

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.

2. Coverage.

(a) Casualty. All buildings and improvements upon both the 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 coverages, 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;

(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.

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

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.

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.

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, 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 in an amount sufficient to pay for the said cost of repair or rebuilding. Provided, however, that a special assessment shall be levied equally against all lot owners to make up any deficiency for repair or rebuilding of the common area or for the repair or rebuilding of any sidewalks or any "facility to be used in common by all of the lot owners." 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.

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.

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

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 agree 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 and of the area of the lots outside the confines of the buildings and patio walls and of the "facilities to be used in common by all the owners" and the other properties, the maintenance of which is the responsibility of the Association, and of the homes situated upon the lots, and for taxes on the common area and for the taxes on the recreational facilities to be used in common by all the owners even though they be situated on individual lots it being understood that the Association shall be responsible for that portion of the taxes on the individual lots which are attributable to the said recreational facilities located thereon; 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. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an owner,

the maximum annual assessment shall be \_\_\_\_\_ Dollars(\$ \_\_\_\_\_ ) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased by the Board of Directors each year not more than 3% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above 3% by a vote of two-thirds (2/3) of the members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 4. 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 or a "facility to be used in common by all the owners" which may be located on an individual lot, 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 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting of the members of the Association called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than 30 days nor more than 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 the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to all lots actually owned by the Developer and as to all lots sold to lot owners on the first day of the month following the conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 8. 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 9. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of seven percent (7%) 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 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of

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

#### ARTICLE VIII

##### ARCHITECTURAL CONTROL

No building, fence or wall or other structure shall be commenced, erected or maintained upon the lots and 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 effect.

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 percent (90%) of the lot owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the lot owners. Any amendment must be recorded.

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 for 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 Service Mortgage Corporation, an Arizona corporation, by executing this Declaration of Restrictions hereby ratifies, confirms and approves the execution and recording of this Declaration of Restrictions.

DATED, this 22nd day of September, 1971.

DECLARANT

STEWART TITLE & TRUST OF PHOENIX,  
An Arizona corporation,

ATTEST

[Signature]  
Trust Officer

By

[Signature]  
Vice President

FIRST SERVICE MORTGAGE CORPORATION

By

[Signature]  
President