

DECLARATION
of
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by ARIZONA TITLE INSURANCE & TRUST CO., an Arizona corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in the City of Tempe, County of Maricopa, State of Arizona, which is more particularly described as:

TORREMOLINOS, a Planned Residential Development of Part of the East 1/2 of the SW 1/4 of the SE 1/4, Section 24, Township 1 North, Range 4 East, Gila and Salt River Base and Meridian, Maricopa County, according to the plat recorded in Book 161 of Maps, page 14, Maricopa County Recorder's Office.

NOW THEREFORE, Declarant hereby declares that all of the properties described above 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 real property and be binding on all parties having any right, title or interest in the described 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 TORRE MOLINOS ASSOCIATION, an Arizona non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners of the Lots. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Tracks A through Q (except for Tract D)
as depicted on the Plat referred to above.

Section 5. The limited Common Area shall be Tract D as depicted on the TORRE MOLINOS Plat. Tract D shall be a private drive area for the use of Lots 109, 111, 112 and 114.

Section 6. "Developer" shall mean Blankenship Builders, Inc., or its assignees and/or successors in interest.

Section 7. A Lot shall mean and refer to one of the 160 numbered lots on the TORRE MOLINOS Plat referred to above.

Section 8. "Member" shall mean and refer to every person, individual or entity, who holds membership in the TORRE MOLINOS ASSOCIATION.

Section 9. The ownership of Tract R shall be retained by the Developer and shall be freely assignable,

except that Tract R shall be used for the following purpose:

- a) Tract R shall be a boat and trailer storage facility having approximately 75 spaces.
- b) The spaces shall be leased only to Lot Owners (or occupants of the Lots) located in TORRE MOLINOS.
- c) A rental fee may be charged for the use of each space and the use of each space shall be subject to rules and regulations which are promulgated from time to time by the owner of Tract R.
- d) At any time hereafter, the owner of Tract R shall have the right to convey Tract R (in the owner's sole discretion) to TORRE MOLINOS ASSOCIATION as Common Area, and the TORRE MOLINOS ASSOCIATION shall then own Tract R as common area subject to the provisions and purposes set forth herein.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements. Every lot owner shall have a right and easement of enjoyment and to the use of the Common Area, which shall be appurtenant to and shall pass with the title to every lot. Each lot area outside the walls of the building and outside the patio walls, all as originally constructed by the Developer, shall be subject to an easement in favor of all the other owners of lots and their guests and all other persons lawfully upon the premises, for the purpose of permitting said persons to use the Walkways and Paths located on said lots, all as originally developed and constructed by the Developer. In addition, each lot shall be subject to an easement for the purpose of permitting the maintenance by the Association of the outside walls of the buildings and

patio walls and the yards and landscaping located outside the front and rear patios, to the extent that such duties are placed upon the Association. Each Owner, by accepting title to a lot, agrees that the lot shall be subject to said easements.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Until such time as the Developer sells 160 lots, or at such sooner time as the Developer, in its sole discretion, may determine and decide to relinquish control of the Association to the other lot owners by giving said owners written notice of the Developer's relinquishment of control (which event shall be referred to as the "Transfer of Control Date") for the purpose of voting, there shall be two classes of membership as follows:

CLASS A: Class "A" members shall be all owners of lots with the exception of the Developer. A Class "A" member shall not have the right to vote until the "Transfer of Control Date". Thereafter, each class "A" member shall be entitled to one vote for each lot owned.

CLASS B: The Class "B" member shall be the Developer the Class "B" member shall be entitled to one vote for each lot owned by it, both before and after the "Transfer of Control Date".

For the purpose of these Declarations, all lots owned by a Trust of which Developer is a beneficiary shall be deemed to be owned by Developer.

ARTICLE IV

USE RESTRICTIONS

The use of the lots and common area located within the TORRE MOLINOS Planned Area Development shall be in accordance with the following provisions:

Section 1. All lots shall be restricted to residential dwellings for residential use.

Section 2. No lot may be divided or subdivided into a smaller unit, nor any portion thereof sold or otherwise transferred.

Section 3. No building, fence, walls, hedges or any other type of structure shall be built, planted or installed on any lot except such as are built, installed or planted in accordance with the initial construction of the buildings and the improvements placed on the lots by the Developer. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

Section 4. All yard decor and landscaping on each lot (except that area within the front and rear patio walls as said walls were originally constructed by the Developer) shall be maintained by the Association and the owner of each lot shall not change or alter the landscaping and yard decor outside the Patio Walls.

Section 5. All water supplies systems and sewage disposal systems shall be in accordance with the requirements

and standards of the City of Tempe.

Section 6. Common Area. The common areas shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the lot owners.

Section 7. Nuisances. No nuisances shall be allowed upon the lots or common area, nor any use or practice which is the source of annoyance to lot owners or which interferes with the peaceful possession and proper use of the lots by its residents. All parts of the property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist.

Section 8. Trucks, Boats, Cycles, Campers. Except for trucks or vans belonging to persons doing work on the premises during daylight hours (or at other times during emergencies), trucks, buses, vans, trailers, boats, campers, and similar type vehicles or equipment shall not be parked in the streets or front yards, or in other areas which make said vehicles visible from the street or the residence of any other Lot in TORRE MOLINOS Planned Area Development, unless written approval is obtained from the Board of Directors of the Association with respect to some other place and/or manner of keeping or parking such vehicles or equipment. This Section does not apply to passenger automobiles and/or station wagons, or passenger three-quarter (3/4) ton pick-up trucks. If the Board of Directors of the Association determines that a vehicle (including but not limited to a motorbike or motorcycle) is creating loud or annoying noises by virtue of its operation within the properties, such

determination shall be conclusive evidence that such operation of the vehicle is a nuisance to the neighborhood and such operation shall, upon notice by the Board to the owner or operator thereof, be prohibited within the properties. This Section does not apply to Tract R.

Section 9. Trash; Unsightly Items. All garbage cans, mechanical equipment and other equipment, service areas, woodpiles, storage piles and storage areas shall be kept screened by adequate planting or fencing so as to conceal them from view of the other lots and streets in TORRE MOLINOS Planned Area Development. All rubbish, trash, or garbage shall be removed from the premises and shall not be burned on, or allowed to accumulate on, the premises. No incinerators, except those approved in writing by the Board of Directors of the Association, shall be permitted on the premises. All air conditioning and heating units shall be placed on ground level and shall be screened from view by fences or hedges.

Section 10. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the lots or common area nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the lots and common area property shall be the same as the responsibility for the maintenance and repair of the property concerned.

Section 11. 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 approved in writing by the Board of Directors of the Association.

Section 12. All streets within TORRE MOLINOS Planned Area Development are private streets for the benefit of the lot owners, persons occupying the lots, their guests and other persons lawfully upon the properties. The TORRE MOLINOS Association, or any lot owner, shall never petition the City of Tempe to accept the private drive as public streets. Parking on the private drives shall be limited to one side of the drive and the Developer and Association shall place and maintain signs on the private drives indicating which side of the private drive parking is prohibited.

Section 13. In the event that any lot owner purchases a membership in the Tempe Raquet and Swim Club which constitutes a membership which (according to the terms of said membership) is appurtenant to the lot and which is transferable only to subsequent purchasers of the lot, then said membership shall be subject to all contract provisions and rules and regulations of the Tempe Raquet and Swim Club which are, or may thereafter, become applicable to such memberships.

Section 14. Regulations. Reasonable regulations concerning the use of the lots, common area and facilities to be used in common may be made and amended from time to time by the Board of Directors of the Association; provided, however, that all such regulations and amendments thereto shall be approved by not less than a majority of the members of the Association before such shall become effective. Members not present at meetings considering such regulations or amendments

thereto may express their approval or disapproval in writing. Copies of such regulations and amendments thereto shall be furnished by the Association to all lot owners and upon request.

Section 15. The following items shall not be permitted on the property:

- a) Clotheslines.
- b) No outside visible antennas of any type.
- c) No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

Section 16. No advertising signs (except one of not more than five square feet "For Rent" or "For Sale" sign per lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner of any lot or any resident thereof. Provided, further, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, of the Developer or its agents and assigns during the construction and sale period.

Section 17. There is hereby created a blanket easement upon, across, over and under the above described premises, lots and common area (except under the buildings) for reasonable ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas,

telephones and electricity. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits in the prescribed easements, and in the roofs and exterior walls of all buildings on the lots and the common area. In addition, the providing municipality shall have a public easement over the private streets for police, fire and ambulance service. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said premises except as initially programmed and approved by the Developer or the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

Section 18. a) As to all lots which have a common boundary line and upon which is built a wall as part of the original construction of the residencies and/or garages, said wall shall constitute a party wall and there are hereby created Party Wall Easements between the said lots for the purpose of building party walls on the boundary lines which said lots have in common with each other.

A party wall easement is hereby granted upon each said lot in favor of the lot adjacent to it for the construction of such party walls upon the lots by the Developer, said party wall to be constructed pursuant to the Developer's discretion as to the height, width, length and material.

All party walls erected and/or constructed on said boundary lines shall constitute party walls and both lots upon which a said party wall is constructed shall have equal rights to use of said party wall.

In the event any party wall is damaged or destroyed by an owner of a lot or any of his guests, agents, or members of his family, such owner shall, within thirty (30) days from

the date of the occurrence of the damage or destruction, repair and/or rebuild the party wall and any damage to the adjacent building and/or adjacent lot, and repair said property in a good workmanlike manner in conformance with the original plans and specifications used in said construction of the buildings on said lots. In the event said owner fails to repair or rebuild any or all such damage to the party wall and the adjacent property within thirty (30) days, the owner of the adjacent lot which was damaged, or the Association by and through its Board of Directors, is hereby irrevocably authorized by such owner to repair and/or rebuild any such party wall and/or the adjacent property which was damaged in a good workmanlike manner in conformance with the original plans and specifications of the buildings on the lots. The said owner who had the responsibility to make the repairs and/or rebuild shall then repay the Association or the adjacent lot owner, depending upon which did the repairs or building, the actual amount expended in such repairs or rebuilding. The Association shall make the repairs or do the rebuilding upon demand by the adjacent lot owner whose property was damaged; however, in the event the Association refuses to act, then the adjacent lot owner shall have the right to make the repairs or rebuilding.

A party wall shall not be used by an owner of a lot for the purpose of attaching anything to said party wall which is recreational or which produces noise or sound in any way whatsoever, nor shall any owner be permitted to penetrate said party wall in excess of three (3) inches from the exterior of said wall.

In the event any party wall shall be totally or partially destroyed in such a manner that neither adjacent

lot owner is responsible to repair or rebuild said party wall, then either of the said adjacent lot owners may repair said party wall in accordance with the original plans and specifications used in the construction of the buildings on the lots, and the expense of rebuilding and repairing said party wall shall be borne equally by the adjacent lot owners to said party wall and their heirs or assigns, except that this provision shall not be applicable to damage done solely to the interior portion of the said party wall, which damage shall be repaired by the owner of the building whose interior wall is damaged at the said owner's expense. The granted herein in connection with party walls shall include the right to go upon the adjoining owner's land for the purpose of repairing and/or rebuilding to the extent that the same is reasonably necessary to make said repairs or reconstruction.

Notwithstanding any provision herein to the contrary the provisions herein and the easements granted herein in connection with the said party walls shall be perpetual and the covenants and easements and instructions herein contained in connection with the party wall shall run with the respective lots, it being intended to grant herein a right to a perpetual party wall.

b) In the event of a dispute between owners with respect to the repair or rebuilding of a wall, then upon written request of one of such owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators one chosen by each of the owners and the third by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then

the third arbitrator shall be chosen by the Presiding Judge of the Supreme Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three Arbitrators shall be binding upon the owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then the arbitrator who has been chosen shall make the decision alone.

Section 19. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Developer to maintain during the period of construction and sale of said lots, upon such portion of the premises as such Developer may choose, such facilities as in the sole opinion of said Developer may be required, convenient or incidental to the construction and sale of said lots, including but not without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 20. Nothing contained herein shall be construed to prohibit the renting of any dwelling on a Lot (whether it be the entire unit which is rented or any portion thereof) in connection with the use of the Tempe Raquet and Swim Club facilities by the persons renting any said dwelling or any said portion of a dwelling.

ARTICLE V
MAINTENANCE

Section 1. The Association shall be responsible to provide for the maintenance, upkeep and replacement of the common area and limited common area and the improvements located thereon. In addition, the Association shall maintain that area of each lot located outside the building and outside the patio walls, including but not limited to the yard, sidewalks and landscaping. The Association shall also maintain that portion of the Broadway Road Right of Way located directly to the South of the Property, and to the North of the pavement which means the care and maintenance of the landscaping.

Section 2. As to the buildings and structures on the lots, the Association shall provide exterior surface maintenance, including painting and repair, of the exterior building surfaces, roofs, gutters, downspouts, and the exterior of

the patio fences. The individual lot owner shall maintain the surface of the interior patio fences and the cement flooring and landscaping within the patio fence areas.

Section 3. All conduits, plumbing, water and sewer, wiring and other facilities for the furnishing of utility services located in the common area shall be maintained by the Association. All water and sewer lines located within the boundaries of a lot shall be maintained by the lot owner. All electrical and gas wiring and lines located between the meter and the building (including those within each building) shall be maintained by the lot owner.

Section 4. The lot owners shall maintain and repair that part of the building, lot and utility services which the Association has no responsibility for maintaining, including the area within the patio walls attached to each building.

Section 5. In the event that the need for maintenance or repair to either the common area, limited common area, or any part of any lot, or any building structure or improvement on a lot, is caused through the willful or negligent act of the owner of any lot, his family, or guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE VI

INSURANCE

Section 1. Authority to Purchase. All insurance policies upon the common area and lots (including all buildings on the lots) shall be purchased by the Association for the benefit of the Association and the lot owners and their mortgagees as their interests may appear, and provisions shall be made for the issuances of certificates of mortgage endorsement to the mortgagees of lot owners. Such policies

and endorsements thereon shall be deposited with the Association. Lot owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense, and the lot owner may also obtain insurance on the buildings located on his lot.

Section 2. Coverage.

a) Casualty. All buildings and improvements upon both the common area, limited common area, and the lots, and all personal property included in the common area shall be insured by the Association in an amount equal to the maximum insurable replacement value, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against:

- 1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and
- 2) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, including, but not limited to vandalism and malicious mischief.

b) Public Liability in a minimum amount of \$500,000.00 and in such higher amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to, hired automobile and non-owned automobile coverage*, and with cross liability endorsement to cover liabilities of the lot owners as a group to an individual lot.

c) Workmen's Compensation policy to meet the requirements of law.

d) Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

e) The said insurance policy purchased by the Association shall, to the extent possible contain the following provisions:

- 1) That the coverage afforded by said policy shall not be brought into contribution or proration with any insurance which may be purchased by individual lot owners or their mortgagees;
- 2) That the conduct of any one or more lot owners shall not constitute grounds for avoiding liability on said policy;
- 3) That any "no other insurance" clause should exclude insurance purchased by lot owners or their mortgagees; and,
- 4) That there shall be no subrogation with respect to the Association, its employees, lot owners and members of their household or it should name said persons as additional insureds.

Section 3. Premiums. The premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

Section 4. Insurance trustee; shares of proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the lot owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association. Notwithstanding anything herein to the contrary, including any provision for a mortgagee, the Association shall

hold all insurance proceeds collected by it in trust for rebuilding the damaged common elements and buildings located on the lots. The Association or its agents shall have exclusive authority to negotiate with the insurance carrier and to adjust losses, make settlements and give releases to the insurance carrier and to collect monies from the insurance carrier.

Section 5. It shall be the individual responsibility of each lot owner to provide, as he sees fit, homeowner's liability insurance, theft or other insurance covering personal property damage and loss.

Section 6. In the event of damage or destruction to the property by fire or other casualty, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution the accounts of which bank or other financial institution are insured by a Federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall contract with any licensed contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding any building on a lot to the same condition as it formerly existed, the Board of Directors shall levy a special assessment against the lot owner whose building was

damaged or destroyed to make up any deficiency for repair or rebuilding of the common area or for the repair or rebuilding of any sidewalks or passageways. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and owners of lots as their interest may then appear.

Section 7. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the lot owners pursuant to the provisions of Paragraph 6.

Section 8. All said special assessments shall be paid within sixty (60) days from the date of levy and may be enforced by foreclosure in the same manner as is specified in Article VII hereof.

Section 9. Plans and specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, or if not, then according to plans and specifications approved by the Board of Directors.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, 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

agrees to pay to the Association or to any representative appointed by the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be for the purpose of and be used to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the common area, the limited common area, and of that portion of the lots and buildings and structures situated on the lots, the maintenance of which is the responsibility of the Association, pursuant to the provisions of these Declarations and for the taxes on the common area and the limited common area and for insurance purchased by the Association, both for property damage and liability and for such other expenses which the Association incurs in carrying out the duties placed upon it.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, after the "transfer of control date," 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 or 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 the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Notice and Quorum for Membership Meeting to Take Action Authorized Under Section 3. Written notice of any meeting of the members of the Association called for the purpose of taking any action authorized under Section 3 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes of the membership of the Association 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 that preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 6. Date of Commencement of Annual Assessments.
Due Dates. The annual assessments provided for herein shall commence as to each lot on the first day of the month following the conveyance of the lot to the purchaser. 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 have been paid.

Section 7. The Association may appoint an agent (including the mortgagee of any lot) to whom the assessment or any portion of it shall be paid.

Section 8. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight (8%) percent per annum. The Association may bring an action at law against the owner personally obligated to pay the same, and/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 9. a) The covenants, restrictions, reservations and conditions and easements contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, sub-leasing, or occupying any lot, their heirs, successors, executors, administrators, grantees and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations and conditions may be enforced by the Association or its Board

of Directors, which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof, and also may be enforced by the owner of any lot or any one or more of said parties. An action to abate the breach of any of said covenants, restrictions, reservations and conditions may be brought against any lot owner even though said breach was in existence at the time the owner acquired an interest in or title to said lot. All charges against a lot made by the Association pursuant to any of the provisions hereof shall constitute a lien upon the said lot and all purchasers shall take title to said lot subject to any said liens which have accrued prior to the date of purchase, except as to purchasers who have acquired title through foreclosure of a first mortgage and the subsequent Sheriff's sale (or through any equivalent proceedings such as, but not limited to the taking of a deed in lieu of foreclosure), and as to those purchasers, and their successors in interest, they shall take title pursuant to the provisions of Paragraphs (b) (1) (2) and (3).

b) Notwithstanding and prevailing over any other provisions of this Declaration, of the Association's By-Laws, or any rules, regulations, or management agreements, the following provisions shall apply to and benefit each holder of a first mortgage upon a lot (called the first mortgagee):

- 1) An action to abate the breach of any of the covenants, restrictions, reservations and conditions any be brought against the purchasers who have acquired title through foreclosure of a first mortgage and the subsequent Sheriff's sale (or through any

equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in the said lot.

- 2) During the pendency of any proceedings to foreclose the first mortgage, including any period of redemption, the first mortgages (or any receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the owner of the lot, including but not limited to the right to vote as a member of the Association to the exclusion of the owner's exercise of such rights and privileges.
- 3) The first mortgages, or any other party acquiring title to a mortgaged lot through foreclosure suit of the first mortgage or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, and the successors in interest to said purchasers, shall acquire title to the mortgaged lot, free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceedings, including the expiration date of any period of redemption, except as follows: Any such unpaid assessment against the lot foreclosed

which may be treated as an expense common to all of the lots, which expense may be collected by a pro rata assessment of 1/160th of the total amount against each of the lots, including the lot foreclosed against, and which prorata assessment may be enforced as a lien against each lot in the manner provided for other assessments authorized in this Declaration. Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting owner of the respective lot to the Association, and the Board of Directors may use reasonable efforts to collect the same from the owner even after he is no longer a member of the Association. There shall be a lien upon the interest of the first mortgagee or other party which acquires title to a mortgage unit by foreclosure suit of said first mortgage, or by equivalent procedures, for all assessments authorized by this Declaration which accrue and are assessed after the date the acquirer has acquired title to the lot, free and clear of any right of redemption.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. No building, fence or wall other structure shall be commenced, erected or maintained upon the lots or the common area, nor shall any exterior addition to or change or alteration therein be made, nor shall any painting

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

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association, Declarant, or any lot owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration

is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) years by an instrument signed by not less than ninety (90%) percent of the lot owners, and thereafter by an instrument signed by not less than seventy-five (75) percent of the lot owners. Any amendment must be recorded.

Notwithstanding anything herein to the contrary, the Board of Directors of the Association can amend these Declarations at any time prior to the "Transfer of Control Date."

Section 4. Annexation. Additional residential property and common area may be annexed to the properties with the consent of two-thirds (2/3) of each class of members.

Section 5. Costs and Attorney's Fees. In any proceeding arising because of an alleged failure of an owner of a lot to comply with the terms of the Declaration, By-Laws and regulations adopted pursuant thereto, and said documents and regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

Section 6. Indemnification. Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel 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, except as such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board of

Directors approves such settlement and reimbursement as being in the best interests of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

Section 7. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, and shall in all cases be assumed as though in each case fully expressed.

Section 8. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and. in the event that one or more of the phrases, sentences, paragraphs or sections or clauses contained therein should be invalid or should operate to render this Declaration invalid, this Declaration shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections had not been inserted. In the event that any provision or provisions of this instrument appear to be violative of the Rule against Perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving of Rudolph Mariscal and Phillip Weeks, and their respective wives and children who shall be living at the time this instrument is executed.

Section 9. First American Financial Corporation, a California corporation, a national banking association, by executing this Declaration of Restrictions hereby ratifies,

confirms and approves the execution and recording of this Declaration of Restrictions.

DATED this 11th day of MAY, 1973.

DECLARANT

ARIZONA TITLE INSURANCE & TRUST Co., an Arizona corporation, as Trustee

SUPPLEMENT TO DECLARATION OF
COVENANTS, CONDITION AND RESTRICTIONS

This Supplement to the Declaration of Covenants, Conditions and Restrictions, recorded at Docket 10147, Page 252, is made by Robert K. Adams and Judith S. Adams, his wife, and Kenneth X. Himes and Lydia K. M. Himes, his wife.

W I T N E S S E T H:

WHEREAS, Robert K. Adams and Judith S. Adams, his wife, and Kenneth R. Himes and Lydia K. M. Himes own Lots Fifty-five (55) through One Hundred Twenty-five (125), inclusive, Torre Molinos, according to the Plat of Record in the Office of the Maricopa County Recorder in Book 161 of Maps, Page 14.

WHEREAS, at a Special Meeting of the Board of Directors of the Torre Molinos Association, Inc., held on March 22, 1978 at Tempe, Arizona, in accordance with the General Corporation Laws of the State of Arizona, the Board of Directors adopted and approved a new general plan for the Torre Molinos Condominiums (also known as Los Molinos) in accordance with the Plat designated as S-72.41(A), as designated to the Communities Development Department of the City of Tempe, Arizona.

WHEREAS, the general plan as designated in Plat S-72.41(A), as referred to above, was approved by the City of Tempe, Arizona, under the name "Los Brisas Amended" and was recorded on September Eleventh (11), 1978, in Book 203 of Maps, Page 33.

WHEREAS, Robert K. Adams and Judith S. Adams, his wife, and Kenneth R. Himes and Lydia K. M. Himes, his wife, accordingly now own Lots One (1) through Seventy-one (71), inclusive, Los

Brisas Amended, according to the Plat of Record in the office of the Maricopa County Recorder in Book 203 of Maps, Page 33.

WHEREAS, at a special meeting of the membership of the Torre Molinos Association, Inc., held on March 22, 1978, at Tempe, Arizona, in accordance with the General Corporation Laws of the State of Arizona, the members of the Torre Molinos Association, Inc. adopted the new name "Los Brisas Condominium Association".

WHEREAS, at the membership meeting of March 22, 1978, the Association adopted the -name "Los Brisas" for the condominium development then known as Torre Molinos and/or Los Molinos.

WHEREAS, Robert K. Adams and Judith S. Adams, his wife, and Kenneth R. Himes and Lydia K. M. Himes, his wife, wish to supplement the Declaration of Covenants, Conditions and Restrictions recorded on May 22, 1973, in Docket 10147, Page 525, to incorporate those matters stated herein for the purpose of declaring that Lots One (1) through Seventy-one (71) inclusive, of Los Brisas Amended are, and at all times shall be, subject to the provisions of said Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions recorded in Docket 10147, Page 525, is supplemented as follows:

1. "Association" shall now include the Los Brisas Condominium Association.

2. "Common Area" shall now include Tracts J, K, L, M, N, O, P, Q, and S, Los Brisas Amended, according to the Plat of Record in the Office of the Maricopa County Recorder in Book 203 of Maps, Page 33; Tracts B, C, D, E, J, K, O, and P, Torre Molinos,

recorded in Book 161 of Maps, Page 14, together with that portion of Tract I, Torre Molinos, recorded In Book 161 of Maps, Page 14, that lies within the boundaries of Los Brisas, as said boundaries are established by legal description set forth on a Plat recorded in Book 200 of Maps, Page 43, Records of Maricopa County, Arizona, no longer being "Common Area" in that said Tracts are no longer in existence by the Los Brisas Condominium Association's adoption of the new Plat, Los Brisas Amended.

3. "Lot" shall include Lot one (1) through seventy-one (71), Los Brisas Amended, according to the Plat of Record in the Office of the Maricopa County Recorder in Book 203 of Maps, Page 33.

4. "Member" shall include all persons, individuals or entities, who hold membership in the Los Brisas Condominium Association.

5. "Developer" shall include Los Brisas Townhouses, a Joint Venture.

IN WITNESS WHEREOF, this Supplement to Declaration of Covenants, Conditions and Restrictions has been duly executed this 6th day of September, 1978.