of the Committee. Roof mounted solar panels and equipment must match the roof

material. Panels can have a surface area of eight (8) feet by six (6) feet and must be an integrated part of the roof design and mounted directly to the roof plane. Solar units must not break the roof ridgeline and must not be visible from public view. Any solar panels **and/or** equipment exceeding a surface area of eight (8) feet by six (6) feet must be ground mounted and shall not be visible from neighboring property or public view.

Storage Sheds

Storage sheds require prior written approval of the Committee and are subject to the following guidelines:

- 1) Storage sheds are subject to rear and side yard setbacks of five (5) feet.
- 2) Maximum height of storage sheds shall be eight (8) feet
- 3) Quality materials and construction shall be required.
- 4) Shed must be in harmony with the exterior of the residence including siding, color, and roof material.

Window Coverings Criteria

Permanent draperies or suitable window treatments shall be installed on all front-facing windows within thirty (30) days of occupancy. No reflective materials, including but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type material shall be installed or placed upon the outside or inside of any windows. Exterior window coverings or treatments used to shelf or decorate openings must be **compatible**, with respect to materials and **color**, with the style and **color** of the **home**.

Bronze, gray, charcoal, brown or beige sunscreen material may be installed. The **frame** for window screens must match the screen material or existing window frames.

LANDSCAPE GUIDELINES

Within six (6) months of the date of closing, the owner of a lot shall complete installation and irrigation improvements in compliance with the Cooper Commons Community Association CC&R's and the following guidelines as adopted and amended from time to time, in that portion of the lot which is between the street (s) adjacent to the lot and the exterior wall of the residential unit or any wall separating the side or back yard of the lot from the front yard of the lot. Back yards which are visible from common areas shall also adhere to this installation time frame.

Prior to installation of the landscaping, owner shall maintain the lot in a weed-free and neat condition.

**** PLANS FOR LANDSCAPE NEED NOT BE SUBMITTED FOR APPROVAL, PROVIDING THE FOLLOWING GUIDELINES ARE MET****

Minimum Plant Requirements

<u>Plant Type</u>	<u>Size</u>	<u>Quantity</u>
Trees	15 GAL	2
Shrubs or Cactus	5 GAL	3
Shrubs	1 GAL	6
Groundcover	1 GAL	4

1. Select plants for alternating seasons of display and color.
2. Homeowner to **select** low **shrub/groundcover** along driveway and street frontages to maintain site visibility. Plants exceeding 2' 0" in mature height shall be located at least 8' 0" back from public sidewalks or curb.
3. Surface select boulders may be grouped in clusters, with varied sizes, buried **1/3** below grade and **incorporated** with grades to mimic a natural outcropping. Boulders may not exceed 3' in height and shall have a natural oval character that is compatible with specific decomposed granite. Colored and lava rock is strictly prohibited.
4. The use of river rock is prohibited unless specified for drainage considerations.
5. Homeowner may use low voltage lighting to highlight entry walks, or accentuate trees. Colored bulbs and lenses are prohibited. Light source shall be adjusted to minimize glare onto adjacent properties, common areas or streets.
6. Ornamentation such as driftwood, skulls, wagon wheels, sculptures, etc are not permitted in front yards.
7. Special design features such as low walls, trellis, water features or other structures must be approved in advance by the Committee.

Irrigation

With an average rainfall or less than nine inches, most plant material requires a supplemental irrigation system to sustain plant life yet preserve our precious water supply. Each homeowner should provide a complete irrigation system compatible with the front yard design. Time clocks should be cycled for efficient deep watering. Turf areas shall have spray irrigation with 100% head to head coverage, designed to minimize overspray onto any pavement or granite area. All supplemental plants should be watered by an underground drip system to

provide slow deep watering. Specific irrigation requirements include that drip tubing should be buried a minimum of 12" below grade and 6" from rootballs on uphill side of plant.

Maintenance

All landscaping shall be maintained in a neat and attractive condition. Minimum maintenance requirements include watering, mowing, edging, pruning, removal and replacement of dead or dying plants, removal of weeds and noxious grasses, and removal of trash.

Hardscape

Any Hardscape items proposed for front yard installation must be approved by the Committee. Hardscape items that will be visible from neighboring property in the rear yard will also require approval. Materials included in Hardscape are concrete, brick, tile, wood, etc. Examples of Hardscape items are planters, walkways, retaining walls, decorative walls and fountains.

Rock Ground Cover

If decomposed granite or other landscape rock is used, it must be of an "earth tone" color and not white, green, blue or other bright colors. Artificially colored rock(s) or granite is prohibited. All rock areas should be treated with a pre-emergent weed control at regular intervals to retard weed growth.

River rock shall be three (3) to six (6) inches in diameter. Not more than ten percent (10%) of the front yard landscape may be river rock.

Fine Grading and Mounding

Fine grading is a critical aspect of landscaping. Each lot has been graded such that all storm water will **drain** away from the house. It is important that this drainage pattern is maintained when preparing the landscape design, especially if mounding or **berming** is proposed. In all cases, the installation must **comply** with the City grading and drainage plan. Every effort should be made to make mounding appear natural.

Water Features, Statuary, Etc.

Items such as fountains, statuary, **etc.** are permissible within the rear yard and do not require submittal to the Committee, except on lots with view fencing. Such items must be approved by the Committee for installation in the front yard. It is recommended that water features be chlorinated. The Committee reserves the right to limit the size and quantity of statuary in the front yard, as well as rear yards with view fencing. Statuary must be of earth tones, no painted finishes, and must be approved by the Committee. All functional **and/or** decorative items must be approved before being placed in the front yard or rear yard with view fencing. (**i.e.**: swings, benches, stools, etc.)

Lighting

Lighting, other than low voltage landscape lights, must be approved by the Committee. The following outlines the minimum standards for lighting:

1. Lighting shall be shielded such that the light shines primarily on the lot on which it is installed. Lights which create glare visible from other lots are prohibited.
2. Light fixtures shall not exceed an illumination intensity of more than one (1) foot-candle power as measured from the closest lot line. (This information can be obtained from the light manufacturer, factoring in the height of the light and the distance to the lot line).
3. Outside, ground lights should be screened whenever possible with walls, plant materials or internal shielding.

ASSOCIATION RULES

The following Association rules summarize some of the common provisions found in the CC&R's as well as rules established by the Board. Cooperation on the part of all residents in following these rules will make living at Cooper Commons an enjoyable experience.

General Property Restrictions

Owners may rent only the entire lot or dwelling unit. Rental must be made only to a single family. No gainful occupation, trade or other non-residential use may be conducted on the property for the purpose of receiving products or services related to such usage. Owners must receive Board permission to apply for any re-zoning, variances or use permits.

Trash/Recycling Containers and Collection

No garbage or trash shall be kept on any lot except in covered containers as provided by the City of Chandler. These containers must be stored out of sight except for days of collection.

Pets

Residents are allowed to keep a reasonable number of generally recognized house or yard pets. Animals cannot be kept or raised for commercial purposes, and they are not allowed to make an unreasonable amount of noise or become a nuisance to neighbors. Dog runs must have prior approval of the Committee. Dogs must remain on leashes at all times while on Association property. All owners must clean up after their pets.

Holiday Lighting

Temporary holiday decorations are permitted from Thanksgiving through January 15. Any other temporary holiday decorations are permitted so long as they are removed after a reasonable period of time.

Seasonal and Decorative Flags

Seasonal and decorative flags which are house mounted below the **roofline** do not require approval. Seasonal flags must be removed within ten (10) days after the date of the holiday. Flags must be maintained in good condition at all times. Torn, ripped, faded, etc. constitute grounds for fines and removal. Flags may not be offensive to neighbors or the Association. The Board shall make this determination.

Machinery and Equipment

No machinery, fixtures, or equipment of any type, including, but not limited to, heating, cooling, air conditioning, refrigeration equipment and clotheslines, may be placed on any lot or parcel without screening or concealment from view of non-residential neighboring property or public property. Oil pans, carpet, boards or any other object used to collect oil spills from driveways must be removed when not in use so as to not be visible.

Vehicles

No motor vehicle, mobile home, recreational vehicle, travel trailer, tent trailer, camper shell, detached camper, boat, boat trailer, tent trailer, camper shell, detached camper, boat, boat trailer, hang glider, **ultra** lights, or other similar equipment or vehicle may be parked or maintained on any Lot or Parcel **or** on any street in Cooper **Commons** so as to be visible from neighboring property, the common areas or the streets; provided, however, the provisions of

this Section shall not apply to motor vehicles not exceeding seven (7) feet in height measured from ground level and eighteen (18) feet in length which are parked and used on a regular and **recurring** basis for basic transportation which are not used for commercial purposes and which do not display any commercial name, telephone number or message of any kind, or trucks trailers and campers parked in areas designated for parking in non-residential Land Use Classifications in **connection** with permitted commercial activities.

No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Parcel or street in Cooper Commons, and no inoperable vehicle, including but not limited to vehicles with flat tires, may be stored or parked on any such lot, parcel or street so as to be visible from neighboring property or to be visible from common areas or streets; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of **any** improvement approved in writing by the Committee.

Parking

Vehicles of all owners, lessees, 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. Notwithstanding the foregoing, vehicles may not be parked on the streets overnight.