

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MARTINEZ LAKE RESORT PHASE I

# DRAFT

Revised 11/13/2007

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
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THIS DECLARATION OF CONDITIONS AND RESTRICTIONS (“Declaration”) is made and entered into as of \_\_\_\_\_.

RECITALS

A. These covenants, conditions and restrictions are established upon the Property and each and every portion thereof of the Declaration, to be mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property.

B. An Architectural Committee is established to review without approving construction and uses on and of the Property; and, to notify all other owners of any violation of this Declaration.

C. The owners, beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, privileges and rights set forth in the Declaration, all of which are declared to be in furtherance of a plan to promote and protect the Property.

D. Owners shall be required to contract with designated providers and contractors for certain services including water, electricity, sewer, waste disposal, security, fire protection, and off-lot maintenance and any other services not covered by the Improvement District.

The Property shall be sold, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, easements, privileges and rights of the Declaration, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Association and each member of the Association.

ARTICLE 1  
Definitions

1 Definitions

1.1 **“Architectural Control Committee”** means a committee formed to review improvements and alterations to Lots.

1.2 **“Declarant”** means Martinez Lake Resort Phase 1, L.L.C. an Arizona limited liability company, its successors and assigns.

1.3 **“Declaration”** means this entire document, as the same may from time to time be amended.

1.4 **“Improvement District”** means the district formed for the purpose of providing street maintenance and other purposes.

1.5 **“Lot”** means the separately designated and described parcels of land shown on the Plat, together with the Improvements constructed thereon, which, are to be sold and used for residential purposes.

1.6 **“Majority of Owners”** means the Owners holding more than two-thirds of the total votes entitled to be cast with respect to a given matter; and any specified fraction or percentage of the Owners means the Owners holding that fraction or percentage of the total votes entitled to be cast with respect to a given matter. A specified fraction or percentage “of all of the Owners” means that fraction or percentage of the total votes of all Owners. Unless otherwise specified, any provision herein requiring the approval of the Owners means the approval of a Majority of Owners.

1.7 **“Occupant”** means a person or persons, other than an Owner, in rightful possession of a Lot.

1.8 **“Owner”** means the record owner, whether one or more persons or entities, of fee simple title to any Lot. If fee simple title to a Lot is vested of record in a trustee pursuant to Arizona Revised Statutes, 33-801 et seq., fee simple title shall be deemed to be in the trustor. If fee simple title to a Lot is vested of record in a trustee pursuant to

a single beneficiary trust or similar arrangement, title shall be deemed to be in the beneficiary.

1.9 **“Parcel”** means the parcel of real estate herein above described which was initially subjected to the Declaration.

1.10 **“Parking Space”** means a level area at least 9' x 20'. Tandem parking spaces are acceptable (9' x 40').

1.11 **“Person”** means an individual, corporation, partnership, trustee or other entity capable of holding title to real property.

1.12 **“Plat”** means the plat or plats of subdivision of the Property, and of easements and dedications, recorded in the official records of Yuma County, Arizona, as from time to time amended. Although the initially recorded plat may include real property in addition to the Parcel, the platting of such additional Real property shall not in any way be deemed to subject such property to this Declaration nor shall Declarant be obligated to annex such property to the Property or to develop such property in any particular manner.

1.13 **“Property”** means the Lots and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.14 **“Public Purchaser”** means any Person who becomes an Owner of any Lot within the Property, except Declarant.

1.15 **“Single Family”** means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

1.16 **“Temporary Dwelling”** means travel trailers, motor homes, and such other types of recreational or camping vehicles, mobile homes, park model homes, or manufactured homes.

1.17 **“Visible From Neighboring Lot”** means, with respect to any given object, that the object is or would be visible to a person having a height of six feet, standing on any part of a neighboring Lot at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE 2  
Property Subject to the Declaration

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The Property has been developed or will be developed into various Lots. Declarant intends to sell and convey Lots within the Property to Public Purchasers. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their successors in interest.

## ARTICLE 3

### Land Use Classifications, Permitted Uses, and Restrictions

3 **Permitted Uses and Restrictions - All Property.** The permitted uses, easements, and restrictions for all property covered by this Declaration, shall be as follows:

3.1 **Use and Occupancy.** Lots shall be used solely for site built homes, existing park models or existing manufactured homes.

3.2 **Building Code.** Prior to the purchase of a lot on which is situated a site built dwelling, a licenced Arizona Contractor shall be requested to inspect the dwelling and list changes, modifications or improvements required to bring the dwelling into compliance with current Yuma County building codes. Inspection fees are to be paid by the tenant. The tenant shall, within 90 days of inspection, complete all changes, modifications or improvements, called out by the licenced Arizona Contractor. Site built dwellings or site rebuilt dwellings with building permits issued by Yuma County within two years prior to sale shall be exempt from the required inspection.

3.3 **Manufactured Dwellings.** Manufactured dwellings, including park model dwellings, manufactured prior to 1985 shall be removed from Martinez Lake Resort within three years from the date of purchase of the lot. Manufactured dwellings, including park model dwellings, manufactured after 1985 shall be permitted at Martinez Lake Resort provided that within three years from the date of the purchase of the lot, the requirements for set backs and off street parking, as contained in this Declaration, are met. Manufactured homes, mobile homes, prefabricated homes or park model dwellings shall not be installed at Martinez Lake Resort after the effective date of this Declaration. Travel trailers, RV's, and additions must be removed prior to the purchase of the lot.

3.4 **Leases.** No lot, after purchase, shall be leased other than to a single family and for a period of not less than

a month. Lot owner must inform security company of any such lease. All such leases shall be subject to the provisions of this Declaration.

3.5 **Use of Lots by Declarant.** Lots owned by Declarant may be used for any purpose, including sales rentals and construction offices for the purpose of enabling Declarant to sell, develop and maintain Lots within the Property, until such time as all of the Lots owned by Declarant have been sold to Public Purchasers.

3.6 **Use Restriction.** Only one dwelling unit may be placed, built, or maintained on any Lot.

3.7 **Cleared Lots.** Any lot cleared by the removal of a temporary dwelling or a demolished site built dwelling shall be improved with site built masonry construction.

3.8 **Construction.** All construction shall be site built masonry and shall conform to current applicable building codes.

3.9 **Sun Decks.** All sun decks shall be constructed on the upper floor ~~with a temporary sun cover~~ and safety railings of 42" in height. The top of any railings shall not be more than 32' above the center of the lot on the street side.

3.10 **Window Construction.** All window construction, including improvement or replacement, shall utilize dual pane glass.

3.11 **Exterior Walls.** Exterior walls shall be constructed of concrete or masonry, which shall include rock, brick, block or adobe, and shall be not less than 8 inches thick with no open cells. Walls shall be 2 hour fire rated and shall extend to a height of 30 inches above the roof.

3.12 **Interior Walls.** Interior bearing walls and roof and floor assemblies shall be 1 hour fire rated.

3.13 **Roof.** The roof shall be of fire resistive material (tile, metal or other) approved by Yuma County Building Safety.

3.14 **Eaves and Projections.** Eaves and projections shall be a minimum of 30 inches from side and rear property lines.

3.15 **Garages.** Garages under living space shall be provided with residential type automatic fire sprinkling system.

3.16 **Heavy Timbers.** Heavy timbers shall be fire rated at 1 hour.

3.17 **Height Restriction.** The top of any portion of a structure shall not be more than 10' above the center of the lot on the street side.

3.18 **Street Fan Palms.** Street fan palms **Defined Species** shall be planted on each lot. On larger lots, one palm shall be planted every 30 feet. The initial height shall be not less than 10' and placed in the 3' front setback. The trees shall be irrigated by the lot owner but annually skinned and trimmed by the Improvement District. Front landscaping is encouraged.

3.19 **Architecture.** Diverse, creative and non-repetitive architecture is encouraged in construction. The front 3 foot setback may be used to have returns at both ends of the building out to the property line and false decorative roof overhangs above the garages, window boxes and decorative window and door frames.

3.20 **Setbacks.** Setback of construction from side and rear Lot lines shall be three feet unless a 2 hour fire wall is built on or next to the property line. Setback from the front Lot line shall be three feet but may be modified to create greater articulation as approved by the architectural committee.

3.21 **Temporary Dwellings.** No Temporary Dwelling shall be located on any lots, roads or streets within the Property or shall be used to house overnight occupants or permitted to hook up to sewer, water or electricity.

3.22 **Recreational Vehicles.** Recreational Vehicles larger than 25' are prohibited on Resort streets.

3.23 **Tents.** Tents are prohibited.

3.24 **Parking Requirements.** All lots must provide a minimum of four off street parking spaces with the exception of existing site built homes. Existing site built homes must maintain existing parking configuration at the time of lot purchase. Future redevelopment of the site will require a minimum of four off street parking spaces.

3.25 **Parking Restrictions.** No car, motorcycles, boat trailers or other motor vehicles shall be parked or located on any roads or streets within the property.

3.26 **Shoreline Construction.** All shoreline construction shall conform to Yuma County Planning Department and/or Army Corp or Engineer approvals.

3.27 **Dock Specifications.** All docks shall meet the U.S. Army Corps of Engineers specifications with Corps permits.

3.28 **Dock Restrictions.** All docks must provide areas for boats that shall not extend beyond the lot lines in the water.

3.29 **Dock Spaces.** Dock spaces shall not be leased or rented to third parties and shall be used only by the lot owner or a lot owner's weekend guest or tenant.

3.30 **Utility Service.** No lines, wires, or other devices for the communication, reception or transmission of electric current, power, or signals, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any portion of the Property, unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. Satellite dishes similar to the size of Direct TV dishes are accepted. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures. No piping, conduits or other fluid transmission devices, including natural gas and water pipelines, shall be erected, placed or maintained anywhere in or upon any portion of the Property, unless the above conditions in this Subdivision are satisfied. No water well shall be drilled, operated, or used unless by the Shepard Water Company or its designee. Generators shall only be permitted to operate when there is a power failure.

3.31 **Improvements and Alterations.** No improvements, alterations, repairs, excavation or other work which in any way alters the appearance of any Lot or the Improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed or transferred to a Public Purchaser shall be made or done except in compliance with the provisions of this Declaration or Yuma County Planning Department approvals. No awnings or other structures shall be attached to any Temporary Dwelling except in compliance with the provisions of this Declaration.

3.32 **Maintenance and Repair of Improvements and Temporary Dwelling.** All Temporary Dwellings and site built homes shall be maintained in good condition. No Owner or Occupant shall allow any portion of Temporary Dwelling or a site built home to become unsightly, fall into disrepair, become dangerous or otherwise create a displeasing appearance visible from a neighboring lot.

3.33 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any portion of the Property except in covered containers provided by the waste disposal contractor. Such containers shall be located only so that the containers are not visible from a street except to make the container available for trash collection. Owners shall be responsible for removal of all rubbish, trash or garbage from the Owner's Lot and such materials shall not be allowed to accumulate thereon. Incinerators shall be operated, kept or maintained on any portion of the Property.

3.34 **Overhangs.** No trees, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any other Lot.

3.35 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or structures which are within the permitted uses of such Lots.

3.36 **Restriction on Further Subdivision.** No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner. No Lot may be converted into a condominium or cooperative or other similar type of entity. This provision shall not, in any way, limit Declarant from subdividing or separating into smaller Lots or Parcels any property owned by Declarant.

3.37 **Signs.** No signs whatsoever shall be erected or maintained on any Lot so as to be Visible From Neighboring Lots, except one "For Sale" sign no larger than four square feet.

3.38 **Traffic.** Speed limit within the development is 5 MPH. All motorized vehicles must be legally licensed for roadways. All operators of motorized vehicles must be legally licensed.

3.39 **Utility Easements.** There is hereby created a blanket easement upon, across, over and under all Lots for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, septic systems, gas, telephones, electricity, television cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on any portion of the Property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said Lot. Notwithstanding anything to the contrary contained in this Subpart, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on a Lot except as initially developed and approved by the Declarant.

3.40 **Animals.** No animals, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot covered by this Declaration and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purpose. No animal shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained anywhere on a Lot, except behind A Temporary Dwelling or site built home so as not to be visible from a street. All pets must be kept on a leash or otherwise confined when not within the Temporary Dwelling or site built home

where their owner resides. Further, all pets must be accompanied by their owner or an authorized person when not on the owner's Lot, and in no instance shall a pet be leashed, restrained or otherwise, confined to a portion of a Lot in such a way as to allow the Pet, because of the leash length or the manner of restraint or confinement, to travel off the Lot without accompaniment by their owner or an authorized person.

3.41 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise therefrom, so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or to an Occupant of a Lot. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot or to any Occupant of a Lot. Without limiting the generality of any of the foregoing provisions, horns, whistles, bells or other obnoxious sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot. Yuma County sound ordinances will be enforced. No motorcycles or motor driven vehicles (except licenced golf carts) shall be operated on any walkways or sidewalks within the Property.

3.42 **Mineral Exploration.** No portion of the Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

3.43 **Diseases and Insects.** No Owner shall permit any thing or condition to exist upon any portion of the Property which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.44 **Drainage Easement.** There is hereby created a blanket easement for drainage of groundwater on, over and across the Property. No Owner shall obstruct, divert, alter or interfere in any way with the drainage of groundwater upon, across or over any portion of the Property. Each Owner shall at his own expense maintain the drainage ways and channels on his Lot free from obstruction. All buildings shall be guttered and drained to the street unless otherwise provided by the subdivision grading.

3.45 **Enforcement.** Any other Owner shall have the right, after 30 days' notice to a violating Owner, to repair or remedy any condition which is in violation of any provision in this Declaration. All costs and expenses incurred by the other Owner shall be borne by the violating Owner.

3.46 **Services Contracts.** Each Owner at the time of purchase shall contract for all services necessary required by this Declaration. Such service contracts may be as part of certificate service areas or for such services as are required for the maintenance, protection, and enhancement of the Property. Such services shall be in addition to the services provided by the Improvement District.

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#### ARTICLE 4 Special Declarant Rights

Until the sale to a Public Purchaser of the last Lot owned by Declarant, the following rights shall be reserved to the Declarant, its employees, agents, and subcontractors or parties designated by it in connection with any legitimate purpose with the Property and neither this Declaration, the Articles, Bylaws or Association Rules may be amended in any way which would eliminate, modify or impair any rights granted to the Declarant or any party connected thereto under the terms of this but not limited to, the right to maintain sales offices, management offices, signs advertising the project and Lots for sale.

#### ARTICLE 5 General Provisions

5 **Enforcement.** Any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

5.2 **Amendment.** The Covenants and restrictions of this Declaration shall run with and bind the land for a term of 20 years from the date the Declaration was recorded, after which time they shall be automatically extended for successive periods of ten years. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of two-thirds of all of the Owners consent. Amendments may be adopted at a meeting of the Owners upon the approval thereof of two-thirds of all of the Owners or without any meeting if all Owners have been duly notified and if two-thirds of all of the Owners

consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of all Owners in favor of the amendment.

5.3 **Violations and Nuisance.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not relief sought is for negative or affirmative action, by Declarant, or any Owner or Owners of Lots within the Property.

5.4 **Violation of Law.** Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of the Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

5.5 **Remedies Cumulative.** Each remedy provided by the Declaration is cumulative and not exclusive.

5.6 **Delivery of Notices and Documents.** Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered 72 hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows:

**To an Owner.** If to an Owner, to the address of any Lot within the Property owned, in whole or in part, by the Owner or to any other address last furnished by an Owner.

**To Declarant.** If to Declarant, at 10430 North Martinez Lake Road, Yuma, Arizona 85365.

5.7 **The Declaration.** By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representative, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments hereto. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property subject hereto and thereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

5.8 **Captions and Exhibits Construction.** Captions given to various provisions herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as herein above set forth.

5.9 **Severability.** If any provision of this Declaration, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration shall be construed as if such invalid part were never included therein.

5.10 **Attorneys' Fees.** In the event the Declarant or any Owner employs an attorney or attorneys to enforce compliance for any violation and non-compliance with this Declaration the prevailing party in any such action shall be entitled to recover from the other party the reasonable attorneys' fees incurred in the action.

IN WITNESS WHEREOF, the undersigned, being the Declarant has executed this Declaration the date first appearing above.

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LEGAL DESCRIPTION