

# DECLARATION OF PROTECTIVE COVENANTS FOR LAS ALTURAS LOTS 1 THROUGH 167

THIS DECLARATION, made this 16th day of October, 1978, by STEWART TITLE & TRUST OF TUCSON, an Arizona corporation, as Trustee under Trust No. 1748, hereinafter called the Grantor,

WITNESSETH:

WHEREAS, Grantor holds legal title to the real property described in ARTICLE II of this Declaration, the Reversionary Owner holds beneficial title to the real property described in ARTICLE II of this Declaration, and they are desirous of subjecting the real property described as Lots 1 through 167 in LAS ALTURAS to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, each and all of which is and are for the benefit of said property and for each owner thereof, and shall inure to the benefit of, be binding on and pass with said property, and each and every lot thereof, and any owner thereof;

NOW, THEREFORE, Grantor and Reversionary Owner do hereby establish a general plan for the improvement and development of said Lots 1 through 167, and do hereby establish the provisions, conditions, restrictions and covenants upon which and subject to which all of said real property and the lots into which it has been subdivided shall be improved or sold and conveyed by the owners thereof; each and every one of said provisions, conditions, restrictions and covenants is and all are for the benefit of each owner of real property in said subdivision, or any interest therein, and shall inure to and pass with each and every parcel of said subdivision, and shall bind the respective successors in interest of the present owner or owners thereof; said provisions, conditions, restrictions and covenants are and each thereof is imposed upon said lots, all of which are to be construed as restrictive covenants running with the title to said lots and with each and every parcel thereof, to-wit:

## ARTICLE I

As used herein the following terms shall mean:

"Approving Agent" shall mean a person duly appointed by the Reversionary Owner.

"Detached single-family dwelling" or "single-family dwelling" shall mean a building and structures customarily appurtenant thereto, erected and maintained in conformance with the requirements of this Declaration for private residential purposes and designed for occupancy by a single family. It shall not mean any professional office, flat, apartment, multi-family dwelling or duplex, school, lodging house, rooming house, hotel, hospital or sanitarium, even though intended for residential purposes, or similar dwelling, whether or not a fee is charged for occupying the dwelling.

“Detached single-family dwelling” or “single-family dwelling” shall expressly not include any mobile homes, manufactured homes, multi-sectional manufactured homes, modular homes, factory-built homes, mobile/component housing or similar units which are manufactured elsewhere, or a single-family dwelling constructed elsewhere and moved to the lot for attachment to either a permanent or movable foundation.

“Outbuilding” shall mean a structure or ramada, enclosed, covered, or open, not directly attached to a single-family dwelling to which it is appurtenant.

“Reversionary Owner” shall mean the beneficiaries of Stewart Title & Trust of Tucson, an Arizona corporation, Trustee under Trust No. 1748, their heirs, grantees, assigns, or successors; provided, however, the term “successors or assigns” of the Reversionary Owner as used in this Declaration shall not be deemed to mean individual lot owners who have purchased individual lots or an interest therein or whose predecessors in interest have purchased individual lots or an interest therein from the Owner, Stewart Title & Trust of Tucson, an Arizona corporation, as Trustee under Trust No. 1748, its successors or assigns.

“Owner” shall mean the Grantor and each person or entity who is or becomes the owner of the fee or equitable title in a building site, or who has purchased a building site under a contract pursuant to the provisions of any recorded instrument, which site is located within the property legally described in Paragraph 1 of ARTICLE II of this Declaration, and any site located within the other property legally described in Paragraph 2 of ARTICLE II of this Declaration as determined by the Reversionary Owner. Such ownership will be deemed to have vested upon delivery of a duly executed deed or contract to the grantee or vendee. The legal title retained by a vendor selling under a contract and the legal title transferred to a trustee under a deed of trust shall not qualify the legal title holder as an owner. The transfer of ownership as above defined (whether by sale, forfeiture, foreclosure, or otherwise) will work an automatic transfer of ownership to the new owner.

Should Trust No. 1748 referred to hereinabove terminate and should legal title to the real property described in ARTICLE II of this Declaration be vested in the Reversionary Owner, references to the Grantor herein or the Grantor and Reversionary Owner shall mean the Reversionary Owner.

“Residential building site” as well as “building site” shall mean any lot, a lot and portions of another contiguous lot, or two or more contiguous lots upon which a detached single-family dwelling may be erected in conformance with the requirements of this Declaration; provided, however, an ownership or single holding by any person comprising parts of two adjoining lots, or the whole of one lot and part or parts of one or more adjoining lots, may, at the option of the Reversionary Owner, be deemed to constitute a single lot. No lot subject hereto shall be re-subdivided except as approved by the Reversionary Owner.

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## ARTICLE II

1. The real property which is, and shall be, conveyed, transferred, occupied and sold subject to this Declaration is located in the County of Pima, State of Arizona, and is more particularly described as follows, to-wit:

Lots 1 through 167, in LAS ALTURAS, a subdivision in Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona in Book 30 of Maps and Plats at page 19.

2. No property other than that described above shall be deemed subject to this Declaration, provided, however, that these conditions, covenants, restrictions, reservations and easements are for the benefit of said above described property and also of all other portions of Section 15, Township 13 South, Range 14 East, G. & S. R. B. & M., Pima County, Arizona, presently owned by the Reversionary Owner.

## ARTICLE III

1. No structures or improvements whatsoever except public utility facilities shall be erected, placed or permitted to remain on any portion of the above described land which does not constitute a building site.

2. No structures shall be erected, altered, placed or permitted to remain on any building site subject to this Declaration other than one first-class detached single-family dwelling, for private use, a private garage, patio walls, swimming pool, guest house, servants' quarters and other outbuildings and improvements incidental to residential use of the premises, as approved by the Reversionary Owner, including public utility facilities. No kitchen facilities shall be installed or maintained in any building on any lot other than one kitchen in the principal residence. A garage shall be constructed on every building site before the residence constructed thereon is occupied. All garages shall be maintained as such unless the Reversionary Owner approves its use for some other purpose.

No mobile home, manufactured home, multi-sectional manufactured home, modular home, factory-built home, mobile/component housing or similar unit, or a single-family dwelling constructed elsewhere shall be placed on any lot covered by these restrictions, nor shall such unit form a part of a single-family dwelling located within the subdivision.

3. The native growth of said property, including cacti, mesquite and Palo Verde trees, shall not be destroyed or removed from any of the lots in said property by any of the lot owners, except such native growth as it may be necessary to remove for the construction and maintenance of roads, driveways, detached single-family dwellings and necessary garages and other outbuildings related to said residence and walled-in service yards and patios, unless written permission is first obtained from the Reversionary Owner. No private road or driveway shall be constructed

under the authority given until the person or persons desiring to construct such private road or driveway has submitted to the Approving Agent as mentioned in Paragraph 4 hereof two sets of plans showing the location, course and width of such private road or driveway and the approval of the Approving Agent to the construction of such private road or driveway has been obtained in accordance with the provisions of said Paragraph 4 relating to the construction of other improvements upon said property. In the event such growth is removed or destroyed without such approval, the Reversionary Owner may require the replanting or replacement of same, the cost thereof to be borne by the lot owner.

4. All buildings plans, specifications and plot plans, including exterior color scheme, for any building, wall or structure to be erected on or moved upon or to any part of said property, the proposed location thereof on any building site and any changes after approval thereof and any remodeling, reconstruction, alterations or additions to any building or other structure on any building site in said property, shall be subject to the approval in writing of an Approving Agent appointed from time to time by the Reversionary Owner as its representative authorized for such purpose. Before beginning the construction of any building, wall, coping or other structure whatsoever, or remodeling, or reconstructing or altering said structure on any building site, the person or persons desiring to erect or construct or modify the same shall submit to the Approving Agent two complete sets of building plans and specifications, plot plans, including exterior color scheme, for the building, wall, coping or other structure so desired to be erected, constructed or modified and no structure of any kind, the plans, elevations and specifications of which have not received the written approval of said Approving Agent and which do not comply fully with such approved plans and specifications, shall be erected, placed or maintained upon any building site. The location of such improvements to be approved by the approving agent shall be staked on the site prior to such approval. Approval of such plans and specifications shall be evidenced by the written endorsement of Approving Agent made on said plans and specifications, a copy thereof to be delivered by said Approving Agent to the owner or owners of the building site upon which said prospective building or other structure is proposed to be erected, or to his agent or representative, prior to beginning said construction. One set of said plans and specifications shall be delivered to the Reversionary Owner to be kept permanently by it. No changes or deviations in or from said plans and specifications as approved by said Approving Agent insofar as the exterior of the proposed structure is concerned, shall be made without the written approval of said Approving Agent first had. There shall be no changes of exteriors or roofs permitted unless written permission is given by the Approving Agent. The Reversionary Owner shall not be responsible for any structural defects in said plans or specifications, nor in any building or structure erected according to such plans and specifications. Sewage systems and swimming pools are included within the meaning of the term structure.

Failure on the part of an owner to obtain the written approval of any modifications referred to in this paragraph prior to construction shall allow the Reversionary Owner to assert its rights pursuant to these covenants, whether or not plans and specifications, if filed, would have been approved by the Reversionary Owner.

4.1. Prior to submitting complete sets of building plans as provided for in Paragraph 4 above, a preliminary set of plans shall be submitted in duplicate to the Approving Agent for approval showing:

- a. The height of any single-family dwelling or outbuilding above the finished floor elevations of such dwelling or outbuilding.
- b. The finished floor elevation of such dwelling or outbuilding in relationship to the natural grade of that portion of the building site on which such dwelling or outbuilding will be located.
- c. The location of such dwelling or outbuilding on the building site superimposed on the topographic elevations shown on the Tentative Plat approved by and on file with Pima County, Arizona.

The intent of this paragraph is to provide a means for controlling the position and height of single-family dwellings and outbuildings relative to surrounding dwellings and outbuildings within the building sites, so as to provide the greatest protection of views and privacy for the benefit of the largest number of lot owners. The Approving Agent may allow a two-story single-family dwelling or one-story and a partial-story single-family dwelling on certain lots, provided the topography of the lot and its relationship to surrounding lots is such that in the sole judgment of the Approving Agent such exception(s) would not be in conflict with the stated intent of this paragraph.

5. Said Approving Agent shall have the right and privilege to disapprove any and all plans and specifications submitted to him as aforesaid, for any one or more of the following reasons, to-wit:

- a. If, in the opinion of said Approving Agent, the architectural design of the proposed building or other structure as shown by said plans, specifications and plot plans, including exterior color scheme, or the location of any structure, be not in harmony with the general surroundings, or with the buildings or structures, or proposed buildings or structures on any building site subject to these covenants, or if the location or arrangement of any sewage system would endanger or interfere with any public or utility facilities or improvements. The decision of said Approving Agent upon said subject shall be final.
- b. That the plans and specifications submitted are not in detail or incomplete.
- c. If said plans and specifications are not in exact accordance with each and every provision of this Declaration.

d. That the roof is of either a material or style different than that specified by the Approving Agent. No white, light colored or reflective roofs shall be permitted without express approval by the Approving Agent.

e. That the plans and specifications do not include a garage.

5.1. For the purpose of enforcing architectural and construction control, the Reversionary Owner or Approving Agent shall have the exclusive right, exercisable in its sole discretion, to promulgate reasonable rules, regulations and restrictions on construction; to amend such rules, regulations and restrictions from time to time; and to waive or modify any such rules, regulations or restrictions, provided that no such waiver shall be deemed a waiver of the right to enforce such rules, regulations or restrictions in the future as to others; and provided, further, that any waiver or modification shall be consistent with the general plan for the improvement and development of the property. Any waiver granted by the Reversionary Owner or Approving Agent shall be given in exchange for a hold harmless agreement executed by the Owner benefitting from the waiver and running to the benefit of the Reversionary Owner or its successors or assigns.

6. The Reversionary Owner shall not be liable in damages to anyone so submitting plans for approval, or to any owner or owners of land subject to these covenants by reason of mistake in judgment, negligence or non-feasance of itself, its agents or employees, arising out of or in connection with the approval, or disapproval, or failure to approve any such plans; anyone submitting plans to the Approving Agent for approval, by the submitting of such plans, and any owner by acquiring title to any of the property covered hereby, waives his claim for any such damages.

7. No lot or portion thereof shall be used in whole or in part for the storage or dumping of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, animal, thing or material be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might unreasonably disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

8. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any lot or on any building erected thereon, other than a name plate of the occupant of any residence upon which his professional title may also be added, and provided no such sign or name plate shall exceed a size of one square foot. Such signs must be of a uniform shape as designated by the Approving Agent. Provided, however, that permission is hereby granted for the erection and maintenance of not more than one signboard on each building site during the course of construction of a new single-family dwelling and upon its completion, during the course of its initial sale, which signboard shall not exceed five square feet. Such sign shall not include any name other than the contractor's name.

Notwithstanding anything herein contained to the contrary, nothing herein shall be construed to prevent the Reversionary Owner from erecting, placing or maintaining sign structures and offices, including manufactured or mobile offices or manufactured or mobile homes used as offices, as may be determined necessary by Reversionary Owner to promote sale and development of lots within the subdivision.

9. All driveways and roads shall be treated and maintained with a minimum of a two-shot bituminous surface treatment to prevent dust.

10. All exterior lights must be so located as not to be directed toward surrounding properties or public rights-of-way.

11. The Reversionary Owner shall determine the location, color, design, lettering, and all other particulars, including attached lights, of all mail or paper delivery boxes and standards and brackets and name signs for same in order that the area be strictly uniform in appearance with respect thereto.

12. All cooling and heating equipment shall be concealed. No evaporative cooler, air conditioning equipment, heating equipment, cooling or heating ducts or other equipment shall be placed, installed or maintained on the roof or wall of any building or structure, except that certain solar heating or cooling devices may be placed on roofs which completely conceal the same and are in no way detrimental to other properties within the subdivision. Specific prior written approval by the Approving Agent is required before placement of such devices. If not obtained, said devices shall be immediately removed by the owner at his expense.

Provided, however, the requirements hereunder shall not effectively prohibit the installation or use of solar energy devices.

13. Bermuda grass, except that of a variety recognized to be pollen free and approved in writing by the Reversionary Owner, shall not be grown on any lot.

14. All trees and other vegetation planted on any of said property shall be kept trimmed to a height which will not materially interfere with the principal views from neighboring building sites (over such vegetation) and of surrounding landscapes.

15. No derrick or other structure designed for use in boring for oil or natural gas or radio or television transmission towers or radio or television receiving towers shall be erected, placed or permitted upon any part of said property, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon product or substances be produced or extracted therefrom. Television receiving antennae shall not be included in the meaning of this paragraph; however, such antennae exceeding ten feet above the roof line of the house shall be subject to approval by the Approving Agent.

16. No elevated tanks of any kind shall be erected, placed or permitted upon any part of said property. Any tanks for use in connection with any residence constructed on said property, including tanks for the storage of gas and fuel oil, gasoline or oil, must be buried or walled in sufficiently to conceal them from the view from neighboring or other lots

or roads or streets. All clothes lines, equipment and mechanical equipment shall be walled in, and wood piles, storage piles and construction materials shall be concealed at all times, so that none may be viewed from any point beyond the building site on which they are located. Trash or rubbish containers shall remain concealed from view of adjoining lots and shall not be placed along street rights-of-way.

17. Said property and the whole thereof shall be used for single-family dwelling purposes only; no business of any nature nor any so-called home occupations shall be conducted thereon. Rental of any guest house is prohibited, the occupancy thereof shall be limited to members of the owner's family, guests or servants. This shall not be construed as preventing the leasing or renting of an entire lot, together with the improvements thereon.

18. Any single-family dwelling, garage, building, swimming pool, wall, coping or other structure erected or placed upon any such building site and every part thereof, including overhangs, shall be located not closer to any property line of said building site than the following distances:

Front yard—thirty (30) feet  
Side yards—ten (10) feet each  
Rear yard—forty (40) feet

Any wall or coping may not exceed six (6) feet in height. Any plantings used to form a hedge shall be subject to the same setback requirements and height limitations as apply to a wall or coping. In determining the height of such wall, coping or hedge, the average ground level shall be used. However, exemptions from setback and height requirements for any structure or hedge may be granted by the Approving Agent when in his sole judgment such exemptions would not be detrimental to any other lot and provided a similar exemption is granted by the City of Tucson or the County of Pima, Arizona.

19. Said property shall be subject to any and all rights or privileges which the City of Tucson or the County of Pima, Arizona, may have acquired through dedication, or the filing or recording of maps or plats of said property, as authorized by law. No condition, restriction or privilege or act performed hereunder shall be in conflict with any applicable City or County Zoning law. Where the setback requirements set forth herein differ from applicable City of Tucson or County of Pima setback requirements, the more restrictive setback requirements shall prevail.

20. No garage or other building or structure shall be erected or permitted on any building site on said property until the construction and completion of a single-family dwelling thereon, except a single-family dwelling and the necessary outbuildings, garages or other structures related thereto may be simultaneously constructed; provided, however, that nothing herein contained shall be construed to prevent the incorporation and construction of a garage in and as a part of such dwelling house.



21. No temporary house, dwelling, garage, outbuilding, house trailer, commercial vehicle or equipment, construction or like equipment, tent, or other structure shall be placed or erected upon any of said property. Boats, campers, other trailers, recreational and similar vehicles or equipment shall not be placed upon any of said property unless stored within an enclosed structure approved by the Reversionary Owner and not visible when parked.

Only normal passenger vehicles, such as station wagons, two-door coupes and four-door sedans may be left outside a garage on a routine basis. All other vehicles, including but not limited to pick-up trucks, off-road vehicles and carryalls, shall be placed within an approved enclosed structure.

No residence placed or erected on any building site shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed as herein required, nor shall any residence when completed be in any manner occupied until made to comply with the approved plans, and all other conditions and restrictions herein set forth. The work of constructing, altering or remodeling any single-family dwelling, garage, building or other structure on any part of said property shall be prosecuted diligently from the commencement thereof until the completion thereof. Any single-family dwelling, garage, building or other structure damaged by fire or other casualty shall be repaired, replaced or removed within six months from the time of such damage; provided, that the Reversionary Owner may extend such time when in Reversionary Owner's opinion conditions warrant same.

22. No tennis court shall be constructed or permitted upon any part of said property; however, the Reversionary Owner may waive this restriction when in its sole judgment such waiver would not be detrimental to any other lot.

23. No animals, birds or fowl of any kind other than customary domesticated household pets belonging to the household of the premises shall be kept or maintained on any part of the real property subject to this Declaration. In no event, however, are more than two dogs and two cats more than ten weeks old permitted. The Reversionary Owner shall have the right to order the removal from any lot of any animals, birds, or fowl which may be objectionable to any of the residents on adjacent property. The owner of such animals, birds or fowl must immediately remove the same from the premises upon receipt of notice from the Reversionary Owner.

24. a. All electrical service and telephone lines from the utility company lines shall be placed underground and no outside electrical and telephone lines shall be placed overhead.

b. Where sewer, if any, water or other public utility facilities have been installed to or near the property line of a particular lot, for the purpose of providing service to that lot, the service connection to service an improvement on that lot shall be made at and from the installed facility or point assigned by the Approving Agent only.

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25. No motor driven two-wheel or three-wheel vehicles (including but not limited to motorcycles, motor driven bicycles and mini-bikes) shall be kept or operated on any part of the property subject to these restrictions if such vehicle, or the operation of such vehicle, is disturbing to the owner or owners of any neighboring or nearby property for whose benefit these restrictions are created. The Reversionary Owner shall have the right to order the removal of and/or cessation of operation of any such vehicle which is objectionable as provided in the preceding sentence. Upon receipt of a written order to remove and/or to cease operation of any such vehicle, the owner of the property upon which such vehicle is located or being operated shall promptly comply with such order.

#### ARTICLE IV

1. The Reversionary Owner has formed, under the laws of the State of Arizona, a non-profit, homeowner's corporation, referred to herein as the Association. The Reversionary Owner may at Reversionary Owner's sole option at any time hereafter convey, cause to be conveyed, or otherwise transferred to the Association all or any part of the real property described in ARTICLE II of this Declaration and any property situated thereon, and assign or otherwise transfer to the Association all or any number of the rights, powers and duties retained by the Reversionary Owner under this Declaration. Upon such assignment or other transfer, it shall be the responsibility of the Association to exercise said rights and powers and perform said duties to further the purposes for which the Association is organized. In addition, the Association shall accept the responsibilities set forth in the Dedication of the plat referred to in ARTICLE II, Paragraph 1 hereof.

2. Said Association was formed for the general purpose of providing for maintenance, preservation and architectural control of the property of the owners and the Association, and promoting the health, safety and welfare of the owners, and for these purposes to exercise the rights and powers and perform the duties assigned to it by the Reversionary Owner and granted to it by the Articles of Incorporation of the Association.

3. Each owner as defined by this Declaration shall automatically become a member of the Association; provided, however, that the Board of Directors of the Association may establish additional requirements for maintaining such membership. Where Owner as defined by this Declaration includes more than one person or entity, such persons or entities shall be deemed one member. Each member shall be entitled to one vote, unless the number of votes is otherwise provided for in the declaration applicable to the Owner's building site.

4. The owner of each lot bound by this Declaration, except for those sites owned by Grantor, shall pay to the Association within ten (10) days from receipt of an invoice a sum equal to the total of the following:

a. The pro rata share of the actual cost to the Association of all installation, maintenance and improvements of common areas, trails, street signs, entrance gates and common recreational facilities in LAS ALTURAS, taxes and insurance on said

property, operation and management of recreational facilities, and any other costs which in the judgment of the Association are incurred to promote the preservation and architectural control of said property and the health, safety and welfare of the owners, and professional fees, including attorneys' fees and costs incurred in the enforcement of deed restrictions, incurred by the Association in connection therewith, to the extent such costs and other expenses are not covered by funds theretofore collected and reserved for such purposes.

b. The pro rata share of the estimated future costs and expenses listed in subparagraph a. above which the Association determines shall be necessary to collect in advance and which are not covered by funds theretofore collected and reserved for such purposes.

c. The proration of the total of such costs and expenses shall be made on the basis that each lot will bear an equivalent share of such charges.

5. The total amount for such assessments against any single lot for any calendar year shall not exceed the sum of \$100.00, provided, however, the stated annual maximum sum assessed against each lot may be increased with the approval of the Association.

6. Invoices for payment of any and all assessments may be submitted monthly or at any other interval as may be fixed by the Association. In the event any such invoice is mailed to the building site, the amount of such invoice shall be and become a lien upon the building site against which such assessment was levied. Such lien may be enforced and foreclosed as provided for the enforcement and foreclosure of mechanics' and materialmen's liens in Arizona.

7. The lien for such assessments shall be subordinate to the lien of any mortgage or deed of trust made in good faith for value covering the same property or a portion of the same property against which said assessment or assessments are made, which mortgage or deed of trust is recorded prior to recordation of the claim for such assessments, but the liens of such assessments shall be binding and effective against any party who owns any such property during the period for which such an assessment is made even though the title of such party is acquired through foreclosure, forfeiture, trustee's sale or otherwise.

## ARTICLE V

1. Any or all of the provisions, conditions, covenants, restrictions and reservations herein are subject to express waiver by the Reversionary Owner and any such express waiver may apply at the option of the Reversionary Owner to less than all of the lots without waiver of such provisions, conditions, covenants, restrictions and reservations as to any other lot or lots.

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2. Anything in this Declaration to the contrary notwithstanding, the Reversionary Owner (and the Grantor, if applicable), or its successors or assigns, shall have the right from time to time to amend or make any changes in this Declaration which the Reversionary Owner (and the Grantor, if applicable), or its successors or assigns may deem beneficial to the owners of a majority of all of the then owners' interests in the lots in said subdivision. Any such amendment shall be made by an instrument executed by the Reversionary Owner (and the Grantor if applicable) with like formalities as this Declaration specifically stating the portions of this Declaration being amended. In addition, this Declaration may be amended by the Reversionary Owner in order to qualify these restrictions for acceptance by any federal, state, county or city regulatory body.

3. In the event that any one or more of the conditions, restrictions and covenants herein set forth and contained or any changes made therein shall be declared for any reason, by any court of competent jurisdiction, to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of said conditions, restrictions and covenants not so expressly held to be void, but all the remaining conditions, restrictions and covenants not so expressly held to be void, but all the remaining conditions, restrictions and covenants not so declared to be void shall continue unimpaired and in full force and effect.

4. In the event it is held by any court of competent jurisdiction that the period specified in Paragraph 1 of ARTICLE VI is in violation of the rule against perpetuities in Arizona, then and in such event the period specified in said paragraph shall thereupon be automatically modified so that the period specified therein is not more than twenty-one years from the date of this Declaration.

## ARTICLE VI

1. All of the aforesaid provisions, conditions, covenants, restrictions and reservations shall continue and remain in full force and effect at all times as against the owner of any portion of said property, however his title thereto may be acquired, until the commencement of the calendar year 2003, and shall be automatically continued thereafter for successive periods of ten years each; provided, the holders of record title of a majority of the lots subject to these restrictions may, by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and recording the same at any time at least one year prior to January 1, 2003, release all of the land so restricted from any one or more of said restrictions or may release any of the property subject to these restrictions from any one or more of said restrictions, said release, change or modification to be effective January 2, 2003. During each successive ten-year period after January 1, 2003, a majority of record title holders shall have the same power to release, change or modify said

restrictions as to any property then covered by said restrictions by executing, acknowledging and recording an appropriate agreement of agreements at least one year prior to expiration of said ten-year period, said release, change or modification to be effective at expiration of said ten-year period.

2. a. A breach of any of the conditions, covenants, restrictions and reservations hereby established shall cause the title to the building site upon which said breach occurs to revert to the Reversionary Owner, as the owner of such reversionary rights herein provided for and the owner of such reversionary rights shall have the right to immediate re-entry upon such real estate in the event of any such breach and as to each lot owner in said property the said provisions, conditions, covenants, restrictions and reservations shall be covenants running with the land and the breach of any thereof or the continuance of any such breach may be enjoined or remedied by appropriate proceedings by the owner of the reversionary rights, the homeowner's Association, or by any owner of any property for whose benefit these restrictions have been established, but by no other person.

b. An owner of any lot who permits the breach of any of these conditions, restrictions and covenants by persons over whom he or she exercises either direct or indirect control shall be given ten (10) days written notice, by first class mail sent to his last known address or personal service, to remedy said breach. If such breach is not remedied as provided, a Notice of Violation of Covenants may be recorded in the office of the Pima County Recorder and shall be removed subsequent to compliance. This Notice may place a cloud on the title to the property which may limit an owner's ability to convey full legal title to said property. Nothing in this paragraph shall be construed to limit any other remedy available at law or equity for breach of these covenants.

c. The breach of any of the foregoing conditions, covenants, restrictions or reservations or any re-entry by reason of such breach, shall not affect or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any lot or lots or portions of lots in said property, but said conditions, covenants, restrictions and reservations shall be binding upon and effective against any party acquiring title to any such property, whose title thereto or whose grantor's title is or was acquired by foreclosure, trustee's sale or otherwise.

3. Although the provisions, conditions, covenants, restrictions and reservations may be modified or terminated as provided herein, any and all reversations for breach of said provisions, conditions, covenants, restrictions and reservations committed or suffered prior to said expiration shall be absolute.

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4. In the event the Reversionary Owner incurs attorney's fees, court costs or other expenses in enforcing the Reversionary Owner's rights under this Declaration, said costs and expenses shall be paid by the owner, trustee or owner of an interest in any of the property hereinabove described committing or permitting the breach giving rise to such costs and expenses, and the Reversionary Owner shall have a lien upon such lot or lots to secure payment of all such amounts. The lien referred to herein shall be filed, recorded, and foreclosed in the same manner and pursuant to the same statutory regulations as a mechanic's and materialman's lien pursuant to Arizona law.

5. No delay or omission on the part of the Reversionary Owner or the owner of other lots in said property in exercising any right, power or remedy herein provided shall be construed as a waiver thereof or acquiescence in any breach hereof; and no right of action shall accrue nor shall any action be brought or maintained by anyone on account of any breach hereof or for imposing restrictions herein which may be unenforceable.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed the day and year first above written.

STEWART TITLE & TRUST OF  
TUCSON, an Arizona corporation,  
as Trustee under Trust 1748, as Trustee  
only, and not in its Corporate Capacity.

By Wanda Dannenfelsler, Trust Officer

STATE OF ARIZONA        )  
                                  )     ss.  
County of Pima            )

The foregoing was acknowledged before me this 2nd day of Oct. 1978 by WANDA DANNENFELSNER, Trust Officer for Stewart Title & Trust of Tucson, an Arizona corporation, as Trustee under Trust 1748, as Trustee only, and not in its Corporate Capacity.

Ernestine Raushel

Notary Public

My commission expires:

7/2/82

Pursuant to Section 33-401, ARS, the names and addresses of the beneficiaries as disclosed by the records of said Trust #1748 are as follows:

Catalina Foothills Estates  
4407 North Campbell  
Tucson, Arizona 85718

RECORDED IN BOOK 6199, pages 479-488 and BOOK 6506, page 1200.

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