

Dyna Camp

DECLARATION OF HORIZONTAL PROPERTY REGIME
AND OF
COVENANTS, CONDITIONS AND RESTRICTIONS
GOLDEN HILLS FAIRWAY
PLAT 6

364230

THIS DECLARATION is made and entered into as of this 20th day of October, 1978, by WESTERN SAVINGS AND LOAN ASSOCIATION, an Arizona corporation, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the owner of that parcel of real property situated in Maricopa County, Arizona, and described on Exhibit "A" attached hereto and by reference made a part hereof, hereinafter sometimes called the "Parcel"; and

3

WHEREAS, Declarant desires to submit and subject the Parcel, together with all buildings, improvements and other permanent fixtures of whatsoever kind now or hereafter located thereon, and all rights and privileges belonging or in anywise pertaining thereto (hereinafter sometimes called the "Property") to a horizontal property regime pursuant to Sections 33-551 through 33-561, Arizona Revised Statutes; and

WHEREAS, Declarant is further desirous of establishing for its own benefit and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, certain easements and rights in, over and upon said premises and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

NOW, THEREFORE, Declarant, for the purposes above set forth, declares as follows:

1. Definitions. As used herein, unless the context otherwise requires:

1.1 "Act" means Section 33-551 through Section 33-561, Arizona Revised Statutes.

1.2 "Association" means FAIRWAY VI ASSOCIATION, an Arizona nonprofit corporation, or any successor or assign, whether by way of consolidation, merger, transfer or otherwise.

I do hereby certify that the within named instrument was recorded at request of		Dorson, Latta, Weeks, Varson & French	
OCT 17 1978	11 55	Docket	10219 Page 250-72
Records of Maricopa Co., Arizona		WITNESS my hand and official seal the day and year aforesaid	
BILL HENRY, Maricopa County Recorder, By		<i>[Signature]</i> Deputy	

12.50

EXHIBIT "A"

DXT 13219 271

Lots 11, 12, 13, 14, 15, 16, 17, 18, the East 34.00 feet of Lot 10, and Lot 19 of Golden Hills Townhouses, according to Book 118 of Maps, page 1, records of Maricopa County, Arizona;

EXCEPT that portion of Lot 19 described as follows:
BEGINNING at the Southeast corner of said Lot 19;
THENCE S 89°30'10" W along the South boundary of said Lot 19 a distance of 1.32 feet;
THENCE N 00°29'50" W a distance of 70.00 feet to a point;
THENCE N 37°22'02" W a distance of 25.00 feet to a point;
THENCE N 00°29'50" W a distance of 90.00 feet to a point on the North boundary of Lot 19;
THENCE N 89°30'10" E along said North boundary line a distance of 16.32 feet to the Northeast corner of said Lot 19;
THENCE S 00°29'50" E along the East boundary of Lot 19 to the Point of Beginning.

1.3 "Building" means the buildings located on the Parcel and forming part of the Property as shown on the plat.

1.4 "Common Elements" means the "general common elements," as that term is defined in Section 33-551, Arizona Revised Statutes, including all landscaping thereon and upon any portion of Broadway Road right-of-way abutting the North boundary line of the Parcel which is adjacent to the full East/West distance of such North line.

1.5 "Declarant" means the above recited Declarant or any person to whom Declarant's rights hereunder are hereafter assigned by recorded instrument.

1.6 "Declaration" means this instrument by which the Property is submitted to a horizontal property regime, as such Declaration may from time to time be amended.

1.7 "Majority" or "Majority of Owners" means the owners of more than 50% of the undivided ownership of the Common Elements then entitled to vote. Any specified percentage of the Owners means that percentage of undivided ownership of the Common Elements.

1.8 "Occupant" means a person or persons, other than an Owner, in possession of a Unit.

1.9 "Owner" or "Owners" means the person or persons whose estates or interests individually or collectively aggregate fee simple ownership of a Unit and the person or persons who are purchasers under a valid and outstanding recorded Agreement of Sale with respect to a Unit.

1.10 "Parcel" means the parcel or tract of real estate described above in this Declaration, submitted to a horizontal property regime.

1.11 "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.12 "Plat" means the plats of survey of the Property and of all Units submitted to a horizontal property regime, as recorded in Book 204 of Maps at page 33 thereof, Maricopa County, Arizona, a reduced copy of said Plat being attached hereto as Exhibit "B".

1.13 "Property" shall have the same meaning as set forth in Section 33-551, Arizona Revised Statutes, as related to the development which is the subject matter of this Declaration, together with all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit and enjoyment of the Unit Owners.

1.14 "Record" or "Recording" refers to record or recording in the office of the County Recorder of Maricopa County, Arizona.

1.15 "Unit" means a part of the Property, including one or more rooms situated in the building comprising a part of the Property, designed or intended for independent use as permitted hereunder and as set forth on the copy of the Plat of survey attached hereto as Exhibit "B". Each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on said Plat and as further described herein. However, (a) no structural components of the building in which each Unit is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility, water or sewer lines situated within such Unit and forming part of any system serving one or more other Units or the Common Elements shall be a part of a Unit, and (b) if at the time any Unit in the project is conveyed, one or more buildings in which Units shown on the Plat are to be located have not yet been built, each such Unit shall have the exterior boundaries shown on the Plat (i.e., finished roof elevation, underside of finished concrete floor, exterior of outside walls and center-line of common walls), until such time as all Buildings and Units have been built.

2. Submission of Property. Declarant hereby submits and subjects the Property to a horizontal property regime pursuant to Sections 33-551 through 33-561, Arizona Revised Statutes, and does hereby declare that all of the Units shall be owned, leased, sold, conveyed and encumbered subject to the terms, conditions and other provisions of this Declaration.

3. Description of the Building, the Units and the Common Elements. The entire horizontal property regime shall be known as GOLDEN HILLS FAIRWAY PLAT 6 and shall be constituted of 28 units as described in the Plat, together with the percentage interest in the Common Elements which is appurtenant to each Unit.

3.1 A description of the cubic content space of the Building with reference to its location on the Parcel is set forth in the Plat. The upper boundary shall be the plane of the top elevation of the Building, as shown on the Plat, and the lower boundary shall be the ground unit floor elevations of the Building as shown on the Plat. The vertical boundaries shall be the exterior of the outside walls, except

where there are patios or balconies for the exclusive use of a Unit and which extend beyond the exterior of the outside walls, the vertical boundaries of which shall be the plane of the outer edge of such patios or balconies.

3.2 The cubic content space of each Unit shall consist of, and be measured by, the entire space between the Unit's horizontal and vertical boundaries shown on the Plat. Each Unit's horizontal boundaries shall be the underside of the finished but undecorated ceiling and the top of the finished but undecorated floor. Each Unit's vertical boundaries shall be the interior of the Unit's outside, finished, but undecorated walls and the plane of the inside edges of such Unit's appurtenant patio or balcony.

3.3 A description of the Common Elements is the description referred to above in subparagraph 3.1, plus the Parcel, less the description referred to above in subparagraph 3.2. A description of the other Common Elements is as set forth in subparagraph 1.4 of this Declaration.

3.4 The percentage (fractionally expressed) interest which each Unit bears to the entire horizontal property regime, which percentage interest shall constitute the percentage interest in the Common Elements which is appurtenant to each such Unit, is twenty-eighth (1/28).

4. Association. The Association has been, or will be, formed so as to constitute the "council of co-owners," as that term is defined in Section 33-551, Arizona Revised Statutes, and to serve as the governing body for all of the Owners for the maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds, and other matters as provided in the Act and in the Declaration and in the Bylaws of the Association (hereinafter called the "Bylaws"). The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of the Declaration and the Bylaws. Each Owner shall be a member of the Association so long as he shall be an Owner and such membership shall automatically terminate when he ceases to be an Owner and, upon the transfer of his ownership interest, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association.

4.1 Association Board of Directors. Until such time as 75% of all Units have been sold by Declarant, unless Declarant sooner terminates such control, only Declarant shall hold a voting membership in the Association, and all members of the Board of Directors of the Association (herein sometimes referred to as the "Board") shall be designated by Declarant. Upon termination of such control, Declarant shall name, from among the Owners, the initial Owner-Board of Directors to

serve until the next annual election of Directors. Except for members designated by Declarant, each Director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a Director may be an officer, partner or beneficiary of such Owner). If a Director shall cease to meet such qualifications during his term, he will thereupon cease to be a Director and his place on the Board shall be deemed vacant.

4.2 Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property, or any question of interpretation or application of the provisions of the Declaration or Bylaws, the determination thereof by the Board shall be final and binding on each and all of such Owners.

4.3 Indemnification. Every Director and every Officer of the Association shall be indemnified by the Association, as the case may be, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, or any settlement thereof, whether or not he is a Director or Officer at the time such expenses are incurred, provided that the Board of Directors of the Association shall determine, in good faith, that such Officer or Director did not act, fail to act, or refuse to act wilfully or with gross negligence, or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Directors or Officers may be entitled.

4.4 Easements. In addition to the blanket easements granted in paragraph 5 below, the Association is authorized and empowered to grant such licenses, easements and rights of way for sewer lines, water lines, underground conduits, storm drains and other public utility purposes as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Elements or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Unit resulting from such grant shall be repaired by the Association at its expense.

5. Blanket Easements and Use of Common Elements. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity. By virtue of the easement, it shall be expressly permissible for the providing utility company to erect and

maintain the necessary facilities and equipment on the Property 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 Property except as initially created, programmed and approved by Declarant or thereafter created or approved by Declarant or the Board. This provision shall in no way affect any other recorded easements on the Property.

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

6. Managing Agent. All powers, duties and rights of the Association or its Board, as provided by law and herein, may be delegated to a managing agent under a management agreement.

7. Parking. Each owner shall have the right to the exclusive use of that parking space on the Parcel which bears the same numerical designation as such Owner's Unit on the Plat. The Board shall have full authority to operate, manage and use for and on behalf of all Owners the unassigned parking spaces situated on the Parcel.

8. Common Expenses. Each Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with the Declaration and the Bylaws (which expenses are herein sometimes referred to as "common expenses"), including specifically, but not by way of limitation, the maintenance and repair thereof and any and all replacements and additions thereto. Such proportionate share of the common expenses for each Owner shall be in the same ratio as his percentage of interest in the Common Elements. However, if the Board feels that because of special circumstances, the Owner of a Unit is consuming more than his proportionate share of utilities, the Board may install a separate utilities meter upon such Unit, at such Unit's expense, and adjust such Unit's proportionate share of such expenses to reflect actual cost. If any Unit has separate meters for certain utilities, the Board may determine that the cost of the same shall be the personal responsibility of such Unit Owner, who shall be excluded from any allocation of similar utility costs relating to other Units. Payment of common expenses, including any prepayment thereof required by contract for sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. If any Owner shall fail or refuse to make any such payment of common expenses when due, the amount thereof shall constitute a lien on such Owner's Unit and appurtenant share of the Common Elements, provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on, or the right, title and interest of the trustee and beneficiary under a first deed of trust in and to, the applicable Unit, except for the amount of the proportionate share of

common expenses which becomes due and payable from and after the date on which the Owner or holder of the mortgage, or the trustee or beneficiary under the trust deed, either takes possession of the applicable Unit, accepts a conveyance of any interest therein (other than as security), or files suit to foreclose its lien, or records a notice of trustee's sale, or causes a receiver to be appointed for the Unit. The lien provided for in this paragraph may be foreclosed by the Association in the same manner as provided for the foreclosure of realty mortgages in the State of Arizona.

9. Mortgages. Each Owner shall have the right, subject to the provisions hereof, to make separate mortgages and to enter into trust deeds for his respective Unit. No Owner shall have the right or authority to make or create or cause to be made or created any mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Unit and its appurtenant interest in the Common Elements.

10. Insurance. The Board shall have the authority to and shall obtain insurance for the Property (which may, at the Board's option, include the additions, improvements and decorating made in the Units by the Owners) against loss or damage by fire and such other hazards as the Board may deem desirable in an amount sufficient to meet the co-insurance requirements of the policy or policies, but not less than 90% of the full insurable value of the Common Elements and the Units as determined at least once each year by the Board. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association or the Board, as the trustee for each of the Owners in their respective percentages of ownership interest in the Common Elements, and to the holders of mortgages or the beneficiaries of deeds of trust on the Property and/or the individual Units. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against individual Owners. Premiums for such insurance shall be common expenses. The Board shall also have the authority to and shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, its Officers and the Board, Declarant, and the manager and managing agent of the Property from liability in connection with the Common Elements and the premiums for such insurance shall be common expenses. Each Owner shall be responsible for his own insurance on the contents of his own Unit, and his additions and improvements thereto and decorating therein to the extent not covered by the Association's Master Policy and furnishings and personal property therein and his personal property stored elsewhere on the Property and his personal liability to the extent not covered by the liability insurance for all of the Owners obtained as part of the common expenses as above provided.

11. Damage and Destruction. In the event the Property is damaged or destroyed by fire or other hazards, and

11.1 If such damage or destruction extends to fewer than one-half of the Units, or extends to any of the Common Elements, and the insurance proceeds derived from such loss amount to \$100,000 or less, then the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Property in conformance with the original plans and specifications, or, if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes, or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.

11.2 If such damage or destruction extends to fewer than one-half of the Units, or extends to any of the Common Elements, and the insurance proceeds derived from such loss amount to more than \$100,000, all of such insurance proceeds shall be paid directly to a bank located in Maricopa County, Arizona, whose accounts are insured by the Federal Deposit Insurance Corporation, or its successor agency, as designated by the Board, as trustee (hereinafter called the "Insurance Trustee") for all Owners and the owners and holders of first mortgages and the trustees and beneficiaries under first deeds with respect to the Units, as their interests may then appear. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Board. Disbursement of such funds shall be made only upon the signatures of two members of the Board and upon the terms and conditions provided in this subparagraph 11.2. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Board shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Elements according to the original plans and specifications of said improvements or, if the Board determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes, or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors of a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Maricopa County, Arizona. Such periodic

disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Board shall furnish to the Board before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board. The Board may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

11.3 If said damage or destruction extends to fewer than one-half of the Units, or if said damage or destruction extends to any of the Common Elements, and if the insurance proceeds are insufficient to pay all costs of repair and rebuilding, the Board shall levy a special assessment to make up any deficiency, which assessment shall be levied only against the Owners of the damaged or destroyed Units, except that the special assessment shall be levied against all Owners to the extent necessary to make up any deficiency for repair or rebuilding of the Common Elements. If the insurance proceeds exceed the costs of repair and reconstruction, then following completion of such repair and rebuilding, the excess shall be paid over to the Owners and the holders of first mortgages or the trustees under first trust deeds as their respective interests may appear. Subject to the terms and conditions hereof, the assessment shall be levied against and all payments made to the Owners in the same proportion as their percentage interests in the Common Elements. The special assessment provided for herein shall be secured by the lien provided for in paragraph 8 of this Declaration.

11.4 In the event that more than one-half of the Units are destroyed, such insurance proceeds shall be paid directly to the Insurance Trustee, upon the same terms and conditions as specified in subparagraph 11.2, to be held in trust for the benefit of all Owners and the holders of first mortgages and the trustees and beneficiaries under first trust deeds with respect to the Units, as their respective interests shall then appear. Concurrently with the payment of any such insurance proceeds to the Insurance Trustee, the Insurance Trustee, any holder of a first mortgage, any trustee or beneficiary under a first trust deed, or the Board shall record an affidavit which shall set forth the following:

11.4.1 A statement that the destruction has occurred and the date thereof;

11.4.2 An identification of the Property by legal description or by reference to the Plat;

11.4.3 A certification that the insurance proceeds have been paid to the Insurance Trustee in accordance with this Declaration; and

11.4.4 A certification to the effect that a copy of such affidavit has been mailed to each of the Owners.

At any time within sixty (60) days after the recordation of such affidavit, a special meeting of the members of the Association shall be convened for the purpose of resolving the question of whether or not the Property shall be reconstructed or repaired and for the resolution of a corollary business which may arise at such meeting. Upon an affirmative decision to rebuild or reconstruct by a majority of the Owners, the Board, as soon as practicable, shall enter into a contract for a specific dollar amount with a licensed contractor or contractors, and such repair or reconstruction shall be accomplished pursuant to the terms of and in the same manner as provided above, in subparagraph 11.2.

Upon the execution of such contract, an executed copy or a memorandum thereof shall be recorded within sixty (60) days immediately following the date of such execution, subject to extensions of time for such recording as may be granted by order of the Superior Court of the State of Arizona upon application filed or made to such court for such extensions by the Board as it, in its sole discretion, may deem appropriate or necessary. If such contract or a memorandum thereof is recorded within such specified time, the Board shall levy a special assessment to make up such deficiency, if any, as may exist between the total of available insurance proceeds and the contract price for such repair or reconstruction. All such insurance proceeds, including any portion thereof subject to the liens of mortgages or to trust deeds, shall be used for such repair or reconstruction. Such special assessment shall be levied against all Owners in the same manner as the special assessment provided for in subparagraph 11.3, and such special assessment shall be levied in the same proportion as each Owner's percentage interest in the Common Elements. If the amount received by the Board

or Insurance Trustee on account of such insurance proceeds and such special assessment, or either thereof, should exceed the cost of repair and reconstruction, then following the completion of such repair and reconstruction, the excess shall be paid over to the respective Owners and to the holders of first mortgage liens and the trustees under first trust deeds, as their respective interests appear, in the same proportion as the Owners' respective undivided percentage interest in the Common Elements. If a majority of the Owners determine, at the special meeting hereinabove provided for in this subparagraph, not to repair or reconstruct, or if a copy or memorandum of such construction contract is not recorded within such specified time, as the same may have been so extended, the Insurance Trustee shall divide the insurance proceeds in as many shares as there are Units, said shares to be in the same proportion as the Owners' respective undivided percentage interests in the Common Elements. The Insurance Trustee shall first make application of each Owner's share of the insurance proceeds to the payment and satisfaction of each mortgage, trust deed, or other encumbrance or lien of record with respect to such Unit. If the Insurance Trustee does not have adequate funds to pay and satisfy each mortgage, trust deed, or other encumbrance or lien on any Unit, the deficiency shall be paid by the applicable Owner but only in an amount that will be equal to the difference between the insurance proceeds payable with respect to his Unit and the amount secured by the applicable mortgage, trust deed, or other encumbrance or lien. If any Owner shall fail to pay such deficiency, it may be advanced by the Association (acting by and through the Board), in which case such advance, plus interest thereon at the highest legal rate then payable in the State of Arizona by individual borrowers who are natural persons, shall be due and payable by such Owner to the Association upon demand, and payment thereof shall be secured by the lien provided for in paragraph 8 of this Declaration. After all of the mortgages, trust deeds, or other liens or encumbrances shall have been fully satisfied and release of record or deeds of reconveyance executed and recorded, the Board shall forthwith execute, acknowledge and record, as attorney-in-fact for all Owners, a declaration withdrawing the Property from a horizontal

property regime, and upon removal of the Property from a horizontal property regime, each Owner's share, or the remainder thereof, of such insurance proceeds shall be distributed to him.

11.4.5 By the acceptance of deeds for Units from Declarant or from subsequent Owners of Units, or by signing of contracts or agreements for purchase, or by succeeding in any other manner to the ownership of a Unit, each Owner does hereby appoint, make and constitute each member of the Board, from time to time in office, as attorney-in-fact for such Owner with full power and authority to remove the Property from a horizontal property regime under the circumstances hereinabove set forth in this subparagraph 11.4. Such appointment and agency shall be irrevocable.

12. Condemnation.

12.1 If a portion of the Property should be taken by exercise of the power of eminent domain, or should be transferred and conveyed to a condemning authority in anticipation of such exercise, the entire award made as compensation for such taking, including, but without limitation, any amount awarded as severance damages, or the entire amount received and paid in anticipation of such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including, but without limitation, attorneys' fees, appraiser's fees and court costs (which net amount is hereinafter in this paragraph 12 referred to as the "Award") shall be paid to the Association, as trustee for all Owners and the owners and holders of first mortgages and deeds of trust then encumbering the Units. If the portion of the Property taken or conveyed shall not be comprised of, or include, all or any part of a Unit, or if a majority of Owners elect to restore or replace a Unit under subparagraph 12.2 below, the Association shall, as soon as practicable, cause the Award to be utilized for the purpose of repairing, replacing and restoring the affected area, including, if the Association deems it necessary or desirable, the replacement of any Common Element improvements so taken or conveyed.

12.2 Except as hereinafter provided in this paragraph 12, if the portion of the Property taken or conveyed is comprised of, or includes, all or any part of a Unit, the Association shall call a special meeting of the members of the Association to convene within thirty (30) days after its receipt of the Award, to determine whether and, if so, in what manner, such Unit shall be restored, reconstituted or replaced. If a majority of the votes entitled to be cast by

the Association members determine, at such special meeting, not to restore, reconstitute or replace such Unit and related improvements, the Association shall distribute the portion of the Award relating to such Unit to first the holder of any mortgage or deed of trust upon such Unit and the remainder to the Owner thereof. At such time as such award has been so distributed, any such Owner who has lost his Unit by such taking or conveyance shall no longer possess any interest in the project, and the interest of the remaining Owners in the Common Elements shall automatically be adjusted accordingly. Any remaining Award shall then be subject to subparagraph 12.1 above. Any remaining portion of the Award not used pursuant to subparagraph 12.1 above shall be divided into as many shares as there are remaining Units, such shares to be in the same proportion as the Owners' respective undivided percentage interest in the Common Elements after such taking or conveyance, and such shares shall be distributed to the Owners and the holders of any mortgage or deed of trust on the applicable Unit, as their interests appear.

12.3 If the cost of any repair and restoration shall exceed the amount of the Award, a special assessment shall be levied against the remaining Owners to the extent necessary to make up such deficiency. If relating to the Common Elements, such assessment shall be levied against the Owners in the same proportion as their percentage interests in the Common Elements after such taking or conveyance. If, relating to a Unit, such assessment shall be levied against the Owner of such Unit, the special assessment provided for herein shall be secured by the lien provided for in paragraph 8 of this Declaration.

13. Maintenance, Repairs and Replacements. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit, and of all windows, doors and locks, interior partitioning, kitchen, bathroom and lighting fixtures, and all utility lines and air conditioning and heating units serving only his own Unit. Except as otherwise provided herein to the contrary, maintenance, repairs and replacements of the Common Elements shall be furnished by the Association as part of the common expenses, subject to the Bylaws and rules and regulations of the Association. If, due to the act or neglect of an Owner or his invitee, guest or other authorized occupant or visitor of such Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such Owner shall pay for such damage and for such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's insurance. An authorized representative of the Board, or of the manager or managing agent of the Building, and all contractors and repairmen employed or engaged by the Board or such manager or managing agent,

shall be entitled to reasonable access to each of the Units as may be required in connection with maintenance, repairs or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units and the Common Elements.

In the event that any Owner shall fail to maintain and repair his Unit and such improvements as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, through its agents and employees, to enter upon said Unit and to repair, maintain, and restore the Unit and the exterior of the Building and any other improvements erected therein; and each Owner (by acceptance of a deed for his Unit) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessment hereunder when due.

14. Alterations, Additions or Improvements. No alterations of any Common Elements, patios or balconies or any additions or improvements thereto shall be made by any Owner without the prior written approval of the Board. Any Owner may make non-structural alterations within his Unit, or any non-structural additions or improvements within such Unit, without the prior written approval of the Board, but such Owner shall be responsible for any damage to other Units, the Common Elements, or the Property, as the result of such alteration, addition or improvement. There shall be no structural alterations or additions to the Building without the prior approval of a majority of the Owners given at a regular or special meeting of the members of the Association. Unless otherwise determined at any such meeting, the cost of such alterations or additions shall be paid by means of a special assessment against the Owners in the proportion of their respective undivided percentage interests in the Common Elements. Such special assessments shall be secured by the lien provided for in paragraph 8 of this Declaration.

15. Decorating and Architectural Control.

15.1 Each Owner, at his own expense, shall furnish and be responsible for all of the decorating within his own Unit from time to time including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decorating. Each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings within his Unit, and such Owner shall maintain such surfaces in good condition at his sole expense as may be required from time to time, which said maintenance and use shall be subject to the rules and regulations of the Association and each such Owner shall have the right to decorate such surfaces from time to time as he may see fit and at his sole expense. Decorating of the Common Elements (other than interior surfaces within the Unit as above provided), and any redecorating of Units to the extent made

necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements by the Association, shall be furnished by the Association as part of the common expenses. The surfaces of all windows and glass doors (if any) forming part of a perimeter wall of a Unit shall be cleaned and/or washed at the expense of such Owner.

15.2 Except for customary patio furniture on patios or balconies, nothing shall be stored, placed, erected, hung or permitted on any patio, balcony, roof, the Common Elements, the exterior of the building, or upon or in the windows or outside doors of any Unit. Cleaning of decorated finished interior walls, floors and ceilings of each patio and balcony shall be the responsibility of the Owner of the Unit to which said patio or balcony is appurtenant. However, painting or decorating of said walls and ceilings must have prior written approval of the Association. Maintenance and decorating of the Unit shall be the responsibility of the Owner. Any construction, alteration, replacement or repair of or upon the Common Elements, or within a Unit (if of a structural nature), must be approved by the Association prior to commencement. The Association may require complete plans and specifications and may charge a reasonable fee for professional services connected with reviewing and approving such plans and specifications.

16. Encroachments. If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, or if any Unit shall actually encroach upon another Unit, as the Common Elements and the Units are shown by the surveys comprising the Plat, there shall be deemed to be mutual easements in favor of the Owners of the Common Elements and the respective Owners involved to the extent of such encroachment so long as the same shall exist.

17. Use and Occupancy Restrictions.

17.1 No part of the Property shall be used for other than residential or other related purposes except that Declarant reserves the right to maintain sales offices, model units, and signs on the Property, together with rights of ingress and egress therefrom, until all Units shall have been sold and conveyed by Declarant. Each Unit shall be used as permitted by this Declaration and for no other purpose.

17.2 Subject to the provisions of these restrictions, use of the Common Elements shall be in accordance with and subject to limitations and rules as established and determined by the Association.

17.3 Nothing shall be done or kept in any Unit or in any of the Common Elements which will increase the rate of insurance thereon without the approval of the Association. No Owner shall permit anything to be done or kept in his Unit or in or upon any Common Elements which will result in the cancellation of insurance thereon or which would be in violation of any law.

17.4 No sign of any kind shall be displayed to the public view or from any Unit or any Common Elements without the approval of the Association, except such signs as may be used by Declarant in connection with the development and sale of the Property.

17.5 No animals of any kind shall be raised, bred, or kept in any Unit or in or upon any Common Elements, except that dogs, cats or other household pets may be kept in Units, subject to approval of the Association, provided that no animal shall be kept, bred or maintained for any commercial purpose.

17.6 The Owner shall not permit or suffer anything to be done or kept about or within his Unit which will obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance about or within his Unit or commit or suffer any immoral or illegal act to be committed therein. The Owner shall comply with all of the requirements of the health authorities and of all other governmental authorities with respect to the Property. If by reason of the occupancy or use of the Property by the Owner the rate of insurance on the building shall be increased, the Owner shall be liable for such additional insurance premiums.

17.7 There shall be no structural alteration, construction or removal of any building, fence or other structure in the Property without the approval of the Association (and Declarant until such time as all Units are sold).

17.8 No religious, professional, commercial or industrial operations of any kind shall be conducted in or upon any Unit or the Common Elements except such temporary uses as shall be permitted by Declarant while Units are being sold by the Declarant.

17.9 Except as permitted by the Association, no boats, campers or vehicles, other than motorcycles and passenger automobiles, shall be parked or stored in any Unit or in or upon the Common Elements. No vehicle shall be repaired or rebuilt in any Unit or upon the Common Elements.

17.10 Subject to the limitations set forth in paragraphs 1.7 and 4.1 above, all Owners shall be members of the Association and shall comply with and be subject to the terms and conditions as set forth in the Articles of Incorporation and Bylaws and any rule or regulation of the Association. No Owner may transfer any membership or interest in the Association, except in connection with the sale of the Unit to which such membership is appurtenant.

17.11 No person under the age of eighteen (18) may permanently reside in any Unit. "Permanent Residence" shall mean residence for a period in excess of thirty (30) days, unless the Association Board extends such time period upon application to it by an Owner who shows special circumstances which in the Board's opinion warrants such extension.

18. Right of First Refusal. Prior to the transfer of title to any Unit and as a condition precedent to each and every transfer of title to every Unit, the Owner (or, in the event of death or incapacity, the Owner's legal representative), his successors and assigns, shall notify the Association, in writing, by mail, postage prepaid, or by actual delivery, that the Unit is for sale, and the terms and conditions of any bona fide written offer to purchase which the Owner is ready and willing to accept. The Association shall have fifteen (15) days following receipt of such notice within which to notify the Owner, in writing, that the Association elects to exercise its Right of First Refusal to purchase said Unit and to present the Owner with signed Escrow Instructions calling for the sale of said Unit to the Association for the same price and upon the same terms and conditions as contained in the Owner's original notice. Such notice from the Association shall create a binding purchase agreement between it and the Owner as to the price, terms and conditions of the offer.

If the Association rejects or fails to exercise its Right of First Refusal, the Owner may then sell the Unit to the proposed purchaser upon the originally proposed terms and conditions, providing that such sale is completed within ninety (90) days after the Association's rejection or failure to exercise its right of first refusal. Any agreements for the purchase and sale of any Unit shall be subject to this Right of First Refusal regardless of whether or not the Association has failed or refused to exercise its right to purchase as to a particular Unit in relation to the possible sale of the Unit to the same or to a different potential purchaser. Nothing to the contrary herein withstanding, this Right of First Refusal shall not apply to any purchaser at a Sheriff's or Trustee's Sale which sale is held under the Sheriff's or Trustee's Sale provision of any deed of trust or mortgage applicable to any Unit.

19. Remedies. In the event of any default by any Owner under the provisions of the Act, this Declaration, the Bylaws, or the rules and regulations of the Association, the Association, or its successors or assigns, or the Board, or its agents; or Declarant, or its assignee, shall have each and all of the rights and remedies which may be provided for

in the Act, this Declaration, the Bylaws or said rules and regulations, or which may be available by law, and may prosecute any action or other proceedings against such defaulting Owner and others for enforcement or foreclosure of its lien and the appointment of a receiver for the Unit without notice, without regard to the value of such Unit or the solvency of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to rent the Unit and apply the rents received to payment of unpaid assessments and interest accrued thereon, and to sell the same as hereinafter in this paragraph provided, or for any combination of remedies or for any other relief. The proceeds of any such judicial sale shall first be paid to discharge court costs, other litigation costs, including but without limitation reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration. All expenses of the Association in connection with any such action or proceeding, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of 10% per annum until paid, shall be charged to and assessed against such defaulting Owner and shall be added to and deemed part of his respective share of the common expenses, and the Association shall have a lien for all of the same, as well as for nonpayment of his respective share of the common expenses, upon the Unit of such defaulting Owner and upon all of his additions and improvements thereto. In the event of any such default by any Owner, the Association and the Board, and the manager or managing agent, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner, and such assessment shall constitute a lien against the defaulting Owner's Unit. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board. The liens provided for in this paragraph 19 shall be junior to prior first mortgages and first trust deeds and shall be foreclosed in the same manner as the lien provided for in paragraph 8 of this Declaration.

If any Owner (either by his conduct or by the conduct of any other Occupant of his Unit) shall violate any of the provisions

of this Declaration or the Bylaws or the rules and regulations, as then in effect, and such violation shall continue for ten (10) days after notice in writing from the Board or shall occur repeatedly during any ten-day period after written notice or request to cure such violation from the Board, then the Board, Declarant, or its assignee, shall have the power to file an action against the defaulting Owner for a judgment or injunction against the Owner or Occupant requiring the defaulting Owner to comply with the provisions of this Declaration or the Bylaws or the rules and regulations, and granting other appropriate relief, including money damages. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any mortgage or deed of trust made in good faith and for value upon any Unit and its appurtenant undivided percentage interest in the Common Elements, but except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Unit whose title thereto is acquired by foreclosure, Trustee's Sale, sale, deed in lieu of foreclosure or otherwise.

20. **Amendment.** The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, executed as follows:

A. If Declarant then owns any Lots in the Property, such instrument shall bear the signatures of Declarant and ninety percent (90%) of the owners of all Lots not owned by Declarant; and

B. If Declarant then owns no Lots in the Property, such instrument shall bear the signatures of seventy-five percent (75%) of the owners of all Lots;

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 Units shall have consented in writing to each such change, modification or rescission.

Notwithstanding the provisions of the foregoing paragraph, if the Act, this Declaration, or the Bylaws require the consent or agreement of all Owners and/or of all lienholders and all trustees and/or beneficiaries under trust deeds, for any action specified in the Act or this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all of the Owners and/or all lienholders and trustees and/or beneficiaries under trust deeds, or both, as required by the Act or this Declaration.

The change, modification or rescission whether accomplished under any of the provisions of this paragraph 20 shall be effective upon recording such instrument, provided, however, that no provisions in this

Declaration may be changed, modified or rescinded as as to conflict with the provisions of the Act.

21. Notices. Notices provided for in this Declaration or the Bylaws shall be in writing and shall be addressed to the Association or the Board, as the case may be, at an address to be established by the Board, or at such other address as hereinafter provided. The Association or the Board may designate a different address or addresses for notices to them respectively by giving written notice of such change of address to all Owners at such time. All notices to Owners shall be to their respective Units. Any Owner may also designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof.

Upon written request to the Board, the holder of any recorded mortgage or the trustee or beneficiary under any recorded trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners of the Unit subject to such mortgage or trust deed.

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

23. 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 United States Senator Barry Goldwater of Arizona.

24. Rights and Obligations. Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such grantee or purchaser in like manner as though the provisions of this

Declaration were recited and stipulated at length in each and every deed of conveyance or purchase contract.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed.

WESTERN SAVINGS AND LOAN ASSOCIATION,
an Arizona corporation

By Clark P. Coder
Its Executive Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 6th day of October, 1978, by Clark P. Coder the Executive V.P. 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.



Jackie Tann
Notary Public

My commission expires:

My Commission Expires July 12, 1981