


**WHEN RECORDED, RETURN TO:**

Michael E. Woolf, Esq.  
Mariscal, Weeks, McIntyre & Friedlander, P.A.  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012

 **Unofficial  
Document**

MAF

2004

DELROSSA

**CONDOMINIUM DECLARATION**

**FOR**

**THE VILLAGES AT AVIANO CONDOMINIUM**

**CONDOMINIUM DECLARATION  
FOR  
THE VILLAGES AT AVIANO CONDOMINIUM**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE 1 DEFINITIONS.....</b>	<b>1</b>
<b>ARTICLE 2 SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION .....</b>	<b>7</b>
<b>2.1 SUBMISSION OF PROPERTY .....</b>	<b>7</b>
<b>2.2 NAME OF CONDOMINIUM.....</b>	<b>8</b>
<b>2.3 NAME OF ASSOCIATION .....</b>	<b>8</b>
<b>2.4 IDENTIFYING NUMBERS OF UNITS .....</b>	<b>8</b>
<b>2.5 UNIT BOUNDARIES.....</b>	<b>8</b>
<b>2.6 ALLOCATION OF COMMON ELEMENT INTEREST AND COMMON EXPENSE LIABILITIES.....</b>	<b>9</b>
<b>2.7 ALLOCATION OF VOTES IN THE ASSOCIATION.....</b>	<b>10</b>
<b>2.8 ALLOCATION OF LIMITED COMMON ELEMENTS.....</b>	<b>10</b>
<b>2.9 RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS.....</b>	<b>12</b>
<b>2.11 EXPANSION OF THE CONDOMINIUM .....</b>	<b>12</b>
<b>2.12 MASTER ASSOCIATION.....</b>	<b>13</b>
<b>2.13 DISCLAIMER OF REPRESENTATI<small>Unofficial Document</small> .....</b>	<b>14</b>
<b>2.14 CHANGES TO CIVIL AND WORKING DRAWINGS.....</b>	<b>14</b>
<b>2.15 RESTRICTION ON LIABILITY OF THE ASSOCIATION AND DECLARANT.....</b>	<b>14</b>
<b>ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS .....</b>	<b>15</b>
<b>3.1 UTILITY EASEMENT .....</b>	<b>15</b>
<b>3.2 EASEMENTS FOR INGRESS AND EGRESS .....</b>	<b>16</b>
<b>3.3 UNIT OWNERS' EASEMENTS OF ENJOYMENT.....</b>	<b>16</b>
<b>3.4 DECLARANT'S RIGHTS AND EASEMENTS.....</b>	<b>17</b>
<b>3.5 EASEMENT FOR SUPPORT.....</b>	<b>19</b>
<b>3.6 EASEMENTS AND RIGHTS OF THE ASSOCIATION FOR PEST CONTROL.....</b>	<b>19</b>
<b>3.7 COMMON ELEMENTS EASEMENT IN FAVOR OF UNIT OWNERS .....</b>	<b>20</b>
<b>3.8 UNITS AND LIMITED COMMON ELEMENTS EASEMENT IN FAVOR OF ASSOCIATION .....</b>	<b>21</b>
<b>3.9 EASEMENT FOR UNINTENDED ENCROACHMENTS.....</b>	<b>21</b>
<b>3.10 EASEMENTS FOR UTILITIES AND MAINTENANCE.....</b>	<b>22</b>
<b>ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS.....</b>	<b>22</b>
<b>4.1 USE 22 .....</b>	<b>23</b>
<b>4.2 ANTENNAS .....</b>	<b>23</b>
<b>4.3 IMPROVEMENTS AND ALTERATIONS.....</b>	<b>23</b>
<b>4.4 TRASH CONTAINERS AND COLLECTION .....</b>	<b>25</b>
<b>4.5 ANIMALS.....</b>	<b>25</b>

4.6	DISEASES AND INSECTS .....	26
4.7	MOTOR VEHICLES.....	26
4.8	TOWING OF VEHICLES .....	26
4.9	SIGNS.....	27
4.10	LAWFUL USE.....	27
4.11	NUISANCES AND OFFENSIVE ACTIVITY .....	27
4.12	WINDOW COVERINGS.....	27
4.13	DECKS .....	27
4.14	MACHINERY AND EQUIPMENT. ....	27
4.15	RENTAL OF UNITS .....	28
4.16	TIME SHARING .....	28
4.17	HAZARDOUS MATERIALS.....	28
4.18	NOISE REDUCTION .....	28
4.19	SPRINKLER SYSTEM .....	29
4.20	STORAGE.....	29
4.21	CLOTHES DRYING FACILITIES. ....	29
4.22	TRAILERS, CAMPERS AND BOATS. ....	29
4.23	TRAILERS, CAMPERS AND BOATS. ....	29
4.24	RELIEF/VARIANCES.....	29
4.25	DECLARANT APPROVAL REQUIRED .....	30
4.26	PRESERVATION AREA .....	30
<b>ARTICLE 5 MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS .....</b>		<b>30</b>
	<small>Unofficial Document</small>	
5.1	DUTIES OF THE ASSOCIATION.....	30
5.2	DUTIES OF UNIT OWNERS .....	31
5.3	REPAIR OR RESTORATION NECESSITATED BY OWNER.....	31
5.4	OWNER'S FAILURE TO MAINTAIN .....	32
5.5	MANAGER; ADDITIONAL SERVICES.....	32
5.6	PRIVATE SEWER FACILITIES .....	32
<b>ARTICLE 6 THE ASSOCIATION.....</b>		<b>33</b>
6.1	RIGHTS, POWERS AND DUTIES OF THE ASSOCIATION .....	33
6.2	DIRECTORS AND OFFICERS .....	33
6.3	RULES .....	33
6.4	IDENTITY OF MEMBERS .....	34
6.5	PERSONAL LIABILITY.....	34
6.6	UTILITY SERVICE .....	34
<b>ARTICLE 7 ASSESSMENTS.....</b>		<b>34</b>
7.1	PREPARATION OF BUDGET.....	34
7.2	REGULAR ASSESSMENT.....	35
7.3	SPECIAL ASSESSMENTS .....	36
7.4	USER FEE ASSESSMENT.....	36
7.5	INDIVIDUAL EXPENSE ASSESSMENT .....	37
7.6	ENFORCEMENT ASSESSMENT.....	37
7.7	PURPOSES FOR WHICH ASSOCIATION'S FUNDS MAY BE USED .....	37

7.8	EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.....	37
7.9	CERTIFICATE OF PAYMENT .....	38
7.10	NO EXEMPTION OR OFFSETS .....	38
7.11	INITIAL WORKING CAPITAL FUND .....	39
7.12	RESERVE CONTRIBUTION .....	39
7.13	TRANSFER FEE .....	39
7.14	RESERVES .....	40
7.15	WAIVER OF EXEMPTION .....	40
<b>ARTICLE 8 INSURANCE.....</b>		<b>40</b>
8.1	SCOPE OF COVERAGE.....	40
8.2	FIDELITY BONDS .....	44
8.3	PAYMENT OF PREMIUMS.....	45
8.4	INSURANCE OBTAINED BY UNIT OWNERS .....	45
8.5	PAYMENT OF INSURANCE PROCEEDS .....	45
8.6	CERTIFICATE OF INSURANCE.....	45
<b>ARTICLE 9 DESTRUCTION OF IMPROVEMENTS.....</b>		<b>45</b>
9.1	AUTOMATIC RECONSTRUCTION .....	45
9.2	DETERMINATION NOT TO RECONSTRUCT WITHOUT TERMINATION.....	46
9.3	DISTRIBUTION OF INSURANCE PROCEEDS IN THE EVENT OF TERMINATION OF THE CONDOMINIUM .....	46
9.4	NEGOTIATIONS WITH INSURER.....	46
9.5	REPAIR OF UNITS.....	46
9.6	PRIORITY .....	46
<b>ARTICLE 10 EMINENT DOMAIN .....</b>		<b>47</b>
10.1	TOTAL TAKING OF A UNIT .....	47
10.2	PARTIAL TAKING OF A UNIT .....	47
10.3	TAKING OF COMMON ELEMENTS .....	47
10.4	TAKING OF ENTIRE CONDOMINIUM .....	47
10.5	PRIORITY AND POWER OF ATTORNEY.....	47
<b>ARTICLE 11 DISPUTE RESOLUTION .....</b>		<b>48</b>
11.1	DEFINED TERMS .....	48
11.2	AGREEMENT TO RESOLVE CERTAIN DISPUTES WITHOUT LITIGATION .....	48
11.3	NOTICE OF CLAIM .....	48
11.4	MEDIATION.....	49
11.5	BINDING ARBITRATION .....	49
11.6	RIGHT TO ENTER, INSPECT, REPAIR AND/OR REPLACE .....	51
11.7	USE OF FUNDS.....	52
11.8	APPROVAL OF LITIGATION .....	52
11.9	STATUTE OF LIMITATIONS.....	52
11.10	CONFLICTS .....	52
<b>ARTICLE 12 RIGHTS OF FIRST MORTGAGEES .....</b>		<b>53</b>
12.1	NOTIFICATION TO FIRST MORTGAGEES .....	53

12.2 APPROVAL REQUIRED FOR AMENDMENT TO DECLARATION, ARTICLES OR BYLAWS.....53

12.3 PROHIBITION AGAINST RIGHT OF FIRST REFUSAL .....55

12.4 RIGHT OF INSPECTION OF RECORDS .....55

12.5 PRIOR WRITTEN APPROVAL OF FIRST MORTGAGEES .....55

12.6 LIENS PRIOR TO FIRST MORTGAGE .....56

12.7 CONDEMNATION OR INSURANCE PROCEEDS.....56

12.8 LIMITATION ON PARTITION AND SUBDIVISION .....56

12.9 CONFLICTING PROVISIONS .....56

12.10 RESTORATION OR REPAIR OF CONDOMINIUM.....57

ARTICLE 13 GENERAL PROVISIONS.....57

13.1 ENFORCEMENT .....57

13.2 SEVERABILITY .....59

13.3 DURATION.....59

13.4 TERMINATION OF CONDOMINIUM .....59

13.5 AMENDMENT .....59

13.6 NOTICES.....60

13.7 GENDER .....60

13.8 TOPIC HEADINGS.....61

13.9 SURVIVAL OF LIABILITY .....61

13.10 CONSTRUCTION .....61

13.11 JOINT AND SEVERAL LIABILITY.....61

13.12 LESSEES AND INVITEES .....61

13.13 ATTORNEYS' FEES.....61

13.14 NUMBER OF DAYS.....61

13.15 DECLARANT'S RIGHT TO USE SIMILAR NAME.....61

Unofficial Document

**CONDOMINIUM DECLARATION  
FOR  
THE VILLAGES AT AVIANO CONDOMINIUM**

This Condominium Declaration for The Villages at Aviano Condominium is made this \_\_\_\_\_ day of August, 2004, by TOLL BROTHERS AZ CONSTRUCTION COMPANY, formerly known as EDMUNDS-TOLL CONSTRUCTION COMPANY, an Arizona corporation (the "Declarant").

**ARTICLE 1**

**DEFINITIONS**

As used in this Declaration, the terms defined in this Article shall have meanings specified in this Article. Capitalized terms used in this Declaration but not otherwise defined in this Declaration shall have the meanings specified for such terms in the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time.

**1.1 "Additional Property"** means the Buildings described on Exhibit B attached to this Declaration together with all Improvements and all easements, rights and appurtenances related thereto.

**1.2 "Articles"** means the Articles of Incorporation of the Association, as amended from time to time.

Unofficial Document

**1.3 "Assessments"** means the Regular Assessments, Special Assessments, Individual Expense Assessments, Enforcement Assessments and User Fee Assessments levied pursuant to Article 7.

**1.4 "Assessment Lien"** means the lien granted to the Association by the Condominium Act to secure the payment of Assessments, monetary penalties and other fees and charges owed to the Association.

**1.5 "Association"** means The Villages At Aviano Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

**1.6 "Aviano"** means the master planned development commonly known as Aviano which is a part of the Desert Ridge master planned development.

**1.7 "Aviano Association"** means the Aviano Community Association, an Arizona nonprofit corporation, its successors and assigns, organized pursuant to the provisions of the Aviano Declaration.

**1.8 "Aviano Declaration"** means the Declaration of Covenants, Conditions, and Restrictions for Aviano Recorded at Recording No. 2003-1183982, as amended from time to time.

**1.9 "Aviano Use and Expense Sharing Agreement"** means that certain Use Easement and Expense Sharing Agreement of even date with this Declaration (and Recorded immediately following this Declaration), among Declarant, the Association and the Aviano Association, whereby in consideration of the Association paying a use fee to the Aviano Association, the Aviano Association has granted to Owners, Lessees and their Invitees the right to use the Aviano Recreational Facilities.

**1.10 "Balcony" or "Deck"** means a portion of the Common Elements designated as a deck or balcony on the Plat.

**1.11 "Board of Directors" or "Board"** means the Board of Directors of the Association.

**1.12 "Building"** means each of the buildings located on the Parcel and containing Units as shown on the Plat.

**1.13 "Bylaws"** means the Bylaws of the Association, as amended from time to time.

**1.14 "City"** means the City of Phoenix, an Arizona municipal corporation.

Unofficial Document  
**1.15 "Collection Costs"** means all costs, fees, charges and expenditures (including, without limitation, attorneys' fees, court costs, filing fees and recording fees) incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, interest or other amounts payable to the Association pursuant to this Declaration.

**1.16 "Common Elements"** means all portions of the Condominium other than the Units.

**1.17 "Common Expense Liability"** means the percentage of undivided interests in the Common Expenses allocated to each Unit by Section 2.6.

**1.18 "Common Expenses"** means the actual or estimated costs or expenses incurred or to be incurred by the Association or financial liabilities of the Association including, without limitation, the following:

(a) the cost of inspection, maintenance, management, operation, repair and replacement of the Common Elements and all other areas within the Condominium which are maintained by the Association;

(b) the cost of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

(c) the cost of any utilities, cable television, landscaping, and other services benefiting the Unit Owners and their Units to the extent such services are paid for by the Association;

(d) the cost of fire, casualty, liability, worker's compensation and other insurance maintained by the Association as provided in this Declaration;

(e) reasonable reserves as deemed appropriate by the Board or required by the Condominium Documents;

(f) the cost of bonding of the directors, officers and employees of the Association, any professional managing agent or any other person handling the funds of the Association;

(g) taxes paid by the Association;

(h) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Elements or portions thereof;

(i) amounts payable by the Association to the Aviano Association pursuant to the Aviano Use and Expense Sharing Agreement; and

(j) the cost of any other ~~item~~ <sup>or items</sup> designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in furtherance of the purposes or the discharge of the obligations imposed on the Association by the Condominium Documents.

**1.19 "Condominium"** means the Parcel, together with Buildings 1 through 28, and any part of the Additional Property which is annexed by Declarant pursuant to Section 2.11, together with all Improvements located thereon. The Condominium will consist of three hundred ninety two (392) Units if all Additional Property is annexed to the Condominium.

**1.20 "Condominium Act"** means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time, or any successor statute which governs the creation and management of condominiums.

**1.21 "Condominium Documents"** means this Declaration and the Articles, Bylaws, and Rules.

**1.22 "Contract for Sale"** means a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, et seq.

**1.23 "Declarant"** means Toll Brothers AZ Construction Company, an Arizona corporation, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

**1.24 "Declaration"** means this Condominium Declaration for The Villages At Aviano Condominium, as amended from time to time.

**1.25 "Development Rights"** means any right or combination of rights to do any of the following:

(a) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;

(b) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(c) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner;

(d) Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

Unofficial Document

**1.26 "Driveway" or "Motor Court"** means each driveway or motor court area (paved or with other improved surface) leading from a main access street within the Parcel to one or more of the Garages.

**1.27 "Enforcement Assessment"** means an assessment levied pursuant to Section 7.6.

**1.28 "Eligible Insurer or Guarantor"** means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 12.1.

**1.29 "Eligible Mortgage Holder"** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 12.1.

**1.30 "First Mortgage"** means any mortgage, deed of trust or Contract for Sale on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

**1.31 "First Mortgagee"** means the holder of any First Mortgage or the seller in the case of a Contract for Sale.

**1.32 "Garage"** means each portion of a Unit located on the first floor of a Unit and intended for the parking of one or more motor vehicle(s).

**1.33 "Improvement"** means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, buildings, private drives, paving, fences, walls, fountains, sculptures, signs, hedges, plants, trees and shrubs of every type and kind.

**1.34 "Individual Expense Assessment"** means an assessment levied by the Association pursuant to Section 7.5.

**1.35 "Invitee"** means any person whose presence within the Condominium is approved by or is at the request of a particular Owner, Lessee or Occupant, including, without limitation, family members, guests, employees and contractors.

**1.36 "Lessee"** means any Person who is the tenant or lessee under a written lease of a Unit.

**1.37 "Limited Common Elements"** means a portion of the Common Elements specifically designated on the Plat or in this Declaration as a Limited Common Element and allocated by this Declaration or by operation of the Condominium Act for the exclusive use of one or more but fewer than all of the Units.

**1.38 "Manager"** shall mean the Person (including any management company) employed by the Association for the management of the Condominium in accordance with this Declaration.

**1.39 "Master Association"** means Unofficial Document Desert Ridge Community Association, an Arizona nonprofit corporation, its successor and assigns organized pursuant to the provisions of the Master Declaration.

**1.40 "Master Association Documents"** means the Master Declaration and the Articles, Bylaws, Association Rules and Design Guidelines (as such terms are defined in the Master Declaration), as amended from time to time.

**1.41 "Master Declaration"** means the Declaration of Covenants, Conditions, Restrictions, and Easements for Desert Ridge Recorded on February 7, 1994 at Recording No. 94-0106341, as amended from time to time.

**1.42 "Member"** means a Person who is or becomes a member of the Association.

**1.43 "Occupant"** means a person, other than an Owner, in possession of a Unit at the request of or with the consent of the Owner.

**1.44 "Owner" or "Unit Owner"** means: (a) the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit; (b) a purchaser under a Contract for Sale; (c) in the case of a Unit subject to a Recorded option, the optionor; (d) in the case of a Unit the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the trustor;