

Upon recording, please return to:

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COMMUNITY CHARTER

FOR

MARLEY PARK

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COMMUNITY CHARTER FOR MARLEY PARK

PREAMBLE

Marley Park LLC, an Arizona limited liability company, as the founder of Marley Park, has established and recorded this "**Community Charter**" ("**Charter**") to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of Marley Park as a master planned community. An integral part of the development plan is the formation of Marley Park Community Association, Inc., a nonprofit corporation whose membership consists of all owners of residential real property in Marley Park, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Charter and the other Governing Documents referenced in this Charter.

This Charter has been established to protect and enhance the many unique design, amenity, and civic elements which define Marley Park. The Charter provides the appropriate framework to nurture the Community's positive attributes, productive potential, and positive relationships between all of Marley Park's owners and residents. Inherent within this framework is the capacity for adaptability as the Community grows and values evolve over time.

Marley Park will be part of a greater community, the City of Surprise, Arizona. To further promote the overall sense of community, the Marley Park Community Association, Inc. will work with the City of Surprise to ensure that Marley Park is an integral part of the Surprise community, and to ensure that Marley Park is fully integrated within the City of Surprise.

Declaration of Covenant

The "**Community**" referred to in this Charter consists of the property described in Exhibit "A". This Charter shall run with the title to such property, binding not only Marley Park LLC, its successors and assigns (the "**Founder**"), but also the future owners of any portion of the property, their respective heirs,

successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property. This Charter also shall be binding upon Marley Park Community Association, Inc., its successors and assigns (the "**Association**").

PART ONE: INTRODUCTION TO THE COMMUNITY

To accomplish great things, we must not only act, but also dream; not only plan, but also believe.

Anatole France

Chapter 1

Understanding the Community at Marley Park

While Marley Park is a master planned community, Marley Park LLC, as Founder, intends for it to be much more than even the best "planned community." Marley Park LLC believes that when you purchased property in Marley Park, you signaled that you shared this goal to create a community, a special place to live and to work, not just a real estate development. By purchasing a lot in Marley Park you became a part of the community.

Truly great communities have a physical identity and a pride in that place; the community's stakeholders have a positive feeling of belonging and accomplishment in its activities. But words alone can never make community, and a community is only as good as the people who live and work there make it. Therefore, this Charter creates a vehicle, a process through which you and other stakeholders can build community at Marley Park. By choosing to live in Marley Park, each resident understands the various components which comprise the Community and acknowledges the necessity to respect the diversity of perspective of other residents and Owners, the Founder, and the Builders, and the important role each must play in Marley Park's success.

Through the procedures established in this Charter, there is an administrative structure with the authority and responsibility to initiate programs, activities, and services and to respond to individual and collective creativity and interests.

1.1. Participation.

An essential component of building a sense of community involves listening to the community. Marley Park LLC appreciates the need for input from all those interested in Marley Park, whether Owners, residents, Builders, Mortgagees, or the Founder. This Charter creates opportunities for everyone to build and sustain a sense of community.

1.2. A Pledge.

The Association and the Founder pledge to work to do the following:

- insure an inclusive environment
- provide an orderly, regular, and informative communication system within Marley Park
- provide all interested parties a voice in community matters and an opportunity to communicate with the Association
- respect the value of each individual as well as the value and the importance of the community
- appreciate diversity of thought and of people
- establish community traditions that will engender pride in Marley Park
- foster a sense of belonging
- motivate Owners and residents to participate by offering a variety of life-enriching opportunities
- provide meaningful opportunities to connect with the greater community

Understanding the Community at Marley Park

- make a significant contribution to the quality of life at Marley Park

1.3. Expectations.

There are only four expectations, but they are vital if there is to be community. They are that in all dealings among and between parties interested in Marley Park, everyone

- be informed

- act with civility
- communicate constructively
- strive to make a contribution to the community

Then there will be community.

You Are the Community

Marley Park LLC and the Association cannot create community at Marley Park; only you and your neighbors can accomplish this goal. This document and the processes and powers it creates are intended to enhance your ability to fashion the community you desire and to do so with minimal interference from sources outside Marley Park. You can be as active or as inactive in that process as you desire, but ultimately you will have the community that you and your neighbors create. Marley Park LLC wants Marley Park to be a special place and hopes that you do so as well.

Chapter 2

Governing Documents

A community is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agrees to uphold. Those principles are set forth in the community's governing documents, which serve as a tie that binds the community together, give it structure, and provide guidance to all who participate in its growth and evolu-

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property within the Community, as well as on anyone else who may now or in the future have an interest in any portion of the property comprising the Community. Such

GOVERNING DOCUMENTS	
Community Charter: (recorded)	this Community Charter for Marley Park, which creates rights and obligations that are binding upon the Association and all present and future owners of property in Marley Park
Supplement: (recorded)	a recorded Supplement to this Charter, which may submit additional property to this Charter, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, designate Neighborhoods, Service Areas, or Limited Common Areas, or any of the foregoing
Articles of Incorporation: (filed with Arizona Corporation Commission)	the Articles of Incorporation of Marley Park Community Association, Inc., as they may be amended, which establish the Association as a nonprofit corporation under Arizona law
By-Laws: (attached as Exhibit "C")	the By-Laws of Marley Park Community Association, Inc. adopted by its Board of Directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc. A copy of the By-Laws is attached as Exhibit "C".
Design Guidelines: (Founder adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 6, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other improvements
Rules: (initial set attached as Exhibit "B")	the rules of the Association adopted pursuant to Chapter 8, which regulate use of property, activities, and conduct within Marley Park
Board Resolutions: (Board adopts)	the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of the property which the Association owns or controls

Table 2.1 - Governing Documents

tion.

2.1. Scope and Applicability.

documents, referred to in this Charter as the "**Governing Documents**," include this Charter and the other documents described in Table

Governing Documents

2.1, as they may be amended. All Owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

2.2. Additional Covenants.

The owner of any property within the Community may impose additional covenants on such property with such approval as may be required pursuant to Section 21.5. If the provisions of any such additional covenants are more restrictive than the provisions of this Charter, the more restrictive provisions control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

2.3. Conflicts.

If there are conflicts between any of the Governing Documents and Arizona law, Arizona law shall control. If there are conflicts between or among any of the Governing Documents, then the Charter, the Articles, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents will control.

Diagrams, tables, and explanatory text (text set apart in boxes with "key" icons) are used in the Governing Documents to illustrate concepts and assist the reader. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

Space has been set aside throughout this Charter to allow the reader to make notes. Those spaces and the heading that denotes the spaces are not part of this Charter.

If any court determines that any provision of this Charter is invalid, or invalid as applied in a particular instance, such determination shall not

affect the validity of other provisions or applications of such provision in other instances.

2.4. Definitions.

Capitalized terms used in the Charter have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found at the beginning of this Charter. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

2.5. Interpretation of Certain References.

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

Discretion and Determination. All references in the Governing Documents to "**discretion**" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Maintenance. All references in this Charter to "**maintenance**" shall refer to maintenance, repair, rehabilitation, and renewal.

Person. References in the Governing Documents to a "**person**" or "**persons**" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

Governing Documents

Recording. All references in the Governing Documents to a "**recorded**" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed or the filing of a legal instrument in the official records of Maricopa County, or such other place designated as the official location for filing documents affecting title to real estate in Maricopa County in order to make them a matter of public record.

Community-Wide Standard. Where the Governing Documents require compliance with the "**Community-Wide Standard**," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Charter, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the Board's or the Design Review Committee's discretion. The Community-Wide Standard may or may not be set out in writing. The Founder initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as Marley Park changes.

2.6. Term and Termination.

This Charter shall be effective for a minimum of 21 years from the date it is recorded. After 21 years, this Charter shall be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that the Community Charter is terminated and that document is recorded within the year before any extension. In such case, this Charter shall terminate on the date specified in the termination document.



There is an old concept of law known as the "Rule Against Perpetuities" that restricts how long covenants can affect the title to land. Many jurisdictions no longer observe the rule; however, where the rule applies, the term of the covenants cannot exceed 21 years after the death of a named person who is living at the time the covenants are recorded.

If any provision of this Charter would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

This Section shall not permit termination of any easement created in this Charter without the consent of the holder of such easement.

A few strong instincts and a few plain rules suffice us. Ralph Waldo Emerson

[NOTES AND THOUGHTS]

Chapter 3

Community Administration

Vibrant communities depend upon community members working together to uphold community standards and achieve the vision and goals for the community. The Founder, the Association, the Owners, the builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This Chapter identifies parties with an interest in the Community and describes their roles in administering the Community.

3.1. The Founder.

The Founder has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The Founder's proposed plan for development of the Community is described in the land use plan(s) for Marley Park approved by the City of Surprise, Arizona, as such may be supplemented and amended, which encompass(es) all of the property described in Exhibit "A" (the "**Master Plan**"). However, the Founder is not obligated to submit property shown on the Master Plan to this Charter. In addition, the Founder may submit property to this Charter that is not shown on the Master Plan.

The Founder has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Founder may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Founder or any "Founder Affiliate" owns real property in the Community or has an unexpired option to expand the Community pursuant to Chapter 18. A "**Founder Affiliate**" is any Person that controls, is controlled by, or is under common control with the Founder, and any Person that is an owner, member, partner, or shareholder of the Founder.

Other rights may be exercised only during the "**Founder Control Period**," which is the period of time that the Founder is entitled to appoint a majority of the members of the Association's board of directors ("**Board**"). It begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

(a) when 75% of the total number of Units permitted by applicable zoning for the property described in the Master Plan have certificates of occupancy issued thereon and have been conveyed to Persons other than builders holding title for purposes of construction and resale;

(b) December 31, 2042; or

(c) when, in its discretion, the Founder so determines and declares in a recorded instrument.

The Founder has certain approval rights, as specified in the By-Laws, for a limited period of time following termination of the Founder Control Period.

The Founder may assign its status and rights as the Founder under the Governing Documents to any Person who takes title to any portion of the property described in Exhibit "A" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties.

3.2. The Association.

The Founder has established the Association as the primary entity responsible for administering Marley Park in accordance with the Governing Documents. On most matters, the Association acts through the Board. However, in some instances the Governing Documents or applicable

Community Administration

law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Arizona law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers which the Governing Documents and Arizona law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It also may take any action reasonably necessary to effectuate any such right or privilege.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances), and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

3.3. The Owners.

Each Person holding record title to a Unit, as defined in Chapter 4, is referred to in the Governing Documents as an "**Owner.**" However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is

sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Part Two of this Charter. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles, as described in Chapters 4 and 5 and in the By-Laws.

3.4. Builders.

Much of the responsibility and credit for helping to create Marley Park rests with the "**Builders**" -- those Persons who purchase one or more unimproved lots or parcels of land within Marley Park for further subdivision or development and resale in the ordinary course of their business. The Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, the Founder may extend to Builders it designates some of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community.

3.5. Neighborhood Associations.

Portions of the Community may be developed under a condominium form of ownership that will require a Builder to establish a separate condominium owners association to administer additional covenants applicable to that particular area ("**Neighborhood Association**"). However, nothing in this Charter requires the creation of a Neighborhood Association, and the jurisdiction of

Community Administration

any Neighborhood Association shall be subordinate to that of the Association.

Neighborhood Associations, if any, are responsible for administering the additional covenants applicable to the property within their jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property which they own or which their respective covenants designate as being for the common benefit of their members.

3.6. Mortgagees.

If a Unit is made subject to a mortgage, deed of trust, or other form of security instrument affecting title to a Unit ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 17.

A community is like a ship; everyone ought to be prepared to take the helm. Henrik Ibsen

[NOTES AND THOUGHTS]

Chapter 4

Community Structure and Organization

The Community consists of parcels of property, referred to as Units, which are intended for the exclusive use of the Owner and other occupants of such parcel, as well as property that is intended for common use. Units may be assigned to Service Areas to permit the Association to provide special services and benefits to and at the expense of particular areas of the Community.

4.1. Designations of Properties Comprising the Community.

Units. The Governing Documents refer to the homes and home sites in Marley Park as "**Units.**" A Unit is a portion of Marley Park, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residence for a single family, and includes each lot or unit depicted in a recorded subdivision plat or a condominium instrument. The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on the Unit.

Until such time as a subdivision plat or a condominium instrument is recorded subdividing a parcel of land into more than one Unit, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the Founder's site plan, whichever is more recent. Thereafter, the portion encompassed by such plat or condominium instrument shall contain the number of Units determined as set forth in the preceding paragraph. Any portion not encompassed on such plat shall continue to be treated in accordance with this paragraph.

Common Area. Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "**Common Area.**" The Common

Area also includes any property that the Association holds under a lease.

Limited Common Area. Certain portions of the Common Area may be designated as "**Limited Common Area**" and assigned for the exclusive use or primary benefit of Units in specified portions of the Community. Limited Common Areas might include such things as entry features, recreational facilities, and landscaped medians and cul-de-sacs, among other things.

The Founder may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Charter. At any time during the Development and Sale Period, the Founder may assign use of the same Limited Common Area to additional Units.

Area of Common Responsibility. All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to as the "**Area of Common Responsibility,**" regardless of ownership. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way. The initial Area of Common Responsibility is described in Chapter 11.

4.2. Service Areas.

Units may be part of one or more "**Service Areas**" in which the Units share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Units within the Community. A Unit may be

Community Structure and Organization

assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous.

The Founder may designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area in a Supplement. During the Development and Sale Period, the Founder may unilaterally amend this Charter or any Supplement to change Service Area boundaries.

In addition, the Board may, by resolution, designate Service Areas and assign Units to them upon petition of Owners of at least 67% of the Units affected by the proposed designation pursuant to Section 12.2.

The Owners of Units within each Service Area may elect a "**Service Area Committee**" in accordance with the By-Laws to represent and act on behalf of the Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

Chaos is the law of nature; order is the dream of men. Henry Adams

[NOTES AND THOUGHTS]

Chapter 5

Association Membership and Voting Rights

The Association is a mechanism by which each Owner can participate in the governance and administration of Marley Park. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in each Owner allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

5.1. Membership.

The Association initially has two classes of membership: the Owner membership, which is comprised of all Owners, including Builders, and the Founder membership, which consists solely of the Founder.

(a) Owner Membership. Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any recreational facilities available for use by members.

(b) Founder Membership. The Founder holds the sole Founder membership. The Founder membership shall terminate two years after expiration of the Founder Control Period, or on such earlier date as the Founder determines and declares in a recorded instrument.

5.2. Voting.

Each Unit is assigned one equal vote, except that no vote shall be exercised for any Unit exempt from assessment under Section 14.8. Further, during such time as there is a Founder membership, no vote shall be exercised for Units that the Founder owns; rather, the Founder's consent shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents. After the Founder membership terminates, the Founder shall continue to hold a membership as an Owner and shall be entitled to one vote for each Unit it owns.

In any situation where there is more than one Owner of a Unit, the vote for that Unit shall be exercised as the co-Owners determine among themselves; provided, if more than one Person seeks to exercise the vote for a Unit, the last vote cast or received shall constitute the vote for such Unit.

Good order is the foundation of all things. Edmund Burke

[NOTES AND THOUGHTS]

PART TWO: COMMUNITY STANDARDS

The price of greatness is responsibility.

Winston Churchill

Chapter 6

Architecture, Landscaping, and Aesthetic Standards

The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This Chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on the Units.

6.1. General.

All site work, landscaping, structures, improvements, and other items placed on a Unit in a manner or location visible from outside of any existing structures on the Unit ("**Improvements**") are subject to standards for design, landscaping, and aesthetics ("**Design Guidelines**") and the approval procedures set forth in this Chapter, except as this Chapter or the Design Guidelines may otherwise specify.

No prior approval is necessary to repaint the exterior of structures on any Unit using the most recently approved color scheme or to rebuild or restore any damaged structures on a Unit in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a Unit visible from outside a structure may require prior approval.

Any dwelling constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Founder or its designee otherwise approves.

Approval under this Chapter is not a substitute for any approvals or reviews required by the City of Surprise or any municipality or govern-

mental agency or entity having jurisdiction over architectural or construction matters.

This Chapter shall not apply to the Founder's design and construction activities, to the design and construction activities of any Founder Affiliate, or to the Association's activities during the Founder Control Period.

6.2. Design Review Authority.

(a) Founder. The Founder has exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibit "A" have been improved with dwellings for which a certificate of occupancy has been issued. The Founder may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Founder and its designee act solely in the Founder's interest and owe no duty to any other Person.

From time to time, the Founder may delegate any or all of its rights under this Chapter to other Persons or committee, including the committee appointed pursuant to Section 6.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Founder's right to revoke such delegation at any time and reassume its prior control, and (ii) the Founder's right to veto any decision which it determines to be inappropriate or inadvisable. So long as the Founder has any rights under this Chapter, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

(b) Design Review Committee. Upon the Founder's delegation of authority pursuant to Section 6.2(a), or upon expiration or termination of the Founder's rights under this Chapter, the

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Board shall appoint a Design Review Committee ("**Design Review Committee**" or "**DRC**") to assume jurisdiction over matters within the scope of the delegated authority or this Chapter, as applicable. The DRC shall consist of at least three, but not more than five, persons, who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Founder's rights under this Chapter, the DRC shall notify the Founder in writing within five business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this Chapter. A copy of the application and any additional information the Founder may require shall accompany the notice. The Founder shall have 15 business days after receipt of such notice to veto any such action, in its discretion, by written notice to the DRC.

Unless and until such time as the Founder delegates all or a portion of its reserved rights to the DRC or the Founder's rights under this Chapter terminate, the Association shall have no jurisdiction over architectural matters.

(c) **Reviewer.** For purposes of this Chapter, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer.**"

(d) **Fees; Assistance.** The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Association's annual operating budget.



Initially, the Founder reviews applications for proposed Improvements and determines whether they should be approved. Thereafter, the Board of Directors will appoint a Design Review Committee to review applications for proposed improvements. The Founder or the Design Review Committee is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

6.3. Guidelines and Procedures.

(a) **Design Guidelines.** The Founder may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Marley Park as well as specific provisions that vary among uses or locations within the Community. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval. The Design Guidelines shall conform to any entitlement for Marley Park established by the City of Surprise.

The Founder has sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 6.2(a). The Founder's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Founder also delegates the power to amend to the DRC. Upon termination or delegation of the Founder's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall be prospective only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with

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the Design Guidelines, as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and their contractors upon request. In the Founder's discretion, such Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Unless the Design Guidelines provide otherwise, no activities described in Section 6.1 may begin on any portion of Marley Park until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to Chapter 20, nor shall they be subject to judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Founder's veto right under Section 6.2(a), the Reviewer shall notify the applicant of the final determination within 45 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 6.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement

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unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

The Reviewer may exempt certain activities from the application and approval requirements of this Chapter, if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.



The purpose of the Design Guidelines is to maintain character and quality of appearance for the Improvements within the community and to ensure that Improvements are constructed in an orderly manner. The Design Guidelines may describe what types of building materials and design elements are preferred and others that are discouraged. The Design Guidelines also provide a specific procedure for submitting applications for proposed Improvements and describe how to carry out the construction of the Improvements once approval has been granted.

(c) Appeals Process. After the appointment of the DRC by the Board, an applicant may appeal disapprovals of applications to the Board. To request an appeal, the applicant must submit to the Secretary of the Board a copy of the original application, the notification of the disapproval of the application, and a letter requesting an appeal no less than 15 days after the delivery of the notification of disapproval. The appeal request shall also contain a response to any specific concerns or reasons for disapproval, if any, listed in the notification of disapproval. The Board may (i) affirm the DRC's decision, (ii) affirm a portion and overturn a portion of the DRC's decision, or (iii) overturn the DRC's decision. When an appeal is requested, the Board shall notify the applicant and the DRC in writing of its decision no later than 30 days after its receipt of the request for appeal along with all required information. The Board's decision shall include a description of its reasons for overturning the DRC's decision.

During the appeal process the Owner shall not commence any of the activities outlined in the application.

6.4. No Waiver of Future Approvals.

The people reviewing applications under this Chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may require that objectionable features be corrected or it may elect not to require changes to objectionable features; provided, the Reviewer may not require the removal of features or improvements constructed in conformance with plans which it previously has approved. However, in any event, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

6.5. Variances.

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, or if the Reviewer otherwise reasonably deems a variance to be appropriate under the particular circumstances. No variance shall (a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Founder's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.



In some circumstances, an Owner may find it difficult or impossible to comply with one

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or more requirements of the Design Guidelines. In that case, the Owner can file a request with the Reviewer to be excused from complying with such requirements. The Reviewer has the discretion to grant or deny the request.

6.6. Limitation of Liability.

This Chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Marley Park; they do not create any duty to any Person. Review and approval of any application pursuant to this Chapter may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

The Founder, the Founder Affiliates, the Association, its officers, the Board, any committee, and any member of any of the foregoing shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Founder has approved or featured such contractor as a Builder; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each as provided in the By-Laws.

6.7. Certificate of Compliance.

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this

Chapter or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

*We shape our buildings and our
buildings shape us. Winston Churchill*

[NOTES AND THOUGHTS]

Chapter 7

Maintenance, Repair, and Replacement

One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive, and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the community. This Chapter describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.

7.1. Maintenance of Units.

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to this Charter, any Supplement, or by law.

Each Owner also shall be responsible for maintaining the landscaping, other than trees, and for irrigating all landscaping within that portion of any adjacent Common Area, public right-of-way, or private street lying between the Unit boundary and any wall, fence, or curb located on the Common Area, public right-of-way, or private street within 10 feet of the Unit boundary. The Association shall maintain any trees in such area. However, Owners may not remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 6.

7.2. Maintenance of Neighborhood Association Common Property.

A Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applica-

ble covenants. The cost of such maintenance shall be assessable against Units in the benefited Neighborhood as a Service Area Assessment, as provided in Section 14.2(c).

A Neighborhood Association also shall maintain the landscaping, other than trees, and for irrigating all landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of its boundary. The Association shall maintain any trees in such area. A Neighborhood Association shall not remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 6.

The Association may assume maintenance responsibility for property in any Neighborhood, either upon designation of the Neighborhood as a Service Area pursuant to Section 4.2 or upon the Board's determination, pursuant to Chapter 9, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. The Association need not treat all similarly situated Neighborhoods the same.

7.3. Responsibility for Repair and Replacement.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either a Neighborhood Association or the Association carries such insurance (which they may but are not obligated to do). If the Association assumes responsibility for insuring a Unit, the premiums for such insurance shall be levied as a Service Area Assessment or a Specific Assessment against the benefited Unit(s) and the Owner(s). The Association is not obligated

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to, but may in the Board's discretion, institute requirements or procedures designed to verify each Owner's compliance with the above insurance requirement. In any event, however, the Association shall not be liable to any party for any costs or damages relating to or arising out of any failure of any Owner to carry the property insurance required under this paragraph.

Within three months of any damage to or destruction of a structure on a Unit, the Unit's Owner shall promptly repair or reconstruct the Unit in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 6, unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Unit of debris in accordance with all City of Surprise requirements and shall maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any Neighborhood or Service Area may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This Section shall apply to a Neighborhood Association with respect to common property within the Neighborhood in the same manner as if the Neighborhood Association was an Owner and the common property was a Unit.

7.4. Maintenance and Repair of Party Walls and Similar Structures.

Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units shall be considered a party struc-

ture. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who shares the structure may restore it. If other Owners thereafter share in the use of the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

The right to and the obligation of contribution for party walls and similar structures between Owners, as provided in this Section, shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Chapter 20.

Any activity becomes creative when the doer cares about doing it right, or doing it better.
John Updike

[NOTES AND THOUGHTS]

Chapter 8

Use and Conduct

In order to maintain a residential environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this Chapter sets forth basic standards regarding use, occupancy and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.

8.1. Use, Occupancy, and Transfer of Interests in Units.

(a) Residential and Related Uses. Units may be used only for residential and related purposes, except as the Founder may otherwise authorize with respect to construction, marketing, and sale activities of the Founder, the Founder Affiliates, and Builders designated by the Founder. A business activity shall be considered "related" to a residential use and thus permitted under this Section only if conducted by a person or persons residing in the Unit and only if the business activity:

(i) complies with applicable zoning and other legal requirements of the city of Surprise (including, without limitation, requirements with respect to "home occupations") and other applicable federal, state, or local authorities;

(ii) does not involve excessive visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(iii) is consistent with Marley Park's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

The Board may exercise its discretion in determining the application of and compliance with these restrictions as they apply to particular uses and activities.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners with whom such Owner is affiliated do not collectively lease or offer for lease more than one Unit at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure. For purposes of this Charter, the terms "**Lease**" and "**Leasing**" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit.

(b) Leasing. Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased; however, a detached "in-law suite" or "guest house" approved pursuant to Chapter 6 may be leased separate from the main dwelling.

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All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this subsection, the Association or the Board may adopt Rules governing leasing and subleasing.

(c) Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least 10 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title. Within 10 days after receipt of notice of a pending Unit sale from an Owner, the Association shall provide the prospective purchaser with such documents and records as are required to be provided under Section 33-1806 of the Arizona Planned Communities Act.

(d) Subdivision and Combination of Units. No Person other than the Founder, the Founder Affiliates and Builders authorized by the Founder shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only

upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling (*i.e.*, the Owner of such adjacent Units shall be responsible for the separate assessments for each of such Units).

(e) Timesharing. No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, unless such program is established by the Founder or with the Founder's prior written approval.

8.2. Rulemaking Authority and Procedures.

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "B" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Owners are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 8.3.

(a) Board Authority. Subject to the notice requirements in subsection (c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.

(b) Membership Authority. Subject to the notice requirements in subsection (c), a majority

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of the Owners also may adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, as long as the Founder membership exists, any such action shall also be subject to the Founder's approval.

(c) Notice. The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board at which such action is to be considered. At any such meeting, Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

(d) Effective Date. A Rules change adopted under this Section shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners.

(e) Conflicts. No action taken under this Section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Charter other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Charter (exclusive of the Rules), the Charter shall control.



Since it is impossible to foresee all potential situations and problems that may arise within the community, the Board has the authority to

adopt and modify rules as needed to address these changing circumstances.

8.3. Protection of Owners and Others.

Except as may be set forth in this Charter (either initially or by amendment) or in the initial Rules set forth in Exhibit "B," all Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Units shall be treated similarly; however, the Rules may vary by Neighborhood or Service Area.

(b) Displays. No Rule shall abridge an Owner's right to display political, religious or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

(c) Household Composition. No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area. In no event shall the number of occupants in a single dwelling exceed that permitted by local zoning ordinances and building codes.

(d) Activities Within Dwellings. No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a

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danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 14.

(f) Leasing and Transfer of Units. No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit; however, the Rules may require a minimum lease term of up to 12 months. Minimum lease terms and other Rules concerning leasing may vary by Neighborhoods or Service Areas. The Rules may also require that Owners use Board-approved lease forms (or include specific lease terms), and may impose a reasonable review or administrative fee in connection with the Board's review of a lease.

(g) Abridging Existing Rights. No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.



This provision protects an Owner's existing personal property. An Owner may not be forced to get rid of something they have which was previously allowed. For example, if basketball hoops are allowed in driveways and then a Rule is passed prohibiting basketball hoops, the Board cannot force an Owner who has a basketball hoop at that time to remove it. However, it can enforce this Rule against any other Owner desiring to install one. In addition, if an Owner sells his or her Unit the new Owner may be required to remove the basketball hoop.

(h) Reasonable Rights to Develop. No Rule may unreasonably interfere with the Founder's ability (or the ability of any Founder Affiliate) to develop, market, and sell property in Marley Park.

(i) Interference with Easements. No Rule may unreasonably interfere with the exercise of any easement.

8.4. Owners' Acknowledgment and Notice to Purchasers.

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

Use and Conduct

Peace rules the day when reason rules the mind.
Wilkie Collins

Chapter 9

Compliance and Enforcement

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the Owners in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This Chapter sets forth the obligation to comply and the remedies available to the Association for non-compliance.

9.1. Compliance.

Every Owner, occupant, and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Chapter. Each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants of or visitors to their Units, and for any damage to the Area of Common Responsibility that such occupants or visitors cause.



All Owners are required to abide by the Governing Documents. If an Owner fails or refuses to obey the Governing Documents the Owner may be subject to various penalties including fines and the loss of the right to use the Common Areas.

9.2. Remedies for Non-Compliance.

The Association, the Founder, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board, in the exercise of its discretion, may impose sanctions for violation of the Governing Documents, including those listed below and any others described elsewhere in the Governing Documents.

(a) Sanctions Requiring Prior Notice and Hearing. After written notice and an opportu-

nity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no hearing is required if the Owner is more than 90 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); provided, the Board may not limit ingress or egress to or from a Unit;

(iv) suspend services the Association provides (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

Compliance and Enforcement

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 6 and the Design Guidelines from continuing or performing any further activities in Marley Park;

(vii) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(viii) record a notice of violation with respect to any Unit on which a violation exists.

In the case of continuing or repeated violations, only a single notice and opportunity for a hearing is required prior to imposing any of the above sanctions for each violation.

(b) Other Sanctions. The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Unit in any situation which requires prompt action to avoid potential injury or damage or involves unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner or a Neighborhood Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Neighborhood Association's property, respectively, that is in violation of the Community-

Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Neighborhood Association fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) Additional Powers Relating to Neighborhood Associations. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

9.3. Board Decision to Pursue Enforcement Action.

It is expressly intended that the Board have discretion to enforce or not enforce technical violations of the Governing Documents based upon fairness, hardship, aesthetic, or other considerations, except that the Board shall not act in an arbitrary or capricious manner. For example,

Compliance and Enforcement

the Board may determine that, in a particular case:

(a) the Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) that it is not in the Association's best interests, based upon fairness, hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

9.4. Attorneys Fees and Costs.

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

9.5. Enforcement of Ordinances.

The Association, by contract or other agreement, may enforce applicable city and county ordinances. In addition, the City of Surprise may enforce ordinances within Marley Park.

PART THREE: ASSOCIATION OPERATIONS

We cannot escape the responsibility of tomorrow by evading it today.

Abraham Lincoln

Chapter 10

Tools for Community Achievement

Achieving the goal of making Marley Park a truly special place to live and work requires more than just meaningful, productive opportunities for you and your neighbors to share your ideas, suggestions, and desires. It also requires a creative process, specialized staffing, and great communication. In this Chapter, you find these essentials. However, you also will see that the Founder believes that the best community building ideas will come from the community itself.

Luck is the residue of design. Branch Rickey

10.1. Community Program Director.

The Board may create and fund the position of "**Community Program Director**," or "**CPD**," whose role will be to provide leadership for the overall planning, development, implementation, and continuing evaluation of programs, activities, and services to carry out the Association's mission of enhancing community within Marley Park. The CPD may be an employee or independent contractor.

The CPD's specific responsibilities may include the following:

(a) creating accessible opportunities for residents to participate in and volunteer their time and skills for community events and activities;

(b) working with volunteers and staff members and cooperating with the Board to implement the Association's community building objectives;

(c) coordinating, promoting, and facilitating community-wide cultural, artistic, musical, athletic, and social events and activities;

(d) conducting governance educational programs and contracting for and coordinating continuing education programs and opportunities;

(e) serving as an ombudsman within Marley Park by teaching and practicing "non-adversarial communication" and, when the need arises, mediating or otherwise intervening to resolve disputes and conflicts at the request of the parties involved; and

(f) seeking out new opportunities for building community life and spirit while appreciating diversity.

The CPD's responsibilities may also include those agreed upon by the CPD and the Board, so long as such responsibilities do not hinder, limit, or otherwise interfere with the fulfillment of the CPD's responsibilities outlined above.

The CPD shall be employed or otherwise contracted for by the Association and shall be entitled to attend and participate in Board meetings; however, in the case of discussions regarding the CPD's employment the CPD may be excluded from Board meetings. The Board may enact rules to ensure the successful creation, staffing, funding, operation, and continuity of the CPD position.

10.2. Youth Board.

The Board may create and fund a "**Youth Board**" composed of and selected by community residents between the ages of 11 and 17 to serve as a liaison between Marley Park's youth and the Board. The purpose of the Youth Board is to empower Marley Park's youth with a voice, a sense of "belonging," and a mechanism for positively influencing their peers and others in Marley Park.

The best Youth Board is one that is representative of those it seeks to serve. The members of the Youth Board shall be selected from candidates solicited through Marley Park-wide publications,

Tools for Community Achievement

emails, and other methods designed to reach large portions of Marley Park. The Community Program Director shall compile all applications for the Youth Board. The Board, with the assistance of the Community Program Director, will then select the Youth Board members from the applications. In the process of selecting members of the Youth Board, the Board shall endeavor to include representatives from a wide variety of backgrounds, ages, hobbies, charter clubs, sports teams, and residence locations within Marley Park.

The Community Program Director shall serve as an *ex officio* member of the Youth Board, and the Youth Board shall cooperate with and assist the Community Program Director in the performance of its duties.

The Board may enact additional rules to ensure the successful formation, selection, operation, and continuity of the Youth Board, including terms of service of the Youth Board.



10.3. Community Education and Training.

In recognition of the fact that Owners and other residents who are well-informed regarding their community's structure and governance and their rights and responsibilities in the community, have greater capacity to participate in civic life and in the affairs of the community, the Board

may establish education, training, and orientation programs relating to community governance, including "continuing" education programs, for everyone in Marley Park. The Board may utilize any appropriate method to achieve these education goals, including a community intranet; learning centers, computer centers, and business centers; and coordinated activities with the CPD, Association committees, or Board members.

Community education shall begin as early as the marketing stage or the point of sale of property within Marley Park and may include orientation classes regarding community structure and governance; the nature, extent, and purpose of the covenants, rules, and regulations; and community-building issues such as the mission for Marley Park, opportunities to participate in and affect the community's evolution and growth, and general community orientation. The Board also may provide programming explaining the Youth Board's purpose, goals, and selection to those interested in being participants and their parents.

Community governance education is an essential component of living in Marley Park. Educating Owners regarding ownership rights, voting privileges, property use restrictions, assessment responsibility, community development, developer turn-over or transition, community activities, etc. should be an ongoing innovative process geared toward including residents of all ages. Governance education may be offered in the form of seminars, simple question and answer pamphlets, audio/video recordings, through a community cable channel, or through an interactive website. The Board may also coordinate with nationally recognized organizations such as the Urban Land Institute or the Community Associations Institute to offer programs regarding community governance or coordinate with nationally recognized speakers in the field to provide community governance instruction and workshops.

Tools for Community Achievement

10.4. Volunteerism and Charter Clubs.

In recognition of the fact that volunteerism benefits both Marley Park and the larger community, the Board desires to promote a strong volunteer ethic among residents of Marley Park and encourage and facilitate the organization of volunteer organizations within Marley Park. To accomplish this end, the Board may grant incentives for volunteering, such as exemptions from specific program fees and public recognition of distinguished volunteers and their achievements. The Board also may cooperate with and support outside organizations, such as recreational leagues or cultural organizations, by making facilities available for the organization's use or sponsoring the organization's activities. Additionally, the Board may compile and maintain a data bank of people interested in volunteering and make such data available to other volunteer organizations.

In its discretion, the Board may establish or support the establishment of "charter clubs" to encourage or facilitate the gathering of people to pursue common interests or hobbies. A charter shall confer privileges and impose responsibilities on the club and its members. For example, the Board may grant privileges including financial support; material support; facility use privileges, either with or without charge; priority for facility use; administrative and technical support; and liability insurance coverage.

The Board may grant charters to any group of individuals who share a particular field of interest. Any Owner, tenant, or resident may submit a written request to the CPD for a charter. In his or her discretion, the CPD may grant or deny such request. The Board may fund the charter club as a Common Expense and/or require that club members pay use or consumption fees for materials, facilities use, or other club expenses.

However, the Board may not fund a charter club's events or activities or another volunteer group's events or activities, or the advertising or promotion of such events or activities, unless the Board, in its discretion, determines that such events or organizations benefit the entire community.

Volunteerism

Board:

- ✦ Facilitates volunteer organizations
- ✦ Supports recreational leagues and cultural organizations
- ✦ May maintain volunteer data bank
- ✦ May grant charters to charter clubs
- ✦ Publicizes meetings, events, etc.
- ✦ Provides recognition to volunteers

10.5. Education as an Amenity.

Continuing education and learning opportunities are community amenities to be enjoyed by all Owners and residents, and, as such, the Association may provide or provide for continuing education opportunities. The range of continuing education opportunities offered in Marley Park should be determined by interest, participation, and satisfaction, as well as the budget. The Association should make every effort to provide or provide for a variety of continuing education opportunities that reflect the diverse interests of the Community, *i.e.*, finance, art, music, exercise, community wellness, gardening, environmental preservation, sports, and recreation.

[NOTES AND THOUGHTS]

Chapter 11

Property Management

One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of Marley Park. This Chapter establishes the Association's obligation to accept property that the Founder designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of Marley Park.

11.1. Acceptance and Control of Association Property.

(a) Transfers and Conveyances by Founder. The Founder, the Founder Affiliates, and other designees of the Founder may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Founder's written request, the Association shall reconvey to the Founder any real property that the Founder or any Founder Affiliate originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

(b) Management and Control. The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in

such amount as the Board may establish, for such use.

11.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

- (a) the Common Area;
- (b) landscaping within public rights-of-way within or abutting Marley Park;
- (c) such portions of any additional property as may be dictated by the Founder, this Charter, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association; and
- (d) any property and facilities that the Founder or any Founder Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. The Founder shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Founder revokes such privilege of use and enjoyment by written notice to the Association.

The Association shall also be responsible for proper functioning of the stormwater drainage system serving the Community, including maintenance, repair, and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system. It shall have no responsibility for landscaping or other maintenance of Units burdened by stormwater drainage easements unless otherwise specifically set forth in a Supplement or in a recorded agreement or plat.

Property Management

The Association may maintain other property it does not own, including, without limitation, Units, property dedicated to the public, or property owned or maintained by a Neighborhood Association, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

11.3. Discontinuation of Operation.

The Association shall maintain the Common Area facilities (other than Limited Common Area facilities) in continuous operation unless Owners representing at least 67% of the total votes in the Association consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall require the approval of the Board and the approval in writing of Owners representing at least 75% (or such higher percentage as a Supplement may require) of the Units to which such Limited Common Area is assigned. During the Development and Sale Period, the Founder's consent is required to discontinue operations of Common Areas. This paragraph shall not apply to temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs.

11.4. Restoring Damaged Improvements.

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements (other than Limited Common Area improvements) unless the Founder, during the Development and Sale Period, and Owners representing at least 67% of the total votes in the Association, decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, any decision not to restore the damaged improvements shall require the approval of the Board and Owners representing at least 75% of the Units to which such Limited Common Area is assigned. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.



This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible *not* to repair or rebuild if the Owners who benefit from the Common Area do not want it anymore.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain for the benefit of all Owners, or the Owners of Units within the affected Service Area, as the Board deems appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

Property Management

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 13.4.

11.5. Relationships with Other Properties.

The Association may contract with the owner of any neighboring property to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

When you do the common things in life in an uncommon way, you will command the attention of the world.
George Washington Carver

[NOTES AND THOUGHTS]

Chapter 12

Provision of Services

In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This Chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

12.1. Provision of Services to Units.

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Founder or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as cable television, utilities, security, trash collection, landscape maintenance, pest control, caretaker services, Community Systems (as described in Section 12.3), and other technology services.

The Association may charge use fees for any such services or the Board may include the cost of services in the Association's Common Expense budget and assess it as part of the Base Assessment, if provided to all Units. If services are provided to less than all of the Units, the Association may assess such costs as a Service Area Assessment or a Specific Assessment, as appropriate, against only those Units being provided such service.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of

services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Chapter 14.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

12.2. Provision of Services to Service Areas.

(a) Service Areas Designated by Founder. The Association shall provide services to Units within any Service Area designated by the Founder pursuant to Section 4.2 as required by the terms of any Supplement applicable to the Service Area.

(b) Service Areas Designated by Board. In addition to Service Areas which the Founder may designate pursuant to Section 4.4, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association (i) special benefits or services which are not provided to all Units, or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of a majority of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 67% of the Units

Provision of Services

within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 14.2.

12.3. Community Technology.

(a) Community Systems. Without limiting the generality of Sections 12.1 and 12.2, and subject to the Founder's rights under Section 19.6, the Association is specifically authorized to provide, or to enter into contracts with other Persons to provide, or to take assignment from the Founder and assume contracts with other Persons to provide, central telecommunication receiving and distribution systems (*e.g.*, cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate.

The Association shall have no obligation to utilize any particular provider(s) and the Board is specifically authorized to act in its discretion with respect to the type and extent of Community Systems offered.

The Association may charge use fees for any of the Community Systems or the Board may include the cost of Community Systems in the Association's Common Expense budget and assess it as part of the Base Assessment, if provided to all Units. If services are provided to less than all of the Units, the Association may assess such costs as a Service Area Assessment or a Specific Assessment, as appropriate, against only those Units being provided such service.

(b) Opportunities for Community Interaction. The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. To the extent Arizona law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

I think there is a world market for maybe five computers.

Thomas Watson, Chairman of IBM, 1943

[NOTES AND THOUGHTS]

Chapter 13

Association Insurance

The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This Chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

13.1. Required Coverages.

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated as typically purchased by properties of similar business size and scope within the same geographical area), for all insurable improvements on

(i) the Common Area;

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Service Area, to the extent specified or authorized by any applicable Supplement.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes; provided any such policy may include a reasonable deductible which shall not be sub-

tracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this subsection.

In addition, if a Supplement so specifies, the Association shall obtain and maintain property insurance on the insurable improvements within a Service Area, which insurance shall comply with the above requirements.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for various risks, including without limitation for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$1,000,000 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-tenth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the

Association Insurance

exclusion of Persons serving without compensation.

The Association may arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Phoenix area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this Section requires.

13.2. Deductibles.

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 13.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.



The Board can charge Persons who cause damage in Marley Park for amount of the insurance deductible to ensure that the Association need not pay for such damages.

13.3. Policy Requirements.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Arizona which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(e) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

(f) provide a waiver of subrogation against any Owner or household member of an Owner; and

(g) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners (as a class) as additional insureds and provide:

Association Insurance

(a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

(b) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(c) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation or non-renewal;

(d) a cross liability provision; and

(e) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

13.4. Insurance Premiums.

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to, a particular Service Area shall be a Service Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

[NOTES AND THOUGHTS]

Chapter 14

Association Finances

This Chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this Chapter authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this Chapter.

14.1. Association Expenses.

(a) Common Expenses. Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered "**Common Expenses**." Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate. Common Expenses shall not include Service Area Expenses.

Common Expenses shall not include any expenses incurred during the Founder Control Period for initial development or original construction costs unless a majority of the Owners approve such expenditure. Payments due under leases of capital improvements such as streetlights shall not be considered an initial development or original construction cost.

Common Expenses may include expenses which the Association incurs for matters outside of Marley Park. The Association is empowered and encouraged to create partnerships with groups outside of Marley Park for the purpose of promoting a greater sense of community within and outside Marley Park. Expenses incurred in developing and maintaining such partnerships and

expenses incurred in providing services and programs through these partnerships, are considered Common Expenses.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Charter, any Supplement, or any other recorded covenants or agreements.

(b) Service Area Expenses. All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance, and operation of Limited Common Areas, or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses**." Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Service Areas receiving the same service.

14.2. Budgeting for and Allocating Association Expenses.

(a) Preparation of Budget. Prior to the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

Association Finances

The estimated expenses in each budget may include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units (including amounts to which the Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c).

(b) Calculation of Base Assessments. The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be allocated equally among all Units subject to assessment under Section 14.5 and levied as a "**Base Assessment.**"

The Founder may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Founder under Section 14.6(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from the Founder, or a loan, in the Founder's discretion. Any such subsidy and the characterization thereof shall be conspicuously

disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Founder to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Founder. Provided all of the Association's financial obligations with respect to the Common Expenses and Association reserves are met for the fiscal year (*i.e.*, the payment of all operating expenses and contributions are made to reserves which meet the scheduled requirements), the Founder shall be entitled to a rebate of any subsidy payments made to the extent of any budget surplus.

(c) Calculation of Service Area Assessments. The total Service Area Expenses budgeted for each Service Area, less any surplus in such Service Area budget from prior years, shall be allocated among all Units in the Service Area that are subject to assessment under Section 14.5 and levied as a "**Service Area Assessment.**" Unless otherwise specified in any Supplement applicable to a Service Area, Service Area Assessments shall be set at a uniform rate per Unit in the Service Area, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

The Founder may, but shall not be obligated to, reduce the Service Area Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Founder under Chapter 14.6(b)) which may be either a contribution, an advance against future Service Area Assessments due from the Founder, or a loan, in the Founder's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate the Founder to continue paying a subsidy in future years, unless otherwise pro-

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vided in a written agreement between the Founder and the Association. Provided all of the Association's financial obligations with respect to the Service Area are met for the fiscal year (*i.e.*, the payment of all operating expenses and contributions are made to reserves which meet the scheduled requirements), the Founder shall be entitled to a rebate of any subsidy payments made to the extent of any Service Area budget surplus.

All amounts the Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

(d) Notice of Budget and Assessment; Right to Disapprove. The Board shall send a copy of each applicable budget, together with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budgets, to each Owner at least 30 days prior to the due date of the assessments to be levied pursuant to such budget. After termination of the Founder Control Period, the Common Expense budget shall be subject to disapproval at a meeting by Owners representing at least 67% of the Units. After termination of the Founder Control Period, each Service Area budget shall be subject to disapproval at a meeting by Owners of at least 67% of the Units within the Service Area, except that the right to disapprove a Service Area budget shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing

Documents require to be assessed as a Service Area Expense.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on petition of the Owners as provided for special meetings in the By-Laws, and in the case of a Service Area budget, on petition of Owners representing at least 2/3 of the Units within the Service Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, increased by 10%, shall continue in effect until a new budget is determined.

(e) Budget Revisions. The Board may revise the budget and adjust the Base Assessment or Service Area Assessments anytime during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (d) above.

(f) Limitation on Assessment Increases. Notwithstanding any provision to the contrary, the Board may not impose a Base Assessment which exceeds the Base Assessment for the immediately preceding fiscal year by greater than the percentage set forth in Section 33-1803.A. of the Arizona Planned Communities Act, as amended from time to time, without the prior approval of a majority of the Owners.

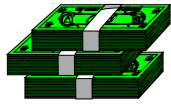
14.3. Special Assessments.

Association Funds



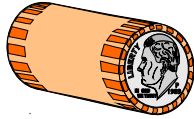
General Operating Fund
Reserve Fund for Repair and Replacement of
Capital Items
Community Enhancement Fee Fund

Primary Sources of Income



Base Assessments
Service Area Assessments
Special Assessments
Specific Assessments
Founder Subsidy (if any)
One-time Contributions to Working Capital
Community Enhancement Fees

Secondary Sources of Income



Facilities Rental
Monetary Penalties
Interest on Reserves and
Delinquent Assessments
Late Charges

The Association may levy "**Special Assessments**" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Charter, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of the Owners of more than 50% of the Units subject to assessment under Section 14.5 and shall be allocated equally among all such Units. Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Units in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under Section 14.2(c). In addition, until termination of the Founder membership any Special Assessment also shall be subject to the Founder's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

14.4. Specific Assessments.

The Association may levy **Specific Assessments** against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to

the Unit upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 14.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b); and

(c) to cover the Unit's pro rata share of any costs that the Association incurs in bringing the Neighborhood of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Owners of Units in the Neighborhood and an opportunity for such Owners to be heard before levying any such assessment.

14.5. Authority to Assess Owners; Time of Payment.

The Founder hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to a Unit upon the later of: (a) the date the Unit is made subject to this Charter; or (b) the first month for which the Board determines a budget and levies assessments pursuant to this Charter; provided, until the earlier of (a) six months following the date on which the Founder (or any Founder Affiliate) transfers title to the Unit; or (b) the date on which a certificate of occupancy is issued for a dwelling on the Unit or the Unit is actually occupied, the

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Unit shall be assessed at 25% of the full per Unit assessment for Base, Service Area, and Special Assessments. The first annual Base Assessment and Service Area Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

14.6. Obligation for Assessments.

(a) *Personal Obligation.* By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Arizona law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver,

modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to all Units or to all Units within the Service Area to which the Unit is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) *Founder's Financial Obligations to Association.* The Founder shall be liable for assessments on any Units it owns that are subject to assessment under Section 14.5, except that during the Founder Control Period the Founder may satisfy its obligation to pay Base Assessments, Service Area Assessments, and Special Assessments for Common Expenses on Units it owns either by paying such assessments in the same manner as any other Owner, or by paying (i) any shortfall under the Common Expense budget re-

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sulting from events other than failure of other Owners to pay their assessments, and (ii) any budgeted contributions to reserves in accordance with the Common Expense budget. Unless the Founder otherwise notifies the Board in writing before the beginning of each fiscal year, the Founder shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the Founder Control Period, the Founder shall pay Base Assessments on any Units it owns that are subject to assessment under Section 14.5 in the same manner as any other Owner liable for such assessments.

Regardless of the Founder's election under this Section, any of the Founder's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.



By buying a Unit in Marley Park each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, that Owner will be charged late fees on all past due amounts. Owners may not claim a reduction in their assessments due to action or inaction by the Association.

In some instances the Founder may choose to pay the difference between the Association's budgeted and actual expenses, rather than paying assessments on the Units it owns. The Founder is free to do so only during the Founder Control Period.

14.7. Lien for Assessments.

The Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Arizona law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies

which by law would be superior, and (b) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit. Such liens, when delinquent, may be enforced by suit and foreclosure; provided, if enforcement proceedings are not instituted within three years after the full amount of the assessment or other charge becomes due, the lien (but not the personal obligation of the subject Owner) shall be deemed extinguished.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf and the Unit shall not be counted as an eligible vote in determining the presence of a quorum for any purpose; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the

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sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 14.5, including such acquirer, its successors and assigns.



In order to insure that each Owner pays their assessments, the Association has a lien against the Units when assessments are not paid in a timely fashion. This means that if an Owner does not pay his or her assessments on time, the Association could foreclose the lien, thus causing the Owner's Unit to be sold to pay the past due assessments. Alternatively, the Association may sue an Owner in court to recover past due assessments.

14.8. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

- (a) All Common Area and any such portion of the Area of Common Responsibility which the Founder or any Founder Affiliate owns;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

In addition, both the Founder and the Association shall have the right, but not the obligation,

to grant exemptions to schools, houses of worship, hospitals, police or fire stations (or other similar public service uses), or Units owned by Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code and used by such Persons for purposes listed in Section 501(c) of the Internal Revenue Code. Exemptions granted by the Founder shall be binding on the Association.

14.9. Capitalization of Association.

The first Owner of each Unit other than the Founder, a Founder Affiliate or a Builder designated by the Founder shall make a contribution to the working capital of the Association in an amount equal to one-half of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and any Service Area Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title, for its use in covering initial start-up expenses, operating expenses, and other expenses which it incurs pursuant to this Charter and the By-Laws.

14.10. Use and Consumption Fees.

The Association may offer services or facilities for which it does not recover its costs through assessments under this Article. The Board may charge use and consumption fees to any Person who chooses to use or participate in such services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Owners and non-Owners).

14.11. Community Enhancement Fee.

(a) *Authority.* As an additional funding source, the Board may establish and collect a Community Enhancement Fee upon each transfer of title to a Unit. The fee shall be charged to the

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seller of the Unit, shall be payable to the Association at the closing of the transfer, and shall be secured by the Association's lien under Section 14.7. Each Owner shall notify the Association's Secretary or designee at least 10 days prior to the scheduled closing and provide the name of the buyer, the date of title transfer, and other information the Board may reasonably require.

(b) Fee Limit. The Board shall have the sole discretion to determine the amount of and method of calculating the Community Enhancement Fee. The fee may be based upon a sliding scale that varies in accordance with the "gross selling price" of the property or any other factor the Board deems appropriate. However, the Community Enhancement Fee may not exceed 0.25% of the Unit's gross selling price. The gross selling price is the total cost to the purchaser of the Unit, excluding transfer taxes, title fees, and recording fees, if any, imposed by the City of Surprise, Maricopa County, and/or the State of Arizona. In the event of the transfer of title to a Unit for less than the fair market value of the Unit (including without limitation a transfer for no consideration or for nominal consideration), the Board reserves the right, in its sole discretion, to impose a Community Enhancement Fee that is calculated based upon the fair market value of the transferred Unit at the time of the transfer.

(c) Purpose. The Community Enhancement Fee shall be used to provide funding for activities and such other purposes as the Board deems beneficial to the general good and welfare of Marley Park. For example, Community Enhancement Fees might be used to assist one or more tax-exempt entities in funding:

(i) programs and activities which enhance the welfare, benefit, and lifestyle of residents within and outside Marley Park;

(ii) the preservation and maintenance of natural areas, wildlife preserves, and similar con-

servation areas and sponsorship of educational programs and activities that contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding Marley Park;

(iii) programs, services, and activities which serve to promote a sense of community within Marley Park, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs; and

(iv) social services, educational programs, community outreach programs, and other charitable causes.

(d) Exempt Transfers. Notwithstanding the above, no Community Enhancement Fee shall be levied upon transfer of title to a Unit:

(i) by or to the Founder or any Founder Affiliate;

(ii) by a Builder designated by the Founder who held title solely for purposes of development and resale;

(iii) by an Owner who conveys a Unit that is the personal residence of such Owner, if such Owner acquires another Unit within Marley Park within 30 days thereafter for use as such Owner's personal residence;

(iv) by a co-owner to any Person who was a co-owner immediately prior to such transfer;

(v) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(vi) to an entity wholly owned by the grantor or to a family trust created by the grantor

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for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due;

(vii) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage, or to an institutional lender who takes a deed in lieu of foreclosure;

(viii) to a Person who takes title to a Unit under a beneficiary deed; or

(ix) under circumstances which the Board, in its discretion, deems to warrant classification as an exempt transfer (*e.g.*, a transfer made solely for estate planning purposes may be, but is not required to be, deemed exempt from payment of the Community Enhancement Fee).

[NOTES AND THOUGHTS]

PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

You don't get harmony when everybody sings the same note.

Doug Floyd

Chapter 15

Easements

The easements created in this Chapter establish the rights of Owners to use the Common Area and create various rights for the benefit of Owners, the Founder, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the rights of Association to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.



An easement is one person's right to go onto the property of another.

15.1. Easements in Common Area.

The Founder grants to each Owner a non-exclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) Certain Owners' rights to the exclusive use of those portions of the Common Area designated "Limited Common Area;" and
- (d) The Board's right to:
 - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
 - (ii) suspend an Owner's right to use Common Area facilities;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Charter;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;

(vi) permit use of any recreational facilities situated on the Common Area by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and

(vii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.


Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

15.2. Easements of Encroachment.

The Founder grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit and any Private Amenity. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than three feet, as measured from any point on the common boundary along a line

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perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

 An encroachment occurs when a person's home, fence, or structure of any kind is placed on his or her neighbor's property. This Section provides that minor, inadvertent encroachments are permitted.

15.3. Easements for Utilities and Other Infrastructure.

(a) *Installation and Maintenance.* During the Development and Sale Period, the Founder reserves for itself perpetual non-exclusive easements throughout Marley Park (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure, other Community Systems, security and similar systems, and drainage systems to serve Marley Park;


(ii) install walkways, pathways and trails, street lights, and signage on property the Founder, any Founder Affiliate or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, the Founder reserves the right to assign such easement rights to the Association, utility providers, or other appropriate parties.

(b) *Specific Easements.* The Founder also reserves for itself the non-exclusive right and power to grant and record such specific easements as it deems necessary to develop the property described in Exhibit "A". The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

 Therefore, before the Founder can grant a new right to enter property, if someone else owns that property, the Founder must get that Owner's permission.

(c) *Minimal Interference.* All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

15.4. Easements to Serve Additional Property.

The Founder hereby reserves for itself and its duly authorized agents, successors, and assigns, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "A". This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Per-

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son exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property which is not submitted to this Charter (or which, having been originally submitted to this Charter, is later removed from the effect of this Charter), the Founder, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

15.5. Easements for Maintenance, Emergency, and Enforcement.



The Association may come onto the exterior portions of your Unit to do maintenance or to address violations of the Governing Documents. This Section describes the extent of the Association's right in this regard.

By this Charter, the Founder grants to the Association easements over Marley Park as necessary to enable the Association to fulfill its maintenance responsibilities under Section 11.2 and its enforcement rights under Section 9.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

15.6. Easements for Lake and Pond Maintenance and Flood Water.

The Founder reserves for itself, the Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not dwellings) adjacent to or within 100 feet of bodies of water and wetlands within Marley Park, in order to (a) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (b) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make the Founder, any Founder Affiliate, or any other person liable for damage resulting from flooding due to weather events or other natural occurrences.

In the event that any lake or other body of water within Marley Park is dedicated to the Association, the City of Surprise, or any other local, state, or federal governmental or quasi-governmental entity, the Founder may amend this Section as necessary or appropriate to reserve or assign rights with respect to bodies of water to such parties.

[NOTES AND THOUGHTS]

Chapter 16

Disclosures and Waivers

This Chapter discloses some important information about Marley Park for the benefit of purchasers of property in Marley Park. Each Owner, by accepting a deed to property in Marley Park, accepts and agrees to the matters set forth in this Chapter.

16.1. Facilities and Services Open to the Public.

Certain facilities and areas within Marley Park may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, and other neighborhood spots conducive to gathering and interaction, roads, sidewalks, and medians. The Founder may designate such facilities and areas as open to the public at the time the Founder makes them a part of the Area of Common Responsibility, or the Board may so designate at any time thereafter.

16.2. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Marley Park. The Association may, but shall not be obligated to, maintain or support certain activities within Marley Park designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor the Founder or any Founder Affiliate shall in any way be considered insurers or guarantors of safety or security within Marley Park, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any system or measure, including any security monitoring system or any mechanism or system for limiting access to Marley Park, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board and committees, and the Founder and the Founder Affiliates are not insurers or guarantors of security or safety and that each Person within Marley Park assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

16.3. Changes in Master Plan.

Each Owner acknowledges that Marley Park is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Association nor any Neighborhood Association shall engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses or density of property within Marley Park, or (b) changes in the Master Plan as it relates to property outside Marley Park, without the Founder's prior written consent, which consent may be granted or withheld in the Founder's discretion.

16.4. View Impairment.

Neither the Founder, nor any Founder Affiliate, nor the Association guarantee or represent that any view over and across the Units or any open space will be preserved without impairment. The Founder and Founder Affiliates, and the Association shall not be obligated to relocate,

Disclosures and Waivers

prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Common Area) has the right to add trees and other landscaping from time to time subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

16.5. Notices and Disclaimers as to Community Systems.

Any Community System and its providers, managers, and operators may be subject to federal, state, or municipal regulations, laws, and ordinances. Such regulations, laws, and ordinances may have a significant impact on certain aspects of the system including, but not limited to, the fees charged, the method of delivery, the rights of the system users, as well as the rights of the system providers or operators. These regulations and their impact are beyond the Association's and the Founder's control.

Each Owner acknowledges that interruptions in cable television and other Community Systems will occur from time to time. The Founder, Founder Affiliates, or any of their respective successors or assigns shall not be liable for, and no Community System user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems, regardless of whether such interruption is caused by reasons within the service provider's control.

The Community Systems and all information and materials accessible to users of the Community Systems are made available "as is" without warranties of any kind, either express or implied, including, without limitation, warranties of title or implied warranties of merchantability or fitness for a particular purpose.

There is no guarantee, and neither the Founder, nor any Founder Affiliate, nor the Association make any representation, that any particular Community System will be made available.

16.6. Maricopa Water District Assessments and Water Delivery.

Marley Park is within the service area of Maricopa Water District ("MWD") and is subject to assessments by MWD ("MWD Assessments") even if there is no water delivery to the entire Community. MWD shall bill the Association the MWD Assessments for the entire Community. The Association shall assess each Unit a prorata amount of such MWD Assessments in addition to assessments the Association levies under Chapter 14.

The Association is hereby irrevocably appointed and authorized by the Owners of Units in Marley Park to act on behalf of the Owners and be responsible for the payment of MWD Assessments for all Units and Common Areas located within Marley Park and for the payment and coordination of any MWD water orders, deliveries, and water usage reporting for the Units and Common Areas.

No Owner shall have the right to request water directly from MWD for a Unit. To the extent that the Association fails to pay MWD Assessments on behalf of all Owners, each Owner shall remain obligated for the payment of such MWD Assessments for his or her Unit.

[NOTES AND THOUGHTS]

Chapter 17

Rights of Lenders

In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this Chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in Marley Park. The provisions of this Chapter apply to both this Charter and to the By-Laws, notwithstanding any other provisions contained therein.

17.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days;

(b) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(c) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

17.2. Special FHLMC Provision.

If any portion of Marley Park consists of a condominium, and so long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply. Unless at least 67% of the first Mortgagees or Owners representing at least 67% of the total votes in the Association consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of Marley Park regarding assessments for Service Areas or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Charter);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance, or maintenance of Units and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Charter; or

Rights of Lenders

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

17.3. Other Provisions for First Lien Holders.

To the extent not inconsistent with Arizona law:

(a) Any restoration or repair of Marley Park after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Charter and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

17.4. Amendments to Documents.

The following provisions do not apply to amendments to the Governing Documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 17.3(a) and (b), or to the addition of land in accordance with Chapter 18. If a condominium

has been established in any part of the Community, then:

(a) The consent of Owners representing at least 67% of the total votes in the Association and of the Founder, so long as it owns any land subject to this Charter, and the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association; and

(b) The consent of Owners representing at least 67% of the total votes in the Association and of the Founder, so long as it owns any land subject to this Charter, and the approval of Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Charter, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

(i) voting;

(ii) assessments, assessment liens, or subordination of such liens;

(iii) reserves for maintenance, repair, and replacement of the Common Area;

(iv) insurance or fidelity bonds;

(v) rights to use the Common Area;

(vi) responsibility for maintenance and repair of Marley Park;

(vii) expansion or contraction of Marley Park or the addition, annexation, or withdrawal of Properties to or from the Association;

(viii) boundaries of any Unit;

(ix) leasing of Units;

Rights of Lenders

(x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;

(xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

(xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

17.5. No Priority.

No provision of this Charter or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

17.6. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

17.7. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

17.8. Construction of Chapter.

Nothing contained in this Chapter shall be construed to reduce the percentage vote that must otherwise be obtained under this Charter, the By-Laws, or Arizona law for any of the acts set out in this Chapter.

[NOTES AND THOUGHTS]

PART FIVE: COMMUNITY DEVELOPMENT

The rung of a ladder was never meant to rest upon, but only to hold a man's foot long enough to enable him to put the other somewhat higher.

Thomas Henry Huxley

Chapter 18

Alteration of the Community

Due to the future requirements relating to the development of the Community, Founder may alter certain aspects of the Community.

18.1. Additional Covenants and Easements.

Any Supplement that the Founder records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement submitting new property to this Charter or may be set forth in a separate Supplement applicable to property previously submitted to this Charter. If someone other than the Founder owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the property described in the Supplement in order to reflect the different character and intended use of such property.

18.2. Effect of Filing Supplement.

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any property described in the Supplement shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Charter.

18.3. Condominium Conversions.



Because apartments are commercial concerns they were not submitted to this Charter. However, if an apartment building or buildings becomes a residential condominium, the interests of the condominium owners will be more like the interests of those Owners already subject to this Charter. For that reason, for the good of the Community, the condominium project should be submitted to the terms of this Charter.

If any property described in the Master Plan now or hereafter used for rental apartments is converted to use as residential condominium units for sale to consumers, the owner of such property may submit such property to the provisions of this Charter by recording a Supplement describing the property and specifically submitting it to the terms of this Charter. Such Supplement shall require the Association's consent (acting through the Board), and shall require the signature of an officer of the Association acknowledging such consent. In addition, the Founder's prior written consent shall be necessary during the Development and Sale Period.

[NOTES AND THOUGHTS]

Chapter 19

Additional Rights Reserved to the Founder

This Chapter reserves various rights to the Founder in order to facilitate the Founder's development and sale of property in the Community, to enable the Founder to respond to Owners' concerns, and to protect various property rights and other interests of the Founder.

19.1. Withdrawal of Property.

During the Development and Sale Period, the Founder may amend this Charter to remove any unimproved portion of Marley Park from the coverage of this Charter, including without limitation any portion of Marley Park intended to be utilized for commercial or multi-family residential uses. In the event of such a withdrawal, the Founder (and its successors and assigns) reserves the right to enter into one or more agreements by which the owner(s) and/or occupants of such commercial and/or multi-family residential properties may utilize and enjoy the Common Area, provided that such agreement includes provisions by which such owner(s) share in the costs of maintaining the Common Area. "Unimproved" means that no permanent structure has yet been completed on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Founder. If the property is Common Area, the Association shall consent to such withdrawal.

19.2. Marketing and Sales Activities.

Notwithstanding anything in the Governance Documents to the contrary, the Founder and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles

or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Founder, any Founder Affiliate, and their respective employees, agents, and designees may park vehicles in designated areas, including within courtyards enclosed by building frontages or in parking courts. The rights of any Founder designee or assign under this Section are subject to the Founder's approval.

19.3. Right to Develop.

The Founder, the Founder Affiliates, and their respective employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area and to the Exhibit "A" property as it deems appropriate.

In addition, during the Development and Sale Period, the Founder (or any Founder Affiliate) may replat property that it owns (or any Founder Affiliate owns) and convert Units it owns (or any Founder Affiliate owns) into Common Area.

19.4. Right to Approve Changes in Marley Park Standards.

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Founder.

19.5. Exclusive Rights to Use Name of Development.

No Person shall use the name "Marley Park" or any derivative of such name or in any logo or depiction associated with Marley Park in any

Additional Rights Reserved to Founder

printed or promotional material without the Founder's prior written consent. However, Owners may use the name "Marley Park" in printed or promotional matter where such term is used solely to specify that particular property is located within Marley Park, and the Association shall be entitled to use the word "Marley Park" in its name.

19.6. Community Systems.

The Founder reserves for itself, Founder Affiliates, and their respective successors and assigns, a perpetual right and easement to install and operate within Marley Park such Community Systems as the Founder, in its discretion, deems appropriate to service the buildings and the structures within any Unit or other portion of the Community. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region. The Founder also has the right to charge individual users reasonable fees not to exceed the maximum allowable charges for such services, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

19.7. Easement to Inspect and Right to Correct.

The Founder reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Marley Park, including Units, and a perpetual non-exclusive easement of access throughout Marley Park to the extent reasonably necessary to exercise such right. Except in an emergency, entry

onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.



The Founder, or someone it may designate, may enter any Owner's property to inspect and correct improvements on the Unit. To do so, the Founder must give the Owner of the Unit prior notice, and if entering a dwelling or other enclosed structure on the Unit is necessary, the Owner's consent is also necessary before the Founder or its designee can enter. However, if there is an emergency, the Founder may enter without the notice or consent.

19.8. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Marley Park in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Founder and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

19.9. Right to Transfer or Assign the Founder's Rights.

Any or all of the Founder's special rights and obligations set forth in this Charter or the By-Laws may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which Founder has under this Charter

Additional Rights Reserved to Founder

or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Founder signs. The foregoing sentence shall not preclude the Founder from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Founder in this Charter where the Founder does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Founder's consent to such exercise.

19.10. Termination of Rights.

Unless otherwise specified in this Section, or if made perpetual, the rights contained in this Chapter shall terminate upon the earlier of (a) 40 years from the date this Charter is recorded; or (b) the Founder's recording of a written statement that all sales activity has ceased.

The very essence of leadership is that you have to have a vision. Theodore Hesburgh

[NOTES AND THOUGHTS]

PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

There are many ways of going forward, but only one way of standing still.

Franklin D. Roosevelt

Chapter 20

Dispute Resolution and Limitation on Litigation

From time to time, disputes may arise between owners or between an owner and the Association, the Founder, or others involved in the Community. This Chapter establishes the commitment of the parties to any such dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

20.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) The Founder, the Founder Affiliates, the Association and its officers, directors, and committee members, all Persons subject to this Charter, and any Person not otherwise subject to this Charter who agrees to submit to this Chapter (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 20.2 in a good faith effort to resolve such Claim.

(b) As used in this Chapter, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Chapter 6, which shall not be subject to review.

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 20.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Charter (relating to creation and maintenance of community standards);

(iii) any suit that does not include the Founder, any Founder Affiliate, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 20.2; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 20.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Chapter.

Dispute Resolution and Limitation on Litigation

20.2. Dispute Resolution Procedures.

(a) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

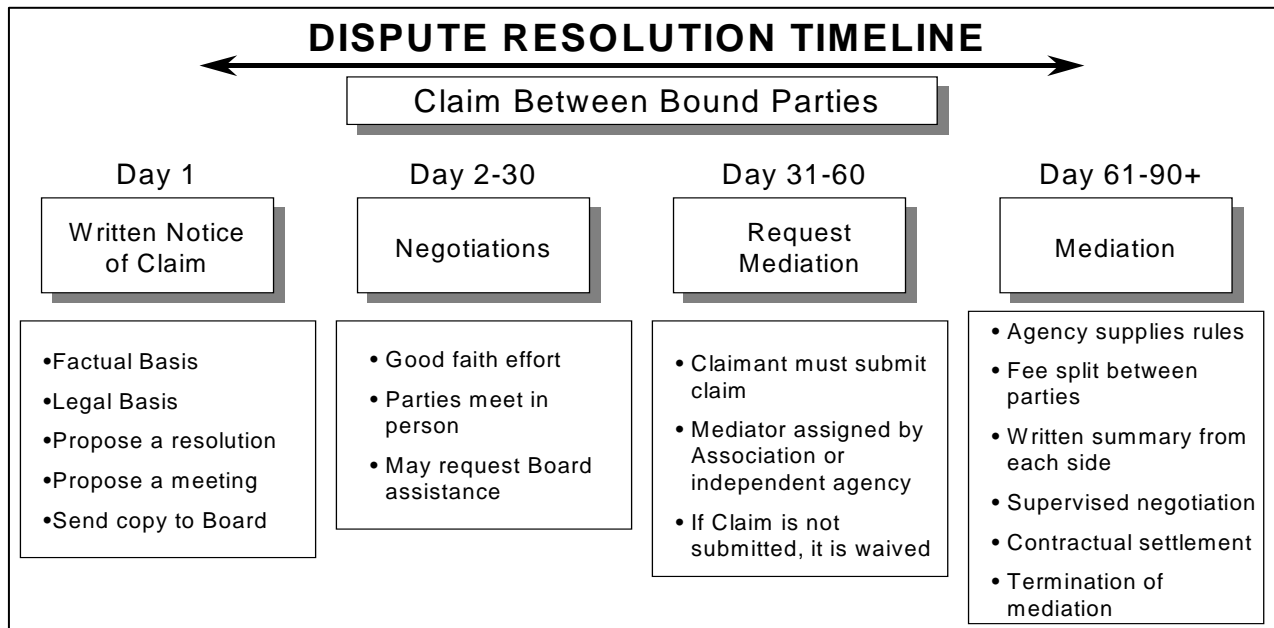
(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of

the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to



mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the metropolitan Phoenix area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by

Dispute Resolution and Limitation on Litigation

the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

20.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Owners representing at least 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

(a) initiated during the Founder Control Period;

(b) initiated to enforce the provisions of this Charter, including collection of assessments and foreclosure of liens;

(c) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services to the Association arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Problems cannot be solved at the same level of awareness that created them. Albert Einstein

[NOTES AND THOUGHTS]

Chapter 21

Changes in the Common Area

Various influences and circumstance within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Common Area. This Chapter explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.

21.1. Assignment and Reassignment of Limited Common Area.

The Board may designate a portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and the vote of Owners representing a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Founder's written consent.

Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

21.2. Condemnation.

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Section 21.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or pro-

ceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Founder, during the Development and Sale Period, and Owners representing at least 67% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 11.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 21.4.

Changes in the Common Area



A public entity such as a town, county, or state has the power to condemn property for its own uses and generally has to pay the value of the property to do so.

21.3. Partition.

Except as permitted in this Charter, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Charter, with such approval as may be required under Sections 17.9 and 21.4.



Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

21.4. Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to the City of Surprise, or to any other local, state, or federal governmental or quasi-governmental entity, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Owners representing at least 67% of the total votes in the Association and the Founder during the Development and Sale Period; or

(b) if Limited Common Area, upon written approval of Owners representing at least 75% of the Units to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

21.5. Additional Covenants and Restrictions.

During the Development and Sale Period, no one other than the Founder may record any additional covenants or restrictions affecting any portion of the Community without the Founder's written consent. Thereafter, the Board must consent. Any instrument recorded without the required consent shall be void and of no force and effect.

Anyone who has never made a mistake has never tried anything new. Albert Einstein

[NOTES AND THOUGHTS]

Chapter 22

Amendment of Community Charter

As Marley Park matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This Chapter sets out procedures by which either the Founder or the Owners as a group may amend this Charter to address such changes.

22.1. By the Founder.

In addition to specific amendment rights granted elsewhere in this Charter, until conveyance of the first Unit to a Person other than a Builder, the Founder may unilaterally amend this Charter for any purpose.

Thereafter, the Founder may unilaterally amend this Charter if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) as necessary to clarify or correct technical, typographical or scrivener's errors. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

22.2. By Owners.

Except as otherwise specifically provided above and elsewhere in this Charter, this Charter may be amended only by the affirmative vote or written consent, or any combination thereof, of

Owners representing at least 67% of the Units (with each Unit being allocated one vote regardless of whether owned by the Founder or a Founder Affiliate). In addition, during the Development and Sale Period, any such amendment shall also require the Founder's written consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

22.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of the Founder or any Founder Affiliate without the written consent of the Founder or the assignee of such right or privilege. In addition, the approval requirements set forth in Chapter 17 shall be met, if applicable.

If an Owner consents to any amendment to this Charter or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Charter.

22.4. Exhibits.

Exhibit "A" is incorporated by this reference, and this Chapter shall govern amendment of

those exhibits. Exhibit "B" is incorporated by this reference and may be amended under Chapter 8 or pursuant to Sections 22.1 and 22.2. All other exhibits are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Charter, which refer to such exhibits.

[NOTES AND THOUGHTS]

THIS COMMUNITY CHARTER is made this ____ day of April, 2004, by Marley Park LLC, an Arizona limited liability company ("Founder"). In witness whereof, the undersigned Founder has executed this Charter the date and year first written above.

FOUNDER: MARLEY PARK LLC, an Arizona limited liability company

By: DMB Realco LLC, an Arizona limited liability company, its Manager

By: DMB Associates, Inc., an Arizona corporation, its Manager

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of April, 2004 by _____, the _____ of DMB Associates, Inc., an Arizona corporation, in its capacity as Manager of DMB Realco LLC, an Arizona limited liability company, in its capacity as Manager of MARLEY PARK LLC, an Arizona limited liability company, on behalf of the latter limited liability company.

Notary Public

My Commission Expires:

CONSENT OF MARLEY PARK PHASE I LLC

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Marley Park Phase I LLC, as the Owner of the Parcel, hereby consents to, ratifies and approves the foregoing Supplement, including all dedications and easements referenced thereon, and agrees that its right, title and interest in and to the Parcel (as defined in the Supplement) is and shall be subject to the Supplement.

MARLEY PARK PHASE I LLC, an Arizona limited liability company

By: MARLEY PARK LLC, an Arizona limited liability company, its Manager

By: DMB Realco LLC, an Arizona limited liability company, its Manager

By: DMB Associates, Inc., an Arizona corporation, its Manager

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of April, 2004, by _____, the _____ of DMB Associates, Inc., an Arizona corporation, in its capacity as Manager of DMB Realco LLC, an Arizona limited liability company, in its capacity as Manager of Marley Park LLC, an Arizona limited liability company, in its capacity as Manager of MARLEY PARK PHASE I LLC, an Arizona limited liability company, on behalf of the latter limited liability company.

Notary Public

My Commission Expires:

EXHIBIT "A"

Land Submitted

EXHIBIT "B"

Initial Rules

The following Rules shall apply to all of Marley Park until such time as they are modified pursuant to the Charter.

1. **General.** Marley Park shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Founder or any Founder Affiliate to assist in the sale of property described in Exhibit "A" or "B," offices for any property manager retained by the Association, or business offices for the Founder, any Founder Affiliate or the Association) consistent with this Charter and any Supplement.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by the Board, the following activities are prohibited within Marley Park:

(a) Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages; provided, construction, service and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area, provided that no parked vehicle shall block any sidewalk within Marley Park;

(b) Raising, breeding, or keeping animals except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Pets shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling, and all pet owners shall be responsible for immediately removing and disposing of any pet waste. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers which must be stored in an enclosed garage except on the regular day for garbage collection;

(j) The carrying, use, or discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such carrying, use, or discharge;

(k) On-site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Chapter 6;

(l) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Marley Park or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(m) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit;

(n) Placement, construction, installation, or any modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 6 and the Design Guidelines. This shall include, without limitation, signs (other than one sign placed in the front of a dwelling advertising that the Unit is for sale); basketball hoops, and swing sets and similar sports and play equipment; clotheslines; garbage cans; wood-piles; lawn ornamentation; above-ground swimming pools; docks, piers, and similar structures; hedges, walls, dog runs, animal pens, or fences of any kind; and satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Founder and/or the Founder Affiliates and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, other communication system for the benefit of all or a portion of Marley Park, should any master system or systems be utilized by the Association and require such exterior apparatus.

American flags shall be permitted in the Community; provided, the Board may promulgate reasonable rules and regulations governing the permitted size of, and the time, place, and manner of displaying such flags; and

(o) Vehicle maintenance on any part of a Unit other than inside an enclosed garage, except under circumstances where it is not practical to do so. When it is not practical to perform vehicle maintenance in an enclosed garage, such maintenance may be performed in a driveway, provided such activity must occur only during daylight hours and the vehicle upon which maintenance is being performed must be placed in an enclosed garage at the end of each day.

3. Prohibited Conditions and Activities. The following shall be prohibited at Marley Park:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Marley Park;

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair, including, but not limited to worn, peeling, or chipped paint on the exterior portion of a Unit; and

(c) Capturing, killing, or trapping wildlife within the Community, except by appropriately trained Persons in circumstances imposing an imminent threat to the safety of Persons or pets.

EXHIBIT "C"

By-Laws of Marley Park Community Association, Inc.