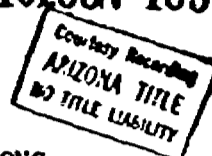


Unofficial  
Document

RETURN TO- HOWARD HOMES, INC.,  
p. o. box 39  
Scottsdale, Arizona 85251

10296 105

243821



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

SCOTTSDALE PARK VILLAS

This Declaration, made on the date hereinafter set forth by HOWARD HOMES, INC., a Nevada corporation, hereinafter termed "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant and the persons who have joined herein are the owners of certain property in the County of Maricopa, State of Arizona, which is more particularly described as follows:

SCOTTSDALE PARK VILLAS, a subdivision, according to the plat thereof recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 154 of Maps, at page 12 thereof.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above, together with any properties hereafter added or annexed as provided herein, shall be hold, sold and conveyed subject to the following easements, restrictions, covenants and conditions (sometimes hereinafter termed "covenants and restrictions"), 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 SCOTTSDALE PARK VILLAS ASSOCIATION, INC., an Arizona corporation formed or to be formed, its successors and assigns.

Section 2. "Owner" shall mean the record owner,

10296 106

whether one or more persons or entities, of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding others having such interest merely as security for the performance of an obligation. In the case of Lots the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor.

Section 3. "Properties" shall mean 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 or controlled by the Association for the common use and enjoyment of the owners. The Common Area to be conveyed to the Association at the time of the conveyance of fifty-one percent (51%) of the Lots to persons other than Declarant is described as follows:

Tracts A, B, C, D, E, F, G, H, I, J, K, L and M, SCOTTSDALE PARK VILLAS, a subdivision, according to the plat thereof recorded in the office of the County Recorder of Maricopa County, Arizona in Book 154 of Maps at page 12 thereof.

Section 5. "Declarant" shall mean HOWARD HOMES, INC., a Nevada corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 6. "Lot" shall mean any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

Section 7. "Mortgage" shall mean any instrument given as security for the performance of an obligation, including without limitation deeds of trust. "Mortgage" shall mean a

0110296: 107

party secured by such an instrument; and "Mortgagor" shall mean the party executing such instrument as security.

Section 8. "Villa" shall mean and refer to all the improvements on a lot including the patio areas on such lot.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, including ingress and egress to and from his Lot which shall be appurtenant to and shall pass with the title to every Lot, subject, however, to:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded, provided, however, no such dedication shall impair the ingress and egress to any individual Lot.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the

M10296x 108

Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Association Easement for Maintenance and Repair. The Association shall have an easement across every Lot for the limited purposes of repairing, painting, or otherwise maintaining the exterior walls and roofs of the living units (excepting the window panes and window screens); for watering, planting, cutting, removing and otherwise caring for the landscaping up to the exterior walls of the living units on each Lot; for cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained service in the underground utility lines owned by the Owners of various Lots; and for entry into an improvement constructed upon a Lot and admittance of such authorized persons as are reasonably necessary in the event of an emergency.

Section 4. Owner's Easement for Maintenance and Repair; and For Utilities and Drainage. Wherever sanitary sewer house connections or water house connections or electricity, gas, telephone or television lines or drainage facilities are installed within the Properties, which connections, lines or facilities, or any portion thereof, lie in or upon Lots owned by other than the Owner of a Lot served by said connections, the Owners of any Lot served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots or to have utility companies enter upon the Lots within the Properties in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

Wherever sanitary sewer house connections or water

M10296 109

connections or electricity, gas, television or telephone lines or drainage facilities are installed within the Properties, which connections, lines or facilities serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections, lines or facilities as service his Lot.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. 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. <sup>Unofficial Document</sup> Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

M10296x 110

(b) on January 2, 1975.

From that date forward, unless and until the Class B membership is reinstated, Declarant shall be entitled to the status of a Class A membership. Nothing contained herein shall preclude the Declarant from adding property pursuant to the provisions of Article XI, or otherwise pursuant hereto, and all property so added shall be included in the determination of the existence and voting rights of the Class B membership. The Class B membership may be reinstated by the addition of such property.

ART<sup>Unofficial Document</sup>

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 (1) annual assessments or charges, (2) special assessments for capital improvements, and (3) individual special assessments levied against individual Lot owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner and not caused by ordinary wear and tear, such assessments to be established and collected as hereinafter provided. The annual, special capital and special individual assessments, together with interest, costs, and reasonable attorney's fees of collection, 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,

M10296: 111

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. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and improvements as herein set forth, including but not limited to private driveways, walkways, and private drainage facilities and of the homes situated upon the Properties Unofficial Document as more particularly set forth in Article V hereof.

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 Four Hundred Seventy-Five Dollars (\$475.00) 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 each year not more than 5% 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 by more than 5% above the maximum assessment for the previous year by a vote or written assent of 2/3 of each class 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.

10296 112

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, 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, repair or replacement of a capital improvement, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of 2/3 of each class of members.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days Unofficial Document advance of the meeting. If the proposed action is favored by a majority of the votes cast at each meeting, but such vote is less than the requisite 2/3 of each class of members, members who are not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than 30 days from the date of such 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 on such date, on or after the date hereof, as shall be specified by the Board of Directors of the Association. 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



1110296 113

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. 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 six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may <sup>Unofficial Document</sup>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. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage obtained in good faith and for value. 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 proceeding in lieu thereof, shall extinguish the lien of such assessment 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 V

#### MAINTENANCE

Section 1. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance

10296X 114

upon each Lot and Villa which is subject to assessment hereunder as follows: Paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, such wall and fence surfaces surrounding patio areas as are exposed to the elements, and any planting on any Lot outside the Villa located on such Lot (but not including plantings within patio areas). Such exterior maintenance shall not include cleaning, repair, maintenance or replacement of glass surfaces. The Association shall also provide and pay for water furnished to the Lots, Villas and Common Area through a master meter.

Section 2. Lateral Sanitation Lines. The Association shall also repair and maintain the lateral sanitation lines to the point of connection with the main line owned by the sanitation company servicing the Unofficial Document lines; provided, however, that if any such repair or maintenance is required due to the negligence or improper usage of the Owner of such lateral, the Association shall have the right of reimbursement for its costs as more particularly set forth in Section 1 of Article IV hereof.

Section 3. Necessitated by Owner. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, 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

##### USE RESTRICTIONS

Section 1. Increase of Insurance Hazard; Violation of Law. Nothing shall be done or kept on any lot which will increase the rate of insurance on any Lot or building, or on the contents thereof, without the approval of the Association. No Owner shall permit anything to be done or kept on any Lot which will result in the cancellation of insurance on any Common Area or which would be in violation of any law. If by reason of the

10296: 115

occupancy or use of said premises by the Owner the rate of insurance on the building shall be increased, the Owner shall become personally liable for the additional insurance premiums.

Section 2. Animals. No animals of any kind shall be raised, bred, or kept on any Lot, or in any Common Area, except that dogs, cats or other household pets may be kept in units subject to approval of the Association, provided that no animal shall be kept, bred or maintained for any commercial purpose.

Section 3. Nuisance. The Owner shall not permit or suffer anything to be done or kept upon said premises which will obstruct or interfere with the rights of other Owners, or annoy them by unreasonable noise or otherwise, nor will he commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. The Owner shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to the said premises.

Unofficial Document

Section 4. Structural Change: Preclusion. Nothing shall be done in, or on any lot or in, on, or to any building which would structurally change any such building except as is otherwise provided herein.

Section 5. Structural Change: Controls. There shall be no structural alteration, addition, construction or removal of any building, fence or other structure in the project without the approval of the architectural control committee as set forth in Article VIII hereof. No building, fence or other structure shall be constructed upon any portion of any lot other than such building and structures as shall be constructed (a) by the Declarant (or a person to whom Declarant assigns its rights

10296 116

as developer) or (b) by the Association pursuant to Article IV.4.

Section 6. Fences. No fence of any kind shall be constructed or erected on or within Lots or Common Area except the fences installed and constructed by the Declarant.

Section 7. Storage. No boat, trailer, camper or similar vehicle shall be stored or parked on any Lot, Common Area or driveway except in accordance with Rules and Regulations of the Association or in areas specifically provided by the Association for such purpose. No automobile, truck, camper or vehicle may be placed on blocks or jacks at any time.

Section 8. Rules and Regulations. The Association shall have the right and the power to make such additional reasonable rules and regulations governing the use of the Properties as it may deem appropriate including without limitation prohibition of or limitations on the use and placement of signs.

Section 9. Builder's Exemption. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the developer, its agents, assigns, and contractors of said townhouses to maintain during the period of construction and sale thereof, such facilities as in the sole opinion of said developer may be reasonably required, convenient or incidental to the construction and sale of said townhouses, including without limitation, a business office, storage area, construction yards, signs, billboards, model units and sales office.

Section 10. No Villa or Lot shall be used except for single family residential purposes; provided, however, that Declarant may make temporary non-residential use of Villas and Lots owned by Declarant during the period of time when Declarant

M10296x 117

is developing the properties and selling Villas and Lots. No Villa shall be occupied by more than one (1) family, nor shall any Villa exceed two and one-half (2-1/2) stories in height.

Section 11. Decoration of and plantings within patio areas visible from other Lots or the Common Area shall be subject to the approval of the Board, and nothing shall be affixed to walls or fences which enclose patio areas without the approval of the Board.

Section 12. Except with the approval of the Board, no change, modification or addition of any kind whatever (including but not limited to painting, decorating, planting, awnings and sunshades) shall be made or carried out on the exterior of any Villa.

Section 13. The Unofficial Document of each Villa shall maintain the interior of the Villa, including interior walls, ceilings, floors, permanent fixtures and appurtenances, attached garages, and patio areas within the Villa, and the interior and exterior of doors, and the interior and exterior of windows and of any other glass surfaces in clean, sanitary and attractive condition and in a state of good repair.

Section 14. No use shall be made of the Common Area except in accordance with the Restrictions, Articles, By-Laws and Rules; nothing shall be stored, kept, placed, built, planted or maintained on any part of the Common Area except in accordance with the Restrictions, Articles, By-Laws and Rules; and each Owner, by acceptance of a Deed to a Lot, covenants and agrees, and shall be deemed to covenant and agree for himself, his heirs, successors and assigns to abide by the provisions of the Restrictions, Articles, By-Laws and Rules as the same may from time to time be adopted and amended.

1110296 118

Section 15. Except with the approval of the Board and subject to the rules and regulations of the Association, nothing shall be stored, placed, built, kept, planted or maintained on any portion of a Lot which lies outside the Villa constructed on such Lot and for which the Association has the responsibility for landscaping or maintenance.

Section 16. No sign of any kind shall be displayed to public view on any Lot or Villa, except one (1) sign of not more than five (5) square feet advertising said property for sale or rent, and except signs used by Declarant or its agents or nominees in connection with the development of the Properties or the construction or sale of Lots and Villas.

Section 17. No quarrying or mining operations of any kind shall be permitted upon or in any portion of the Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted thereon. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Properties.

Section 18. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers. All incinerators or other equipment on any Lot for storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 19. No mast, tower, exterior antenna or similar structure shall be erected or maintained on or about any Lot or Villa without the approval of the Board.

#### ARTICLE VII

#### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the villas upon the Properties and placed on the dividing

10296: 119

line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator within ten

M10296 120

(10) days after written request for arbitration, and such arbitrators shall within five (5) days thereafter choose one additional arbitrator, and the decision shall be a majority of all the arbitrators. In the event an arbitrator is not chosen as provided herein, a judge of the Superior Court in Maricopa County, Arizona, shall have the right and power to make such choice.

ARTICLE VIII

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, color, shape, height, materials, location and other material attributes 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

MORTGAGE PROTECTION

Notwithstanding all other provisions hereof:

1. The liens created under Article IV hereof upon any Lot shall be subject and subordinate to, and shall



10296X 121

not affect the rights of the Mortgagee under any recorded first Mortgage upon such lot made in good faith and for value, provided that after the foreclosure of any such Mortgage, or the giving of any deed or any proceeding in lieu thereof, the amount of all regular assessments, and all special assessments to the extent they relate to expenses incurred subsequent to such foreclosure, deed, or proceeding, assessed hereunder shall become a lien upon such Lot.

2. No amendment to these Restrictions shall affect the rights of any such Mortgagee who does not join in the execution thereof, provided that prior to recordation of such amendment his Mortgage is recorded.

3. By subordination agreement executed by the Association, the benefits Unofficial Document ions 1 and 2 above may be extended to Mortgages not otherwise entitled thereto.

4. No breach of any of the foregoing covenants and restrictions shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but, violation of any one or more of these covenants or restrictions may be enjoined or abated by Declarant, its successors and assigns, and by the Association, by action of any court of competent jurisdiction, and damages may also be awarded against such violations; provided, however, that any such violation shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said property or any part thereof, but said covenants and restrictions shall be binding upon and effective against any Owner of said property, or portion thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

M110296# 122

ARTICLE XEASEMENTS

Section 1. Utilities. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the townhouses. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated except as initially programmed and approved by the major developer of said premises. This easement shall in no way affect any other recorded easements on said premises.

Section 2. Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event a structure is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Notwithstanding any provision herein to the contrary, any encroachment permitted herein shall not exceed one foot.

M10296 123

ARTICLE XIGENERAL PROVISIONS

Section 1. Enforcement. The Association, or any, 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 rights 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. Term. 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.

Section 4. Amendment. This Declaration may be amended by an instrument signed by not less than seventy-five per cent (75%) of the lot owners. Any amendment must be recorded.

Section 5. Annexation of Additional Properties.

a. With Consent of Members. 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.

b. Without Consent of the Members. Additional land within Tract R of PASEO VILLAGE, a subdivision according to the plat of record in Book 147 of Maps at page 18, of the office of the County Recorder of Maricopa County, Arizona, may hereafter

MI10296H 124

be made subject to this Declaration of Covenants, Conditions and Restrictions, without the consent of Lot owners, within five (5) years of the date of this instrument, provided, however, that if FHA and VA approval of this project is sought and obtained by Declarant, the FHA and the VA must first determine that the annexation is in accord with the general plan approved by them.

Section 6. FHA/VA Approval. In the event Declarant shall seek and obtain FHA and VA approval of this project, as long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Unofficial Document Conditions and Restrictions.

Section 7. Prior Recorded Instruments. This instrument and the provisions hereof are expressly subject to all prior recorded documents affecting the Property, including without limitation:

a. That certain Reservation of Architectural Control, recorded by Kaiser Aetna, a Partnership, on the 29th day of December, 1971, in the office of the County Recorder of Maricopa County, Arizona in Docket 9148, commencing at page 701; and

b. That certain Declaration of Restrictions recorded by Kaiser Aetna, a Partnership, on the 29th day of December, 1971, in the aforesaid office in Docket 9148, commencing at page 757; and

c. That certain Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for McCormick Ranch recorded by Kaiser Aetna, a Partnership, on the 29th day of December, 1971, in the aforesaid

10296: 125

office in Docket 9148 commencing at page 706; and

d. That certain Warranty Deed dated July 25, 1972, from Kaiser Aetna, a California Partnership, to HOWARD HOMES, INC., a Nevada corporation, recorded on the 2nd day of August, 1972, in the aforesaid office in Docket 9601, commencing at page 325,

and to the provisions thereof; and to the extent that the provisions of this instrument are inconsistent with or in derogation of any of the provisions of the aforesaid instruments, then the aforesaid instruments shall control.

IN WITNESS WHEREOF, the undersigned has caused to be executed this Declaration of Covenants, Conditions and Restrictions this 12th day of June Unofficial Document, 1973.

HOWARD HOMES, INC.,  
a Nevada corporation

By *Benjamin S. Strout*  
Its *Secretary*  
*Betty Dougan*  
Asst. Secretary

STATE OF ARIZONA )  
County of Maricopa ) ss:

The foregoing instrument was acknowledged before me this 12th day of June, 1973 by BENJAMIN S. STROUT, its Secretary and BETTY DOUGAN, its Asst. Sec. of HOWARD HOMES, INC., a Nevada corporation, on behalf of the corporation.

*Rosemary Cerato*  
Notary Public  
ROSEMARY CERATO

My commission expires:  
My Commission Expires May 17, 1972

STATE OF ARIZONA }  
County of Maricopa } ss  
I hereby certify that the within instrument was filed and recorded at request of ARIZONA TITLE

SEP 4 1973 - 215

Docket 10296  
No. 105-125

Witness my hand and official seal the day and year aforesaid.

*Rosemary Cerato*  
County Recorder  
Deputy Recorder

105

# Unofficial Document

SECOND AMENDMENT

19770228\_DKT\_12095

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SCOTTSDALE PARK VILLAS

Pursuant to the provisions of Article XI, Section 4, of the Declaration of Covenants, Conditions and Restrictions for Scottsdale Park Villas, hereinafter referred to as the Declaration as and previously recorded in Docket 9691, commencing at page 912, and as amended and previously recorded in Docket 10296 and commencing at page 105, the Declaration is hereby amended as follows:

1. Article II, Section 3 of the Declaration is hereby amended to read as follows:

The Association shall have an easement across every Lot for the limited purposes of repairing, painting, or otherwise maintaining the exterior walls of the living units (except window panes and window screens); for watering, planting, cutting, removing and otherwise caring for the landscaping up to the exterior walls of the living units on each Lot; for cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained service in the underground utility lines owned by the Owners of various Lots; and for entry into an improvement constructed upon a Lot and admittance of such authorized persons as are reasonable necessary in the event of an emergency.

STATE OF ARIZONA }  
County of Maricopa }

I hereby certify that the within instrument was filed and recorded at request of

*John R. Callahan*  
FEB 23 1977 -4

in Docket 12095  
on page 1392-1399

Witness my hand and official seal the day and year aforesaid.

*Don [unclear]*  
County Recorder  
*R. B. [unclear]*

250

2. Article III, Section 1 of the Declaration is hereby amended to read as follows:

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.

3. Article III, Section 2 of the Declaration is hereby amended to read as follows:

The Association shall have one class of voting membership. Each member of the Association shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

4. Article IV, Section 1 of the Declaration is hereby amended to read as follows:

Unofficial Document

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 (1) annual assessments or charges, (2) special assessments for capital improvements, and (3) individual special assessments levied against individual Lot owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner and not caused by ordinary wear and tear, such assessments to be established and collected as hereinafter provided. The annual, special capital and special individual assessments, 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. The personal obligation for delinquent assessments shall pass and become the personal obligation of his successors in title, unless otherwise expressly agreed by said Owner and his successors in title.

5. Article IV, Section 3 of the Declaration is hereby amended to read as follows:

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Four-Hundred Seventy-Five Dollars (\$475.00) 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 each year not more than 10% 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 Unofficial Document an Owner, the maximum annual assessment may be increased by more than 10% above the maximum assessment for the previous year by a vote or written assent of 2/3 of the Association's membership 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.

6. Article IV, Section 4 of the Declaration is hereby amended to read as follows:

In addition to the annual assessments authorized above, 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, repair or replacement of a capital improvement, including fixtures and personal property related thereto,



provided that any such assessment shall have the vote or written assent of 2/3 of the Association's membership.

7. Article IV, Section 5 of the Declaration is hereby amended to read as follows:

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at each meeting, but such vote is less than the requisite 2/3 of the Association's membership, members who are not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than 30 days from the date of such meeting.

8. Article V, Section 1 of the Declaration is hereby amended to read as follows:

Unofficial Document

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot and Villa which is subject to assessment hereunder as follows: Paint, repair, replace and care for exterior building surfaces, such wall and fence surfaces surrounding patio areas as are exposed to the elements, and any planting on any Lot outside the Villa located on such Lot (but not including planting within patio areas). Such exterior maintenance shall not include cleaning, repair, maintenance or replacement of glass surfaces. The Association shall also provide and pay for water furnished to the Lots, Villas and Common Area through a water meter. Each Owner shall be solely responsible for maintaining, painting, repairing, replacing, and caring for all roofs, gutters and downspouts respecting his individual Lot and Villa.

M 12095-1396

9. Article VI, Section 9 of the Declaration is hereby rescinded.

10. Article VI, Section 16 of the Declaration is hereby amended to read as follows:

No sign or any kind shall be displayed to public view on any Lot or Villa, except one (1) sign of not more than five (5) square feet advertising said property for sale or rent.

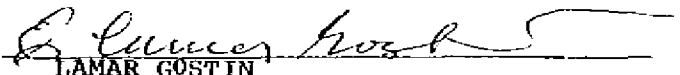
11. Article XI, Section 5 of the Declaration is hereby amended to read as follows:

Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of the Association's membership.

12. In all other respects, the Declaration shall remain in full force and effect pursuant to its terms and conditions.

IN WITNESS WHEREOF Unofficial Document undersigned, being the Declarant herein has hereunto set its hand and seal this 25th day of February, 1977.

SCOTTSDALE PARK VILLAS ASSOCIATION, INC.

By   
LAMAR GOSTIN  
Acting President

STATE OF ARIZONA )  
                                  ) ss.  
County of Maricopa )


On this 25th day of February, 1977, before me, the above-signed officer, LAMAR GOSTIN, personally appeared

DI 12095/1397

and acknowledged himself to the the Acting President of the Scottsdale Park Villas Association, Inc., an Arizona Corporation, and that he, as such officer, being authorized to do so, and pursuant to full compliance with Article XI, Section 4, of the Declaration of Covenants, Conditions and Restrictions of the Scottsdale Park Villas Association, Inc., executed the foregoing instrument for the purposes therein set forth by signing the name of the Corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Allen M. Biggs*  
NOTARY PUBLIC



MY COMMISSION EXPIRES:

March 10, 1980

Unofficial Document