

200.001.005.A8902

WHEN RECORDED, RETURN TO:

Streich, Lang, Weeks & Cardon
A Professional Association
100 West Washington, Suite 2100
Phoenix, Arizona 85003
Attn: Anne M. Hanyak, Esq.

PROP RSTR (RS)

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA			
MAY 3 '89 - 8 00 - 4			
HELEN PURCELL, County Recorder			
FEE	20.00	PGS	16 TB

89 203413

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR COUNTRY PLACE AT CHANDLER

THIS DECLARATION, made on the date hereinafter set forth by WESTERN SAVINGS AND LOAN ASSOCIATION, an Arizona corporation, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property situated within the County of Maricopa, State of Arizona, which is more particularly described as COUNTRY PLACE AT CHANDLER, according to the Plat thereof, recorded in Book 331 of Maps at Page 18, Office of the County Recorder of Maricopa County, Arizona (hereinafter referred to as the "Plat").

NOW, THEREFORE, Declarant, desiring to establish a general plan for the improvement, development, use and enjoyment of the Development (as defined below) hereby declares that the Development shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Country Place at Chandler Association, an Arizona nonprofit corporation, its successors and assigns.

Section 2. "Board" shall mean and refer to the Board of Directors of the Association.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) in any Lot which is a part of the

R
OR
CO

200.001.005.A8902

89 203413

Development, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Development" shall mean and refer to the real property described in the Plat, and such additions thereto as may hereafter be brought within the jurisdiction of the Association and become subject to this Declaration.

Section 5. "Common Area" shall mean the real property which is more particularly described as Tract A and Tract B on the Plat.

Section 6. "Lot" shall mean and refer to the separately designated lots on the Plat numbered 1 through 172, inclusive, together with any and all improvements thereon.

Section 7. "Declarant" shall mean and refer to Western Savings and Loan Association, an Arizona corporation, or any entity to which all or any part of the rights reserved hereunder to Declarant are assigned. The Declarant's rights hereunder shall only be assigned by a written, recorded instrument expressly assigning those rights.

Section 8. "Plat" shall mean and refer to the Plat defined above in the second paragraph of the Witnesseth section of this Declaration, as amended.

Unofficial Document

Section 9. "Unit" shall mean and refer to a residential living unit constructed upon a Lot, without limiting or restricting the definition of Lot referred to in Section 5 above, which also may include any improvements on a Lot.

Section 10. "Mortgage" shall mean a realty mortgage and includes deeds of trust; "Mortgagee" includes a beneficiary under a deed of trust; "Mortgagor" includes a trustor under a deed of trust; and "foreclosure" includes a trustee's sale proceeding pursuant to a deed of trust.

ARTICLE II

USE RESTRICTIONS

Section 1. Residential Use. Each Lot shall be used only for single family residential purposes and no more than one single family residence shall be constructed on any Lot.

Section 2. Temporary Structures. No structures of a temporary character shall be permitted on the Development, and no trailers (except those permitted to be parked pursuant to Section 17 of this Article), tents, shacks or barns shall be permitted on the Development, either temporarily or permanently.

Section 3. Business or Offensive Activities. No noxious or offensive activity may be carried on or permitted on any part of the Development, and nothing shall be done thereon which may be or become an annoyance or nuisance to the other Owners. No part of the Development may

200.001.005.A8902

89 203413

be used for business, professional, commercial, rest home (including but not limited to care or treatment of the physically or mentally sick or disabled), religious or institutional purposes. This Section does not apply to the activities of the Association in furtherance of its powers and purposes as set forth in this Declaration.

Section 4. Signs. No sign of any nature whatsoever shall be displayed or placed upon any Lot. No "For Sale" or "For Rent" signs of any nature whatsoever shall be permitted on any part of the Development, and no other signs shall be permitted on any of the Common Area without the prior written consent of the Board.

Section 5. Outside Lighting. Except as may be initially installed by Declarant, no spotlights, floodlights or similar type of high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or upon the Common Area or any part thereof without the written consent of the Board.

Section 6. Animals, Pets. Only two dogs, cats or other small household pets may be kept on a lot without Board approval, provided that such household pets are not kept, bred or maintained for any commercial purposes. Except as stated above, no other animals or birds of any kind shall be raised, bred or kept on the Development or any part thereof without the prior written approval of the Board. Pets shall not be allowed loose or unsupervised on any part of the Development and walking of pets shall be allowed only on such portions of the Property as the Board may prescribe by its rules and regulations.

Section 7. Trucks, Boats, Cycles, Campers. Except for trucks, vans or trailers belonging to persons doing work on the Development during daylight hours (or at other times during emergencies), no buses, trailers, boats, antique cars, campers, motorcycles and similar type vehicles or equipment shall be kept or parked in the streets or driveways (or any other place except as hereinafter stated) and any such equipment or vehicles shall be kept or parked only in such areas as the Board may specifically prescribe in writing by its rules and regulations. No truck, bus, van, trailer, boat, antique car, camper, motorcycle, passenger car, station wagon or similar type vehicle or equipment shall be stored either permanently or temporarily on the Development, whether on blocks or otherwise, which is inoperable and/or in a state of disrepair, or which is in various stages of construction, repair, reconstruction, modification, or rebuilding with respect to the vehicle or any part thereof, including without limitation, engines, frames, bodies, and other parts and accessories. If the Board determines that any vehicle (including but not limited to a motorbike or motorcycle) is creating loud or annoying noises by virtue of its operation within the Property, such determination shall be conclusive and final that the operation of such vehicle is a nuisance and said operation, upon notice by the Board to the owner or operator thereof, shall be prohibited within the Development. Subject to the above restrictions, all vehicles must be operated in the Development by licensed operators.

200.001.005.A8902

89 203413

Section 8. Windows and Awnings. No reflective materials, including but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items shall be permitted to be installed or placed on the outside or inside of any windows or any other part of a Lot which can be seen from the outside of the Development or from other portions of the Development. Further, no metal or rigid plastic awnings of any nature whatsoever shall be permitted to be placed or installed on or attached to the outside of any of the Units, or elsewhere on a Lot, except those initially installed by Declarant.

Section 9. Screening, Areas, Fences. All screening areas and fences, hedges and walls shall be maintained upon the Development in accordance with their original construction or installation.

Section 10. Underground Utilities. All electric, gas, power, telephone, water and other service and utility lines, pipes and/or other structures and media for transmission thereof shall be placed and maintained underground, except above-ground service pedestals and switch cabinets, and except to the extent (if any) such underground placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by Declarant or as may be otherwise approved in writing by the Board.

Section 11. Antennas. No radio, television and other antennas of any kind or nature shall be placed and maintained upon any Lot or the Development or any part thereof (or the improvements located thereon) unless approved in writing by the Board.

Section 12. Leasing. No Owner shall lease less than the entire Unit. All leases must be in writing ^{Unofficial Document} and must be for a period of not less than thirty (30) days, shall be and must specifically provide that they are subject to the provisions of this Declaration and must provide that failure to comply with this Declaration constitutes a default under any such lease.

Section 13. Subdividing. None of the Lots shall be resubdivided into smaller lots or conveyed or encumbered in less than the full original dimensions as shown on the Plat of the Development.

Section 14. Walls. The walls of any buildings or improvements and fences constructed on any Lot shall not exceed the height of the original construction unless approved in writing by the Board. Setback lines shall be maintained in accordance with the original construction on each Lot unless otherwise permitted by written approval of the Board.

Section 15. Maintenance and Trash Removal. Owners shall regularly maintain their Lots. Such maintenance shall include the painting, repair and replacement of roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and shall also include the care of all landscaping on the Lots, in such a manner that the appearance of the Development shall at all times be that of a first-class residential community. The colors of all exterior walls shall be similar to those used on exterior walls in the Development as part of the original

200.001.005.A8902

89 203413

construction. An Owner shall do no act nor work which will impair the structural soundness or integrity of the Development, nor allow any condition to exist which will adversely affect the other Units, Lots or Owners. Owners shall keep their Lots free of all weeds, trash, garbage and other rubbish. Rubbish, trash and garbage shall not be burned or allowed to accumulate on any Lot, nor shall incinerators be permitted on any Lot. All trash, garbage or other waste shall be kept in closed, sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and screened from public view, including surrounding Lots.

Section 16. Declarant Exempt. Notwithstanding anything contained herein to the contrary or otherwise, none of the use restrictions contained in this Article II or any other restriction contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, or its employees, agents and subcontractors or parties designated by it in connection with the construction, completion, sale or leasing of the Units and Lots.

ARTICLE III

COMMON AREA

Section 1. Use of Common Areas. The Common Area shall be used solely for landscaping and drainage retention areas.

Subject to the rights granted in Article IV, Section 3, the Association shall have the right to restrict access to the Common Area. The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by at least sixty-seven percent (67%) of Members has been recorded.

ARTICLE IV

EASEMENTS

Section 1. Blanket Easement for Utilities. There is hereby created a blanket easement upon, across, over and under the Development for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephones, cable television and electricity. By virtue of said easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary facilities and equipment on the Development and to affix and maintain wires, circuits, conduits and related facilities and equipment on, above, across and under the roofs and exterior walls of the Units. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines, or other facilities for utilities be installed or relocated on the Development except as initially created, programmed and approved by Declarant or thereafter created or approved by Declarant or

200.001.005.A8902

89 203413

the Association. This provision shall in no way affect any other recorded easements on the Development.

Section 2. Encroachments. Each Lot, Unit and the Common Area shall be subject to an easement for encroachments, including but not limited to encroachments of patios, balconies, ledges, roofs, walls, fences, driveways and trellises, created by construction, settling and overhangs, as designed or constructed by Declarant or its nominee. In the event any Unit or any structure is partially or totally destroyed and then rebuilt, the Owners of Units agree that similar encroachments of parts of the adjacent Units or Common Area due to construction, settling and overhangs shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 3. Common Area Easements. There is hereby created a blanket easement upon and across the Common Area in favor of (1) each Owner and his tenants, guests and invitees for the sole purpose of providing ingress and egress to the lot owned by said Owner, to the extent such is absolutely necessary, (2) the Association and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Area, and (3) the Declarant and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Area and for any activities related to the promotion and sale of any of the Lots.

Section 4. Interference. Except as may be constructed by Declarant or its nominee or as specifically allowed by this Declaration and the Plat, no building or other structure shall be placed or erected on any easements nor interference made with the free use thereof for the purposes intended.

ARTICLE V

ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Purpose. The Association shall be a nonprofit corporation organized under and by virtue of the laws of the State of Arizona for the general welfare and benefit of the property Owners in the Development. The Association, through its Members and Board, shall take the appropriate action to manage and maintain, repair, replace and improve the Common Area together with improvements located thereon, if any, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration, all in accordance with this Declaration and with the Association's Articles of Incorporation and Bylaws.

Section 2. Membership. Membership in the Association shall be limited to the Owners of Lots as hereinabove defined, and such membership shall be subject to all the provisions of this Declaration and to the Association's Articles of Incorporation and Bylaws. An Owner of a Lot shall automatically, upon becoming the Owner of a Lot, be a Member of the Association (a "Member"). An Owner shall remain a Member of the Association until such time as his ownership for any reason ceases, at

200.001.005.A8902

89 203413

which time his membership in the Association automatically shall cease. Ownership of a Lot shall be the sole qualification and criterion for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. A membership in the Association shall not be transferred, pledged or alienated in any way except by the sale of such Lot and then only to such purchaser who shall automatically become a member of the Association after such conveyance, or by intestate succession, testamentary disposition, foreclosure of a Mortgage or Deed of Trust of record, or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. At the discretion of the Board, no certificates of membership need be issued, and if certificates are not issued, membership shall be evidenced by an official list of Members kept by the Secretary of the Association.

Section 3. Voting Rights. The Association shall have two (2) classes of voting memberships:

Class A. Class A members shall be all Owners, with the exception of the Declarant (until Declarant's Class B memberships convert to Class A memberships as provided below), and shall be entitled to one vote for each Lot owned. In the event any such Lot is owned by two (2) or more persons, the membership as to such Lot shall be joint, and a single membership for such Lot shall belong to all Owners, and they shall designate to the Association in writing one of their number who shall have the power to vote said membership, and in the absence of such designation, and until such designation is made, the Board shall make such designation. 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 shall cease and be converted to Class A membership on the first to occur of the following events:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) three years following the conveyance of the first Lot to an Owner by Declarant, or

(c) the date Declarant notifies the Board in writing that Declarant is terminating its Class B memberships.

200.001.005.A8902

89 203413

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for 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 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 attorneys' 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 such owner's successor in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the general benefit, recreation, health, safety and welfare of the residents in the Development. Such purposes shall include, but shall not be limited to, and the Association's rights and powers shall include (in addition to the rights and powers set forth in this Declaration and in the Association's Articles of Incorporation and Bylaws) provision for the improvement, construction, repair, ^{Unofficial Document} maintenance, care, upkeep and management of the Common Area and the improvements and facilities thereon, if any; and further, shall include the payment of charges and assessments, if any, which may be assessed against and levied upon any property owned by the Association, and all premiums for hazard and public liability insurance, together with all other costs and expenses related to the management and maintenance of the Common Area.

Section 3. Basis of Assessments. The Board, subject to the provisions of this Article, shall determine and establish a budget and make assessments upon the Owners of Lots on the basis of costs and expenses incurred or estimated to be incurred by the Association. The Owner of each Lot for said Owner and for said Owner's heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees that each lot shall be subject to an assessment in an amount to be determined, which amount shall be the said Lot's pro rata share of the following:

- (a) The actual cost to the Association of all taxes and improvement assessments (if any), water, utilities, insurance, repairs, construction, replacement and maintenance of Common Area and the improvements and facilities located thereon, if any, and all other charges necessary or appropriate to carry out the purposes of the Association as set forth in this Declaration, the Articles of Incorporation

200.001.005.A8902

89 203413

and Bylaws of the Association, and the Association's rules and regulations; and

(b) Such sums as the Board shall determine to be fair and prudent for the establishment and maintenance of a reserve fund for repair, maintenance, taxes, insurance, management and administrative costs and other charges as specified herein.

Section 4. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Eighty and No/100 Dollars (\$180.00) 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 effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

(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 above that established by the Consumer Price Index formula by a vote of the members for the next succeeding year and at the end of each such one-year period for ^{each succeeding period of twenty} years, provided that any such change 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, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. 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 such purpose.

200.001.005.A8902

89 203413

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 or 5 of this Article VI shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting and shall set forth the purpose 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 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and must be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. 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 at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment 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 ^{Unofficial Document} have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 9. 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 non-use of the Common Area or abandonment of his Lot.

Section 10. 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 foreclosure of a first Mortgage 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.

200.001.005.A8902

89 203413

Section 11. Reduced Assessment for Declarant. Notwithstanding the provisions of Section 7 of this Article, the annual and special assessments for Lots owned by the Declarant shall be a sum equal to twenty-five percent (25%) of the annual or special assessment established by the Board pursuant to this Article. Each Lot owned by the Declarant shall be entitled to the reduced assessment provided for in this Section until the earlier of (i) the date on which that Lot is conveyed to a purchaser other than Declarant, or (ii) the date on which any residential structure on that Lot is first occupied for residential purposes. At such time as a Lot ceases to qualify for the reduced assessment in accordance with this Section, the assessment for such Lot shall automatically increase to the assessment fixed by the Board for all Lots not owned by the Declarant.

Section 12. Individual Assessment for Restoration of Owner's Lot.

(a) In the event the Owner of a Lot fails to maintain his Lot in a first-class, neat and clean condition, and generally in a manner satisfactory to the Board, the Association or the Board, through its agents, employees and/or independent contractors, shall have the right, and each Owner expressly grants and assigns the Association the right (subject to prior notice as hereinbelow set forth) to enter upon such Owner's Lot and repair, maintain, rehabilitate and restore the Lot (including, without limitation, the landscaping thereon), and the exterior of any and all buildings and/or other structures located thereon to the condition deemed satisfactory to the Board, or to remove structures therefrom which are, in the opinion of the Board or the Association, in such a state of disrepair or in such a condition as to be objectionable to surrounding Lot Owners. The cost thereof shall be charged against and collected from the Owner of the Lot, ^{Unofficial Document} and the amount thereof to be paid by the Owner within thirty (30) days from the date of the invoice sent to the Owner, and said amount further shall be secured by and subject to all provisions regarding the assessment line as provided in this Article.

(b) Prior to exercising the aforesaid right of restoration, the Board shall give written notice to the Owner of said Lot specifying the necessary repairs, maintenance, rehabilitation or restoration to be undertaken, and granting the Owner thirty (30) days to accomplish the same. If, at the end of said period, the work required to be performed has not been completed (or has been completed in a manner unsatisfactory to the Board), or if, in the opinion of the Board, sufficient action has not been taken to effect same, then the Association or the Board shall have the right, as above set forth, to make such repairs, maintenance, rehabilitation or restoration.

(c) Nothing herein contained shall be construed as granting to the Association or the Board any right to enter into or inside of any building or buildings located on a Lot without the consent of the Owner thereof.

200.001.005.A8902

89 203413

ARTICLE VII

MAINTENANCE

Section 1. Rights and Obligations of Association. The sole obligation of the Board, acting for and on behalf of the Association, shall be to maintain, repair and replace the Common Area (except any portion now or hereafter maintained by any governmental agency with jurisdiction over said portion), and all landscaping, recreational facilities and other improvements located thereon, if any, in accordance with the terms and conditions hereof. The powers, rights and duties of the Association and Board shall be as contained in this Declaration, and as may be adopted in its Articles of Incorporation and Bylaws not inconsistent herewith.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Development 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 Re^{Unofficial Document} 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. 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 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.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, in the event a party wall is damaged or destroyed as a result of the negligent or willful act or omission by an adjoining Owner, his agents, tenants, licensees, guests or family, then, in such event, such Owner shall bear the entire cost of rebuilding and/or repairing such party wall.

Section 5. 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.

200.001.005.A8902

89 203413

Section 6. Extension or Alteration. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each Owner shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then any Judge of the Superior Court of Maricopa County, Arizona shall choose the additional arbitrator. A determination of the matter signed by any two (2) of the three (3) arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one Owner fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other Owner, then said other Owner shall have the right and power to choose both arbitrators.

Section 8. Covenants Binding. These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any party wall except as took place while an Owner.

ARTICLE IX

Unofficial Document GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Declarant 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. In the event any such person employs an attorney or attorneys to enforce compliance with or specific performance of the terms and conditions of this Declaration, and prevails in such action, the Owner or Owners against whom the action is brought shall pay all attorneys' fees and costs incurred in conjunction with such action. 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. The foregoing shall apply regardless of whether any person affected thereby (or having the right to enforce these Restrictions) had knowledge of the breach or violation.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land and shall be binding upon each Owner and his heirs, executors, administrators, successors and assigns and all other persons claiming an interest in and to the Development, for a term of twenty (20) years from the date this

200.001.005.A8902

89 203413

Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be changed, modified or rescinded during the first twenty (20) year period by an instrument in writing setting forth such change, modification or rescission, executed as follows:

(a) If the Class B membership then exists, such instrument shall bear the signatures of Declarant and not less than ninety percent (90%) of the Owners of Lots not owned by Declarant;

(b) If the Class B membership does not then exist, such instrument shall bear the signature of not less than ninety percent (90%) of the Owners of all Lots.

Subsequent to the first twenty (20) year period, this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, executed as follows:

(c) If the Class B membership then exists, such instrument shall bear the signatures of Declarant and not less than seventy-five percent (75%) of Owners of all Lots not owned by Declarant;

(d) If the Class B membership does not then exist, such instrument shall bear the signature of not less than seventy-five (75%) of the Owners of all the Lots.

Any amendment must be recorded in the office of the County Recorder of Maricopa County, Arizona. Notwithstanding the provisions of the foregoing paragraph, if this Declaration, the Articles of Incorporation, or the Bylaws require the consent or agreement of a greater percentage of Owners or require the consent or agreement of a specified percentage of Mortgage Holders, 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 such percentage of Owners and/or Mortgage Holders, as required by this Declaration.

Section 4. Construction and Interpretation of Declaration. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by these Restrictions.

Section 5. Gender. Whenever the context of this Declaration so requires, words used in masculine gender shall include the feminine and neuter genders. Words used in the neuter gender shall include the masculine and feminine genders, words in the singular shall include the plural, and words in the plural shall include the singular.

200.001.005.A8902

89 203413

Section 6. Captions, Titles and Headings. All captions, titles and headings of the Articles and Sections of this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or contents hereof.

Section 7. Jurisdiction. All Owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court or courts of the State of Arizona or of the United States of America having jurisdiction in the State of Arizona, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter; provided, however, as to those matters, if any, to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail.

Section 8. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States on the date hereof.

Section 9. FHA, VA, FNMA and FHLMC Approval. It is the intent of the Declarant that the Development shall comply with all requirements of the Federal National Mortgage Association ("FNMA") and of the Federal Home Loan Mortgage Corporation ("FHLMC") pertaining to the purchase by FNMA and FHLMC of mortgages on individual lots, and with all requirements of the Federal Housing Administration (^{Unofficial Document}) of the Veterans Administration ("VA") pertaining to the insurance by FHA and VA of mortgages on individual lots. In furtherance of that intent and notwithstanding any other provisions of this Declaration or any provision of any other applicable documents, Declarant expressly reserves the right and shall be

200.001.005.A8902

89 203413

entitled by unilateral amendment as long as Declarant owns more than twenty-five percent (25%) of the Lots in the Development to incorporate any provisions that are, in the opinion of FNMA, FHLNC, FHA or VA required to conform this Declaration, the Articles, the Bylaws or the Project to the requirements of FNMA, FHLNC, FHA or VA. Each Owner and each mortgagee by acceptance of a deed or encumbrance agrees to be bound by any such provisions. The Board, each Owner and mortgagee shall take any action or shall adopt or consent to any resolutions required by FNMA, FHLNC, FHA or VA to conform this Declaration, the other applicable documents or the Development to the requirements of FNMA, FHLNC, FHA or VA.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 27th day of April, 1989.

By John H. Jacobs
Its Vice President
Declarant

STATE OF ARIZONA }
County of Maricopa } ss.

Unofficial Document

The foregoing document was acknowledged before me this 27th day of April, 1989, by John Jacobs, the Vice-President of Western Savings and Loan Association, an Arizona corporation, on behalf of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Eva S. Murray
Notary Public

My commission expires:

My Commission Expires Nov. 30, 1992