

First American Title



Unofficial Document

WHEN RECORDED RETURN TO:

Storey & Pieroni PLC  
3030 E. Camelback Road  
Suite 265  
Phoenix, Arizona 85016  
Attention: Lesa J. Storey

MA...

HELEN PURCELL

99-0573014

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TRACT DECLARATION  
COOPER COMMONS  
Parcel 5

This Tract Declaration is made this 15 day of JUNE, 1999, by Cooper Commons L.L.C., an Arizona limited liability company (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Declarant executed and caused to be Recorded that certain Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Cooper Commons, dated April 28, 1998, and Recorded on April 29, 1998 as Document No. 98-0346533, records of Maricopa County, Arizona (the "Declaration"), which covers property known as Cooper Commons; and

WHEREAS, the real property described in **Exhibit "A"** attached hereto is a part of Cooper Commons and subject to the Declaration (said real property being hereinafter referred to as the "Parcel" or "Parcel 5"); and

WHEREAS, the Declaration contemplates that Tract Declarations for Parcels located within Cooper Commons would be executed and Recorded periodically as the development of Cooper Commons proceeds and land use classifications for such Parcels are determined; and

WHEREAS, Declarant, as holder of legal title to all of the Parcel, now wishes to Record a Tract Declaration for the Parcel;

NOW, THEREFORE, Declarant hereby declares that all of the Parcel shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, all of which are declared to be in furtherance of the general plan for the use, enjoyment, development, and improvement of Cooper Commons as contemplated by the Declaration, and which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Parcel and of Cooper Commons as a whole. All of the foregoing are hereby declared to be for the benefit of all of the Parcel and the

Owner or Owners of all or any portion of the Parcel (including any Owner of any Lot into which the Parcel may be subdivided), their heirs, successors, grantees, and assigns. These covenants, conditions, restrictions and easements shall run with the Parcel and shall be binding upon all persons having or acquiring any right, title or interest in the Parcel, or any part thereof, and shall inure to the benefit of each owner thereof.

1. Definitions. Capitalized terms used in this Tract Declaration and not otherwise expressly defined herein shall have the same meanings as are set forth for such terms in the Declaration.

2. Land Use Classification. The Parcel shall be developed and used for Cluster Residential Use per applicable zoning, as defined in the Declaration in Article IV, Section 4.1 thereof.

3. Approval of Development Plan. No Improvements shall be made or placed on Parcel 5 without the prior written approval of the Design Review Committee. Any subdivision plat and/or additional CC&Rs which may be hereafter Recorded against the Parcel shall be subject to approval of the Board of Directors.

4. Association Membership. For the purpose of Annual and Special Assessments and Membership in the Association, the Parcel shall be designated to have two hundred twenty-five (225) Memberships.

5. Sub-Association Formation. <sup>Unofficial Document</sup> Any Sub-Association formed for the benefit of Parcel 5 must be approved in writing and in advance by the Board of Directors of the Cooper Commons Community Association. Any Sub-Association formed shall be subject to the Declaration, the Articles, the Bylaws, the Design Guidelines, the Association Rules, and the Cooper Commons Rules. All members of a Sub-Association shall also be Members of the Cooper Commons Community Association.

6. Integration. This Tract Declaration shall be considered and integral part of the Declaration and construed with the Declaration as if the provisions hereof were set forth therein. This Tract Declaration shall run with Parcel 5 and be enforceable in accordance with and as part of the Declaration.

7. Developer Designation. Kaufman and Broad of Arizona, Inc., an Arizona corporation, is hereby designated as a "Developer" under and for purposes of the Declaration.

8. Special Use Fee. It is contemplated that Parcel 5 may have service for maintenance of driveways, parking areas and landscaping located outside the fenced or walled areas on Lots therein ("Maintenance Service") and that the Tracts within Parcel 5 described on **Exhibit "B"** attached hereto (the "Special Use Fee Tracts") may have landscaping, shared driveways, community courtyards, and other Improvements that are intended solely for the benefit of Owners of the Lots located within Parcel 5. It is further contemplated that Maintenance Service may be provided, and the Improvements located on the Special Use Fee Tracts may be operated and maintained, by the Association and the cost thereof paid by the

Owners of Lots in Parcel 5 through the imposition of a Special Use Fee as hereinafter provided. Subject to the terms hereinafter set forth, the Association shall accept Special Use Fee Tracts for maintenance and operation, and shall accept applicable areas of Lots for Maintenance Service, in one or more phases over time. Notwithstanding any contrary provision hereof, the Developer of Parcel 5 shall have the right (but not the obligation) to form a sub-association (subject to the right of the Board of Directors to approve any additional CC&Rs relating thereto) for the maintenance and operation of any Special Use Fee Tracts which are not accepted for operation and maintenance by the Association hereunder. In the event of the Association's acceptance of a Lot for Maintenance Service (and/or acceptance of a Special Use Fee Tract for operation and maintenance, as applicable) and upon the Association's approval of the use of a Special Use Fee therefor, the following shall apply:

(a) The Special Use Fee Tract and the Improvements thereon shall be deemed Common Areas; however, such Common Areas shall be solely for the benefit of the Owners of the Lots located within Parcel 5. The areas of a Lot so accepted for Maintenance Service shall not be Common Areas (but shall be maintained by the Association as provided herein), and the Association shall have an easement over and across the portions of the Lot located outside the fenced or walled areas thereon, for purposes of providing Maintenance Service;

(b) From and after the Association's acceptance of a Special Use Fee Tract for operation and maintenance, the Association shall be responsible for the required management, maintenance, repair and replacement of any landscaping, courtyard Improvements and various other Improvements located within the Special Use Fee Tract so accepted. From and after the Association's acceptance of a Lot for Maintenance Service, the Association shall be responsible for the required management, maintenance, repair and replacement of any landscaping, driveways, and parking areas located outside the fenced or walled areas on such Lot;

(c) The Developer of Parcel 5 shall be responsible for assuring, at its expense, that all Improvements on Special Use Fee Tract(s) and all landscaping, driveways and parking areas on Lot(s) accepted by the Association pursuant to (b) above shall be in good condition and repair as of the date of such acceptance, and on or before the time of such acceptance such Developer shall expend all reasonable funds required to make all repairs and replacements necessary to put such Improvements in good condition, it being agreed that the Association shall not be obligated to expend any funds for such repairs and replacements on or before the time of such acceptance;

(d) The Owners of Lots within the Parcel shall be subject to a Special Use Fee for the purpose of covering the costs of Maintenance Service on Lots, and the management, maintenance, repair and replacement of Improvements within Special Use Fee Tracts, which are accepted by the Association as provided herein; and

(e) Maintenance Service (and Special Use Fees related thereto) may be terminated with respect to all Lots in Parcel 5 upon the affirmative vote of the Owners of at least 2/3 of the Lots within Parcel 5; provided, however, that for so long as the Developer of

Parcel 5 owns any Lot in Parcel 5, any such termination of Maintenance Service shall require the approval of such Developer.

Special Use Fees shall commence with respect to a Lot upon installation of the front yard of the Dwelling Unit on such Lot. The Board of Directors of the Association shall determine, by the development of an annual budget, the cost of providing Maintenance Service and of managing and maintaining the Improvements on Special Use Fee Tracts as provided herein, including ample reserves for replacement and repair, and shall assess an appropriate amount to each Owner as a Special Use Fee. The determination of the amount of the Special Use Fee shall be in the sole discretion of the Board and shall be in an amount adequate to cover all costs of providing Maintenance Service on Lots, and of managing and maintaining the Improvements on Special Use Fee Tracts, which are accepted by the Association from time to time as provided herein. The Board of Directors shall use the same general standard of maintenance as is used in the Common Areas of the Association. If, at any time, adequate funds were not available for a necessary expense to maintain the integrity of the Improvements and/or Maintenance Services subject to Special Use Fees, the Board, in its sole discretion, may assess a singular Special Use Fee for the purpose of covering such an immediate expense; provided, however, that for so long as the Developer of Parcel 5 owns any Lot in Parcel 5, the assessment (and amount of) any such singular Special Use Fee shall require the approval of such Developer. The Special Use Fee to be paid by the Developer of Parcel 5 with respect to each Lot within Parcel 5 owned by such Developer, shall be a designated reserve allocation (not to exceed 25% of the then-existing Special Use Fee per Lot) as set forth in the Special Use Fee annual budget established by the Board as provided herein. Unofficial Document The Developer of Parcel 5 shall also be responsible for the difference in Special Use Fee income and monthly expenses in the form of a shortfall until such time as such Developer no longer owns any Lot in Parcel 5; provided, however, that in no event shall the sum of the Special Use Fee reserve allocation and subsidy paid by such Developer per year exceed the total amount that such Developer would have paid had it been required to pay the full Special Use Fee rate per Lot as set forth herein.

Kaufman and Broad of Arizona, Inc., an Arizona corporation, is hereby designated as the Developer of Parcel 5 for purposes of this paragraph 8.

IN WITNESS WHEREOF, Declarant has caused this Tract Declaration to be executed as of the day and year first above written.

COOPER COMMONS L.L.C., an Arizona limited liability company

By: CAREFREE PARTNERS, L.L.C., an Arizona limited liability company, its Manager/Member

By: WEST MANAGEMENT LIMITED PARTNERSHIP, an Arizona limited partnership, its Manager

By: THE RICHARD WEST COMPANY, an Arizona corporation, its General Partner

By: *Richard B. West III*  
Richard B. West III, its President

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

June The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 1999, by Richard B. West III, the <sup>Unofficial Document</sup> president of The Richard West Company, an Arizona corporation, the General Partner in West Management Limited Partnership, an Arizona limited partnership, the Manager of Carefree Partners, L.L.C., an Arizona limited liability company, the Manager/Member of Cooper Commons L.L.C., an Arizona limited liability company, on behalf thereof.

*Lesia J. Storey*  
Notary Public

My Commission Expires:  
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**EXHIBIT A**

The real property described in the Final Plat of COOPER COMMONS II PARCEL 5, as recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 504 of Maps, page 44.

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**EXHIBIT B**

Tracts D, E, and G through YY, inclusive, of COOPER COMMONS II PARCEL 5, as recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 504 of Maps, page 44.

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