

PAGE 1 OF 20 (and so on and so forth)
DKT 7254 PG 1176

RICHARD J. KENNEDY, COUNTY RECORDER IN
PIMA COUNTY, AZ.

APR - 4 '84 - 3:00 P.M.

FEE \$20.00 DKT 7254 PG 1176-1195
REQ. TRANSAMERICA TITLE INS. CO.
BY:

OAKBROOK VILLAS AT MIDVALE PARK

LOTS 1 THROUGH 157

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

**OAKBROOK VILLAS AT MIDVALE PARK
LOTS 1 THROUGH 157**

This Declaration made on the date hereinafter set forth by Transamerica Title Insurance Company, a California corporation, as Trustee under Trust No. 8134, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of real property located in Pima County, Arizona and described as follows:

Lots 1 through 157 of Oakbrook Villas at Midvale Park, as shown by map on file in Book 37 of maps and Plats and Page 15, Pima County, Arizona records, being a re-subdivision of Lots 273 through 363 and 517 through 519, Oaktree II at Midvale Park as recorded in Book 36 of Maps and Plats at Page 58, Section 3, T 15 S, R 13 E, G&SRB&M, Pima County, Arizona (hereinafter "the Property"); and

WHEREAS, Declarant will hold and convey the property subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth (hereinafter "Declaration");

NOW THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, liens and charges, all of which are for the purpose of establishing a general plan for the use, protections, maintenance, improvement, development of the value, desirability and attractiveness of the property. This Declaration and every portion thereof shall run with the property and shall be binding on all parties having or acquiring the right, title or interest in the property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. “**Adjoining dwelling units**” shall mean the two dwelling units constructed on two separate contiguous lots and sharing a common wall as a part of the original construction of the units.

Section 2. “**Association**” shall mean and refer to Oakbrook Villas Homeowners Association, its successors and/or assigns.

Section 3. “**Property**” and “**Properties**” shall mean and refer to that certain real property hereinabove described.

Section 4. “**Common Area**” and “**Common Elements**” shall be synonymous and shall mean all real property owned in fee title by the Association for the common use and enjoyment of the Members of the Association and excluding all lots owned or held privately or for residential purposes. The common elements shall include all recreational facilities, swimming pool, ramada, parking area, trees, sidewalks, equipment, walls and landscaping on common area.

Section 5. “**Lot**” “**Unit**” and “**Dwelling Unit**” shall be synonymous and shall mean and refer to separately designated and legally described freehold estate of any plot of land and the improvements thereon shown as a numbered lot on the recorded subdivision plat of Oakbrook Villas, and not otherwise conveyed to the Association for common use.

Section 6. “**Plat**” shall mean the document recorded at Book ____ of Maps and Plats at Page ____ and the records of the Pima County, Arizona Recorded and designated as Oakbrook Villas at Midvale Park, being a re-subdivision of Lots 237 through 363 and 517 through 519, Oakbrook II at Midvale Park, as recorded in Book 36 of maps and Plats at Page 58, Section 3, T 15 S, R 13 E, G&SRB&M, Pima County, Arizona.

Section 7. “**Roadway**” shall mean those areas designated as roadways and streets on the plat and dedicated to the City of Tucson, Arizona for public use.

Section 8. “**Member**” shall mean and refer to every person or entity who holds membership in the Association.

Section 9. “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot, which is not designated as

common area, and which is part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligator.

Section 10. “**Declarant**” shall mean and refer to Transamerica Title Insurance Company, a California corporation, as Trustee under Trust No. 8134, its successors and/or assigns who acquire more than one undeveloped lot from Transamerica Title Insurance Company as Trustee under Trust No. 8134, for the purpose of resale, upon recording a “Notice of Appointment of Successor Declarant” executed by the existing declarant.

Section 11. “**Master Declaration**” shall mean that document entitled “Declaration of Establishment of Covenants, Conditions and Restrictions for Midvale park” recorded in Book 6590 page 8 through 19 in the records of the Pima County, Arizona Recorder, and amendments thereto.

Section 12. “**Mortgage**” shall mean any mortgage, deed of trust, or other security instrument by which a dwelling unit or any part thereof is encumbered and the term “first mortgagee” mean the holder of any mortgage under which the interest of any owner of a dwelling unit is encumbered and which mortgage has first and paramount priority, subject only to the lien of general or ad valorem taxes and assessments.

ARTICLE II

Homeowners Association

Section 1. **Association.** The affairs of the Association shall be conducted by the Oakbrook Villas Homeowners Association, a nonprofit organization. The affairs of the Association shall be governed by the Board of Directors. The Officers and Members of the Board of Directors shall not be liable to the Association or Lot owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith.

Section 2. **Right of Inspection.** The first mortgagee of any Lot in the Oakbrook Villas subdivision shall have the right at reasonable times to inspect the books and records of the Association.

Section 3. **Right to Notice.** Each first mortgagee shall, upon notice to the Association, be entitled to written notification from the Association of any default in the performance by the owner of a dwelling unit encumbered by the mortgage in favor of such mortgagee of any obligation under this Declaration or under the

Articles of Incorporation, Bylaws, Rules and Regulations of the Association which is not cured within sixty (60) days.

Section 4. Restrictions. Any provision contained in this Declaration to the contrary notwithstanding, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned or held) and two-thirds (2/3) of the dwelling unit owners (other than the Declarant, his successors and/or assigns) have given their prior written approval, the Association shall not be empowered or entitled to:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common areas or any common property owned by the Association, directly or indirectly (except that the Association shall have the right to grant easements for public utilities or for other public purposes consistent with the intended use of such common property);
- (b) change the method of determining the obligations, assessment, dues or other charges which may be levied against a dwelling unit or owner;
- (c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior maintenance of dwelling units, the maintenance of common party walks or common fences and driveways or the upkeep of lawns and planting areas of the subdivision;
- (d) fail to maintain fire and extended coverage insurance on the common areas and common property on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value (based on current replacement costs);
- (e) use hazard insurance proceeds for losses to any common areas or common property for other than the repair, replacement or reconstruction of such common property.

Section 5. Management and Service Contracts. Any agreement for professional management of the subdivision, any other contract providing for services of the Declarant shall not exceed three (3) years. Any such agreement shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

Section 6. Separate Master Association. Membership in the Oakbrook Villas Homeowners Association is separate from and in addition to membership in the Midvale Park Master Review Board, Inc., ("Master Association") which is separately required under the Master Declaration. The Oakbrook Villas Homeowners Association is a "Subsidiary Association" to the Master Association as that term is used in the Master Declaration.

ARTICLE III

Association Membership/Voting Rights

Section 1. Every owner of a lot shall be a member of the Oakbrook Villas Homeowners Association and such membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessments.

Section 2. The Association shall have two (2) classes of voting membership.

Class A: Class A members shall be all Lot owners who do not hold the Class B membership, and each Class A Member shall be entitled to one (1) vote for each Lot in which he/she holds the interest required for membership. When more than one (1) person holds the interest required for membership, all such persons shall be Members, but the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Lot.

Class B: Class B members shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds a fee interest. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever is first to occur:

- (a) One hundred twenty days following the first date when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B Members; or
- (b) On December 31, 1989.

ARTICLE IV

Property Rights

Section 1. Common Area. Declarant reserves the right to designate any Lot owned by Declarant as common area. Common area designated by Declarant shall be conveyed to the Association free and clear of all liens and encumbrances prior to the conveyance of the first Lot to an owner. Upon conveyance of any lot from Declarant to Association such lot shall be held, owned, used and maintained as common area for the common benefit of all lot owners and subject to the following right and obligations set forth below in Section 2:

Section 2. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area and such easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of members and owners;
- (b) the right of the Association to establish rules and to regulate the use of any recreational or common facility situated upon the common area;
- (c) the right of the Association, subject to the provision of Article II, Section 4, hereof, and in accordance with its Articles and Bylaws, to borrow money for the purpose of improving and maintaining the common area and facilities and in aid thereof to mortgage said property, and subordinate to the rights of the homeowners hereunder;
- (d) 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/her lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations; and
- (e) the right of the Association, subject to the provisions of Article IX, Section 4 hereof, to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purpose and on such conditions as may be agreed to by the owners. No such dedication or transfer shall be effective unless an instrument signed by owners entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than ten (10) nor more than fifty (50) days in advance.

Section 3. Delegation of Use. Any Owner may delegate in accordance with the Bylaws and rules and regulations of the Association, his right of enjoyment to the common area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

ARTICLE V

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned within the property, hereby covenants, and the owner of each lot, by acceptance of a deed therefore, 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 attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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 obligations and rights of the association created by this Declaration. The Board of Directors of the Association shall provide that Association dues, charges or assessments shall include and adequate reserve fund for maintenance, repairs and replacement of those elements of the common areas and common property owned by the Association that must be replaced on a periodic basis. All such dues, charges and assessments imposed by the Association shall be paid on a periodic basis in regular installments rather than by special assessments.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be established by the Board of Directors and shall not exceed Two Hundred Twenty Dollars (\$220.00) per Lot.

- (a) 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 five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- (b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.
- (c) Notwithstanding anything to the contrary stated herein the provisions of this Declaration regarding payment of assessments shall not apply to the Declarant or the owner of an undeveloped Lot. In consideration of the foregoing, the Declarant agrees that if during the time period commencing

upon the date hereof and ending on the date Declarant's Class B membership ceases, the total assessments collected are insufficient to meet the current operating expenses of the Association, the Declarant shall pay the deficiency. After Declarant's Class B membership ceases, Declarant shall not be required to pay a deficiency nor shall undeveloped Lots owned by Declarant be subject to an assessment.

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, and non-periodic 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 this 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 ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. 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 Monthly Assessment. The monthly assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance by the Declarant of a Lot to an individual owner.

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 eighteen percent (18%) per annum. Subject to the provisions of Article XI, Section 3, 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. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or

transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

Party Walls

Section 1. General rules of Law to Apply. Each wall which is (a) built as a part of the original construction of a dwelling unit upon a lot, and (b) placed on the dividing line between the lots, or (c) a common wall which is constructed as a part of adjoining dwelling units shall constitute a party wall, and shall be subject to the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions, to the extent such general rules of law are not inconsistent with the provisions of this Article.

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 of such use.

Section 3. Destruction by Fire or Other Casualty. 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 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 owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Structural Integrity. Notwithstanding anything contained herein to the contrary there is hereby prohibited any act or omission which shall impair the structural integrity of any party wall or party fence unless the owners of any interest therein shall have first given prior consent by way of written agreement or easement.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements or damaged thereby shall bear the whole cost of furnishing repairs and necessary protection from such damage.

Section 6. Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, and unless all parties to the dispute waive this section 7, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrators, and the decision rendered by a majority of all the arbitrators shall be binding upon all of the parties.

ARTICLE VII

Architectural Control

No improvements, including without limitations dwelling unit, building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior addition to or change or alteration of any improvement be made unless the detailed plans and specifications showing the nature, kind, shape, style, height, materials, color, and location of the same shall have been submitted to and approved in writing by the Architectural Committee or Board of Directors of the Master Association pursuant to the requirements stated in the Master Declaration.

ARTICLE VIII

Exterior Maintenance

Section 1. Landscaping. The association shall provide landscaping and landscaping maintenance on the common area. Landscaping on each lot shall be the sole responsibility and obligation of the owner of each lot. Landscaping by each owner shall be provided as follows:

- a. Within 180 days of taking title or possession of a lot each owner shall substantially complete all landscaping on his/her lot.
- b. Each lot shall be landscaped with turf, dense ground cover, native desert materials, trees, shrubs, grass, or any combination thereof.
- c. Rocks, boulders, patios, sidewalks, railroad ties and other materials may be used to supplement vegetation for landscape design so long as such materials are, in the opinion of the Architectural Review Committee, in keeping with the standard of landscaping design in the neighborhood.
- d. Each owner shall maintain his/her lot and landscaped areas, neatly trimmed and free of weeds or debris.
- e. No unclean or unsightly conditions, or other conditions which, in the opinion of the Architectural Committee, are not consistent with the standards of the neighborhood shall be allowed or maintained on any lot.
- f. If any owner fails to comply with this Article after thirty (30) days written notice of the non-compliance from the Architectural committee, the

Architectural Committee and its agents shall have the right, but not the obligation, to enter upon the lot and cause the necessary repair or remedies to cure the non-compliance. The cost of such action, as determined by the Architectural Committee, shall be a charge upon the lot, a lien against the lot, and a personal obligation of the lot owner.

Section 2. Exterior Maintenance. The Association shall be responsible for maintenance of all common elements and common areas. Each owner shall maintain the dwelling unit and all improvements on his/her lot and such maintenance shall be done to a standard, which is consistent with the standard of the neighborhood as determined by the Architectural Committee. The owners of adjoining dwelling units shall cooperate with each other for the purpose of maintenance of adjoining dwelling units constructed upon their respective lots. Such cooperation shall include, without limitation, cooperation for periodic painting of the adjoining dwelling units in a uniform color for both units. Such periodic painting of the adjoining dwelling units shall be a joint and equally shared expense of both the adjoining unit owners. Periodic maintenance shall be undertaken in a manner, which shall protect the value, desirability and attractiveness of the adjoining dwelling units. The color scheme for painting of adjoining dwelling units shall not be changed except upon written approval by the Architectural Committee.

Section 3. Roof Maintenance. Roof replacement, repair and maintenance of adjoining dwelling units shall be the joint obligation of both owners of adjoining dwelling units; however, if a portion of the roof located on a dwelling unit on one lot is damaged or destroyed by any cause, condition or circumstance and such damage is not contributed to by any act or omission by the owner of the adjoining dwelling unit owner, his agents, tenants, licensees, guests or family, such damaged portion of roof shall be immediately repaired or replaced by the owner of the lot upon which the damaged roof is located and the cost of such repair or replacement shall be the sole expense of that owner, without cost to the owner of the adjoining unit.

ARTICLE IX

Use Restrictions

Section 1. Each lot is hereby restricted to residential dwellings for single-family residential use. No structures of a temporary character, including without limitation, trailer, tent, shack, garage, barn, or other out building shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

Section 2. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its builder, successors or assigns who shall construct all or a portion of dwelling units on lots to maintain during the period of construction and sale of said dwelling units, upon such portion of the premises as such builder may choose, except those lots on which residences have been completed and the lots conveyed to individual owners, sales and development activities and such facilities as in the sole opinion of said builder may be reasonably required, convenient or incidental to the construction and sale of said dwelling units, including, but not limited to a business office, storage area, construction yards, signs, model units and sales offices.

Section 3. Dogs, cats and other household pets approved by the rules and regulations of the Association may be kept provided they are not in violation of conditions established by the rules of the Association and they are not kept, bred or maintained for commercial purposes. No other animals of any kind shall be raised, bred, or kept on any lot. All dogs must be contained on a leash and not allowed to roam the common areas.

Section 4. No unsightly condition or object, no noxious odor or nuisance shall be erected, placed, or permitted to remain on the premises. For purposes of this section the Board of Directors of the Association shall have sole authority to determine the existence of a noxious odor, nuisance or unsightly object or condition and that determination shall be binding on the owners. Nor shall the premises be used in any way or for any purpose, which may endanger the health or safety or unreasonably disturb the owner of any dwelling unit or resident. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the premises. Provided, further, however the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the builder, its agents and assigns during the construction and sale period, and of Oakbrook Homeowners Association, a nonprofit corporation incorporated or to be incorporated under the laws of the State of Arizona, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 5. All clotheslines, equipment, garbage cans, service yards, woodpiles, rubbish or storage piles shall be kept screened from view by adequate planting or fencing so as to conceal them from the view of neighboring dwelling units and streets. No rubbish, trash, or garbage shall be allowed to accumulate on any lot. The Board of Directors of the Association shall have the right to require all owners to subscribe to a trash collection service. All clotheslines shall be confined to patio areas.

Section 6. Any common area or element conveyed to the Association 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 elements.

Section 7. No exterior television antennas, radio towers, evaporative coolers, solar units, heating and cooling units shall be placed, allowed or maintained upon any portion of the property, (except as approved in the Master Declaration) without prior written approval of the Board of Directors or Architectural Committee of the Master Association pursuant to the Master Declaration.

Section 8. Boats, campers, trucks, trailers, motor homes, recreational and other vehicles shall not be placed even temporarily upon the property unless stored within the enclosed garage of the owner's unit. The requirements of this section shall not include automobiles of the owner's guests or service people, which do not remain on the premises overnight.

Section 9. No owner shall interfere with or obstruct the drainage pattern over his lot from or to any other portion of the property, as that pattern may be established by Declarant.

Section 10. No improvement, building, or structure on any lot shall be permitted to fall into disrepair. All improvements on lots shall at all times be kept in good condition and repair, including without limitation, painting, or other exterior surface. Maintenance, provided that, upon approval of the Architectural Review Committee, an owner shall have the right to demolish and rebuild a structure on the owners lot when the useful life of that structure has substantially ended.

Section 11. No fence, wall, hedge, tree, shrub, or planting or structure of any kind, which, in the opinion of the Board of Directors or the Architectural Committee, obscures or impedes sightlines at elevations of more than two (2) feet above the streets or roadways shall be placed or permitted to remain on any corner lot.

Section 12. No lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, earth of any earth substance whatsoever. No owner shall make an excavation for deposit of trash on his lot.

ARTICLE X

Easements

Section 1. There is hereby created a blanket easement upon, across, over and under the property and each lot for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones, and electricity and a master television antenna system. By virtue of this easement, it shall be expressly permissible for each individual owner or public service utility company or municipality to erect and maintain the necessary poles, house sewer connections and other necessary equipment or lines on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits or house sewer connections above, across and under the dwelling units, including the roof and exterior walls of each unit. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said premises except as initially programmed and approved by the Declarant's major builder thereafter approved by the Association's Board of Directors. This easements on shall in no way affect any other recorded easement on said premises. Each dwelling unit and the common elements shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event a dwelling unit or common element is partially or totally destroyed, and then rebuilt, the owner of all lots agree that encroachments not to exceed one (1) foot of parts of adjacent dwelling units or common elements due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 2. The rights and duties of the owners with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities shall be governed by the following:

- (a) Easements. Wherever sanitary sewer or water connections or electricity, gas, telephone or other similar lines or pipes are installed within any lot, which connections, Lines or pipes or any portion thereof, lie in or upon lot owned by other than the owner of the lot served by said connections, lines or pipes, the owners of any lot served by said connections, lines or pipes shall have the right, and are hereby granted an easement to the full extent necessary therefore, at reasonably hours and after reasonable notice, to enter upon the lot within or upon which said connections, lines or pipes, or portion thereof, lie, to repair, replace and generally maintain said connections, lines and pipes, and when the same may be necessary, but any such owner entering another's lot shall restore that lot and improvements thereon disturbed by such work.
- (b) Common Connections, Lines, or Pipes. Wherever sanitary sewer or water connections, or electricity, gas or telephone lines or pipes, or similar lines or

pipes are installed within any lot, which connections serve more than one lot, the owner of each lot served by said connections, lines and pipes, shall be entitled to the full use and enjoyment of such portions of said connections, lines and pipes, as service his lot.

- (c) Arbitration. In the event of a dispute between owners which relates to the repair or rebuilding of said connections, lines or pipes, or with respect to the sharing of the cost thereof, then each disputing owner shall choose an arbitrator and such arbitrators (and if they are an even number the arbitrators shall mutually agree one additional arbitrator), and the dispute shall be submitted to said arbitrators for final determination of the dispute as to all parties. The owners agree to abide by the decision of the majority of the arbitrators, which decision shall be final.

ARTICLE XI

General Provisions

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 3. Revocation and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

This Declaration shall not be revoked unless the owners of two-thirds of all lots and all first mortgagees consent and agree to such revocation by written instruments duly recorded. This Declaration shall not be amended, except as otherwise herein

provided, unless the owners of two-thirds of the lots and all first mortgagees consent and agree to such amendment by written instruments duly recorded. Any amendment to this Declaration may also be evidenced by a recorded certificate of the Secretary of the Association certifying that, at a meeting of the owners duly called two-thirds of the owners of all lots consented to such amendment, and that all first mortgagees have given written consent to such amendment, and that copies of such written consents are in the corporate records of the Association.

Notwithstanding the foregoing amendment procedure, Declarant expressly reserves the right to amend this Declaration or any portion thereof, subject to the consent of all first mortgagees at any time prior to the expiration of Declarant's Class B membership.

Section 4. First Mortgagees' Rights. First mortgagees are hereby granted the right to jointly or singly pay taxes or other charges which are in default and which may or have become a charge against any common areas or other common property owned by the Association, and such first mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common areas or common property and any first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association, or a taking of common areas or other common property owned by the Association.

Section 5. Interpretation. So long as the Federal Home Loan Mortgage Corporation shall be the holder of any first mortgage, this Declaration shall be interpreted in conformity with all rules, regulations and requirements of the Federal Home Loan Mortgage Corporation applicable to conventional mortgages, in effect as of the day of this Declaration, or as hereafter amended, and any provision hereof which is inconsistent therewith shall be deemed to be modified to conform thereto. If there is any conflict among or between this Declaration, the Articles of Incorporation or between this Association, the By-Laws of the Association, or the Rules and Regulations of the Association, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to such Articles of Incorporation, then to such By-Laws, and then such Rules and Regulations.

ARTICLE XII

Insurance Requirements

Section 1. Comprehensive General Liability and Property Insurance. Comprehensive general liability and property damage insurance covering all common area shall be purchased by the Association and shall be maintained in full force and effect at all times. Such insurance policy or policies shall contain a "severability of interest" clause or endorsement, which shall preclude the insurer from denying the claim of a dwelling unit or owner because of negligent act of the Association or of other dwelling unit owners. Coverage shall be for at least One Million Dollars (1,000,000.00) per occurrence of personal injury and / or property damage.

Section 2. Other Insurance. The Association shall purchase and maintain in force fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is, in no event, less than 1 ½ times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 4th day of April 1884.

TRANSAMERICA TITLE INSURANCE COMPANY,
a California corporation, as Trustee under
Trust No 8134 and not otherwise.

By: See Original Document for Signatures

Philip R. Carnie, Assistant Secretary

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, by Phillip R. Carnie, Assistant Secretary this 4th day of April 1984.

See Original Document for Signatures

Notary Public

My Commission Expires: July 12th, 1987.