

Barbara
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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

HACIENDA REAL

THIS DECLARATION, made on the date hereinafter set forth by HACIENDA REAL, an Arizona joint venture, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in Phoenix, County of Maricopa, State of Arizona, which is more particularly described as Hacienda Real, a planned area development of a portion of the East half of Section 23, Township 3 North, Range 2 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as Lot 17, Lake Biltmore Village as recorded in Book 166, page 4, Records of Maricopa County, Arizona.

NOW, THEREFORE, Declarant hereby declares that the property described above, together with any properties hereafter added or annexed as provided herein, shall be acquired, held, sold and conveyed subject to the provisions of this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having or hereafter acquiring any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Articles" shall mean the Articles of Incorporation of the Association which are or shall be filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 2. "Association" shall mean HACIENDA REAL HOMEOWNERS ASSOCIATION, an Arizona non profit corporation formed or to be formed, its successors and assigns. .

Section 3. "Board of Directors" shall mean the governing body of the Association, elected pursuant to the By-Laws.

Section 4. "Building" shall mean all structures erected or to be erected upon the lots as a dwelling unit.

Section 5. "By-Laws" shall mean the By-Laws of the Association, as such By-Laws may be amended from time to time.

Section 6. "Common Areas" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association are described as Tracts A through H, according to that certain plat, of Hacienda Real, a planned area development, as shown in Book 217 of Maps, page 19, records of Maricopa County, Arizona.

Section 7. "Declarant" shall mean HACIENDA REAL, an Arizona joint venture, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Lots" shall mean the eighty (80) separately numbered plats of land shown upon the recorded map of Hacienda Real, previously referenced herein, with the exception of the Common Areas.

Section 9. "Mortgage" shall mean any instrument given as security for the performance of an obligation, including without limitation deeds of trust. "Mortgagee" shall mean a party secured by such an instrument; and "Mortgagor" shall mean the party executing such instrument as security. "First Mortgage" shall mean a recorded

Mortgage, taken by the Mortgagee in good faith and for value which is the first and most senior of all Mortgages upon the same property.

Section 10. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lots which are a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case of Lots the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor.

Section 11. "Property" shall mean all that certain real property hereinbefore described, and such additions thereto as may be brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREA

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a. Charges. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas;

b. Suspension of Voting Rights. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

c. Dedicate or Transfer. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

d. Easements and Prior Recorded Instruments. Any and all easements reserved or created herein and any and all prior recorded instruments;

*e. Rules and Regulations. The right and power of the Association to promulgate reasonable and uniformly applicable Rules and Regulations governing the use of and conduct upon the Common Areas;

f. Parking. The right of individual owners to the non-exclusive use of any parking areas which are located adjacent to said owners lot.

Section 2. Right of Access. Every owner shall an absolute and unrestrained right of access across the common area immediately in front of and behind his Lot in order to afford every such owner the rights of ingress and egress to his Lots.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the proeprty.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Associa-

tion. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

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

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership attributable to the Initial Property shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership attributable to the Initial Property equal the total votes outstanding in the Class B membership attributable to the Initial Property plus one (1);
- (b) on June 1, 1982, or
- (c) at such time as Declarant, by a recorded declaration, expressly and voluntarily relinquishes such membership.

The Class B membership attributable to each addition to the Initial Property as may hereafter be brought within the jurisdiction of the Association shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership attributable to such addition equal the total votes outstanding in the Class B membership attributable to such addition plus one (1); or
- (b) at the expiration of three (3) years from the date of such addition or June 1, 1982, whichever occurs later; or
- (c) at such time as Declarant, by a recorded declaration, expressly and voluntarily relinquishes such membership.

ARTICLE IV

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. --The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be and remain the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for such delinquent assessments shall not pass to his successors in title unless expressly assumed by them, and irrespective of any such assumption the preceding Owner shall remain liable to the Association therefor.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property, and for the improvement and maintenance of the Common Area, and of the buildings situated upon and the grounds comprising the Property.

Section 3. Maximum Annual Assessment. The maximum annual assessment for each Lot shall be as follows:

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment per Lot shall be Thirty-Nine Dollars (\$39.00) per month.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may (be increased each year not more than fifty percent (50%) above the maximum assessment for the previous year without a vote of the membership.)

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above fifty percent (50%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

The Board of Directors may fix the annual assessment at an amount less than or equal to, but not in excess of, the maximum. In addition, the Board of Directors may from time to time during the year amend the annual assessment by increasing or decreasing same, provided, however, that no such increase shall cause the annual assessment to exceed the authorized maximum for the year or cause the amount payable in any given month to exceed the authorized maximum divided by twelve.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for that purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another such meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Except as provided herein elsewhere, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots at such time as is

specified by the Board of Directors. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot, or any increase or decrease thereof, at least thirty (30) days in advance of the effective date thereof. Written notice of the annual assessment or any increase or decrease therein shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of Twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages and Deeds of Trust. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust obtained in good faith and for value. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or first deed of trust (including without limitation the exercise by the trustee of a power of sale thereunder), or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior

to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties owned by Declarant, dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Arizona shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V

EXTERIOR MAINTENANCE

Section 1. By Association. In addition to maintenance upon the Common Areas, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: Paint, repair, replace and care for gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, fences, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

Section 2. Necessitated by Owner. In the event that the need for maintenance or repair is caused through the ~~/~~willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

Section 3. By Owner. In addition to all maintenance required by owners pursuant to Article VI hereof, each owner shall also be responsible, and shall provide exterior maintenance to the roofs on his or her own dwelling unit.

ARTICLE VI

INTERIOR AND OTHER MAINTENANCE

Section 1. Interior and Patios. Each owner shall
* be responsible for the upkeep and maintenance of the interior of his dwelling, individual patios, and all other parts of his Lot not maintained by the Association.

Section 2. Fixtures and Equipment. All fixtures and
* equipment installed within a dwelling unit, commencing at a point where the utility lines, pipes, wire, conduits or systems enter the exterior walls of the dwelling unit, shall be maintained and kept in repair by the Owner thereof.

Section 3. Termite Control. Termite control shall
/ be the responsibility of the Owner.

ARTICLE VII

DAMAGE OR DESTRUCTION OF PROPERTY

Section 1. Common Areas. In the event any part of the Common Areas are damaged or destroyed by the willful or negligent act or omission of an Owner or any of his guests, invitees or members of his family, such Owner does hereby irrevocably authorize the Association to repair said damaged element in a good workmanlike manner in substantial conformity with the original plans and specifications. The Owner shall then repay the Association the amount actually expended for such repairs.

Section 2. Dwelling Units. In the event any dwelling unit is damaged or destroyed by the willful or negligent act or omission of an Owner or any of his guests, invitees or members of his family, such Owner shall, within sixty (60) days from the date of the occurrence of the damage or destruction, enter into a binding bona fide contract for the repair and rebuilding the exterior of said dwelling unit and any damage to adjacent dwelling units or property in a good workmanlike manner in conformity with the original plans and specifications used in the construction of said dwelling units. In the event

In the event such Owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the dwelling unit and adjacent property within a reasonable time, not to exceed six (6) months from the date of the occurrence of the damage or destruction, the Association by and through its Board of Directors, is hereby irrevocably authorized by such Owner to repair and rebuild any such dwelling unit and/or adjacent property in a good workmanlike manner in conformity with the original plans and specifications of the dwelling units. The Owner shall then repay the Association the amount actually expended for such repairs.

Section 3. Lien and Collection. Each Owner further agrees that charges for repairs made pursuant to this Article, together with interest, costs and reasonable attorneys fees, shall be secured by a lien of the Association upon said Owner's Lot until fully paid. Said lien, in the same manner and to the same extent as the assessment lien, shall be subordinate to any First Mortgage on the subject Lot. *Said charges shall bear interest from the date of expenditure at the rate of Twelve percent (12%) per annum. * The Amount of principal and interest owed by said Owner to the Association shall be a debt, and together with the Association's costs and reasonable attorneys fees, shall be collectible by any lawful procedure allowed by the laws of the State of Arizona. Each Owner, by his acceptance of a deed to a Lot, hereby expressly agrees to pay all such charges and vests in the Association or its agent the right and power to bring all actions against such Owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such Owner hereby expressly grants to the Association a power of sale in connection with said lien.

Section 4. Insurance Company Liability. Nothing contained in this Article shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

Section 5. Resolution of Disputes. In the event of a dispute between an Owner and the Board of Directors with respect to the cause of damage, the extent of repairs necessitated, the cost thereof, or any other matters under this Article, then upon written request of the Owner addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by the Board of Directors, one chosen by the Owner; and these two arbitrators shall then choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then the choice shall be made by any Judge of the Superior Court of Maricopa County, Arizona. A determination by any two of the three arbitrators shall be binding upon the Owner and the Association, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then a Judge of the Superior Court in Maricopa County, Arizona, shall have the right and power to choose such arbitrator.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall or fence which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall,

and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Damage or Destruction. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions or under the provisions of this Declaration. Notwithstanding anything herein elsewhere provided, in the event any party wall is damaged or destroyed through the willful or negligent act or omission of an Owner, or any of his guests, invitees or members of his family so as to deprive an adjacent Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild, repair and restore the same to as good condition as formerly at their joint expense.

Section 4. Protection from Elements. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act or omission causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner un-

der this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Modification of Party Wall. No Owner shall modify, extend or alter any party wall without first obtaining the written consent of the adjacent Owner, which consent shall be in addition to all other approvals required under this Declaration or by law.

Section 7. Resolution of Disputes. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then a Judge of the Superior Court in Maricopa County, Arizona, shall have the right and power to choose such arbitrator.

ARTICLE IX

ARCHITECTURAL CONTROL

Section 1. General. No building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition, change or alteration be made thereto or therein, and no

additions to, changes in, or alterations of landscaping, grade or drainage shall be made, until the plans and specifications showing the nature, kind, color, shape, height, materials, location and other material attributes of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Committee. Until the happening of an event under Article III of this Declaration which causes a turnover from Declarant to the Owner, the Declarant shall have the sole and absolute right to appoint members of the architectural committee.

ARTICLE X

USE RESTRICTIONS

Section 1. General Use and Building Restrictions.

All Lots are hereby restricted to residential dwellings for residential use. All buildings or structures erected upon any Lot shall be of new construction and no buildings or structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 2. Pets. No animals, livestock or poultry of any kind, except dogs, cats or other household pets shall be raised, bred or kept on any Lot.

Section 3. Signs; Unsightly Objects; Nuisances.

No signs (except one "for rent" or "for sale" sign per Lot of not more than five square feet), billboards, unsightly objects, or nuisances shall be erected, placed, maintained or permitted to remain on any Lot, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. No Owner shall do or suffer any act or condition upon his Lot which materially impairs any easement or right of, or otherwise materially and adversely affects, the Owners or residents of other Lots.

Section 4. Outside Equipment; Storage; Trash Removal.

All clothes lines, equipment, garbage cans (except for purpose of garbage collection), service yards, wood-piles, or storage piles on any Lot shall be kept within * enclosed patios. All rubbish, trash or garbage shall be regularly removed from each Lot, and shall not be allowed to accumulate thereon.* All clotheslines shall be confined to patio areas.

Section 5. Landscaping and Fencing.

No planting, gardening or landscaping shall be done, and no fences, hedges, screens, or walls shall be erected or maintained outside of the patios upon any Lot except in accordance with the initial construction thereon or in accordance with the architectural control provisions of this Declaration.

Section 6. Common Areas.

The Common Areas shall remain undivided, and shall at all times be owned by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area.

Section 7. Antennas.

Without prior written approval

val and the authorization of the Board of Directors, no exterior television, radio or other antennas of any sort shall be placed, allowed or maintained upon any portion of the Property.

Section 8. Builder's Exemption. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant, its agents, assigns, brokers, salesmen and contractors of the buildings, structures and improvements to maintain during the period of construction and sale thereof, such facilities and to conduct such activities on the Property as in the sole opinion of said Declarant may be reasonably required, convenient or incidental to the development and sale of Lots upon the Property, including without limitation, a business office, storage area, construction yards, signs, billboards, model units and sales office.

ARTICLE XI

EASEMENTS

Section 1. Utilities. There is hereby created a blanket easement upon, across, over and under the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utilities serving the Property, including, but not limited to, water, sewers, gas, telephones and electricity, and any master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing company to erect and maintain the necessary underground equipment on said property, and to affix and maintain wires, circuits and conduits on, in, or under the roofs and exterior walls of the improvements on the Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated except as initially programmed, approved or

marketed by Declarant. This easement shall in no way affect any other recorded easements on said premises.

Section 2. Encroachments. Each Lot and the Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed, constructed or maintained by Declarant. A valid easement for said encroachments and for the maintenance of same, so long as they remain, or for the repair or restoration thereof, shall and does exist. In the event a structure is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Notwithstanding any provision herein to the contrary, any encroachment permitted herein shall not exceed five (5) feet.

X Section 3. Landscaping, Maintenance and Repair. There is hereby created a blanket easement upon, across, over and under each Lot for purpose of Association landscaping upon any portions of a Lot extending beyond the exterior building walls and enclosed patios and for purpose of Association maintenance and repair.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce any and all provisions hereof, by any proceeding at law or in equity. Failure by the Association or by any Owner to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of all or any part of any one of the provisions hereof by judgment or court order shall in no wise affect any remaining part or other provisions, which shall remain in full force and

effect.

Section 3. Term. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless cancelled, effective at the expiration of the then term, in the manner provided for amendment.

Section 4. Amendment. The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed by Owners owning not less than Sixty percent (60%) of the total ownership of the Lots described herein; provided, however, that the holders of all First Mortgages, and the beneficiaries under all first trust deeds, of record against one or more of the Lots acquired in good faith and for value shall have consented in writing to each such change, modification or rescission, provided, further, that such consent shall not be withheld unreasonably or in bad faith.

Notwithstanding the provisions of the foregoing paragraph, if any statute, this Declaration, the Articles or the By-Laws of the Association require the consent or agreement of all or a specified percentage exceeding Sixty percent (60%) of Owners and/or lienholders and/or trustees and/or beneficiaries under trust deeds, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all or such specified percentage of the Owners and/or all lienholders and trustees and/or beneficiaries under trust deeds, or both, as required by said statute or this

Declaration.

Anything to the contrary herein notwithstanding, until such time as deeds to all of the Lots shall have been delivered by Declarant to purchasers thereof, Declarant reserves the right to amend this Declaration, without the consent of the Lot owners.

Section 5. Annexation.

a. With Consent of Members. Additional residential property and Common Areas may be annexed to the Property with the consent of two-thirds (2/3) of each class of members.

b. Without Consent of Members. Additional land within the immediate area of the real property described herein may be annexed by the Declarant without consent of the members within three (3) years of the date of this instrument, provided, however, that if Federal Housing Administration or Veterans Administration approval of this project is sought and obtained by Declarant, such agency or agencies must first determine that the annexation is in accord with the general plan heretofore approved by them.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this _____ day of November, 1979.

HACIENDA REAL

CANTERBURY INVESTMENT CORP.,
an Arizona corporation

By _____
Claire Bymoen
Its _____

HURST CONSTRUCTION, INC.,
an Arizona corporation

By _____
Tim Hurst
Its _____