

RECORDED IN OFFICIAL RECORDS  
OF MARICOPA COUNTY, ARIZONA  
MAY 16 '83 -9 30  
BILL HENRY, COUNTY RECORDER  
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DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on this 10th day of May, 1983, by  
SADATA PROPERTIES, INCORPORATED, an Arizona corporation, hereinafter referred  
to as "Declarant."

W I T N E S S E T H:

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

Lots One (1) through Fourteen (14), **VIRGINIA PARK VILLAS**,  
as shown in Book 252 of Maps, page 23, records of Maricopa  
County, Arizona.

NOW, THEREFORE, Declarant hereby declares that all of the properties  
described above shall be held, sold and conveyed subject to the following  
easements, restrictions, covenants and conditions, which are for the purpose  
of protecting the value and desirability of, and which shall run with, the  
real property and be binding on all parties having any rights, title or  
interest in the described properties or any part thereof, their heirs,  
successors and assigns, and shall insure to the benefit of each **owner** thereof.

ARTICLE I

Definitions

Section 1. "**Association**" shall mean and refer to **VIRGINIA PARK  
VILLAS HOMEOWNERS ASSOCIATION, INCORPORATED**, an Arizona non-profit corporation,  
its successors and assigns.

Section 2. "**Owner**" shall mean and refer to the record **owner**, whether  
**one** or more persons or entities, of a fee simple title to any **Lot** which **is** a  
part of the Properties. **Owner** shall not include a person or entity having an  
ownership 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 and refer to that certain real  
property hereinbefore described, and such addition? thereto as may hereafter  
be brought within the jurisdiction of the Association.

Section 4. "**Lot**," "**Parcel**," "**Residence**," "**House**" and "**Residence  
Unit**" shall be synonymous and shall mean and refer to any plot of land  
(including all improvements thereon and appurtenances thereto) shown upon  
any recorded subdivision map of the Properties with the exception of the  
Common Area.

Section 5. "Common Area" shall mean all real property and improvements thereon owned by the Association for the **common** use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as **follows**:

Tracts "A" and "B", VIRGINIA PARK VILLAS, as shown in Book 252 of Maps, page 23, records of Maricopa County, Arizona.

Section 6. "Declarant" shall mean and refer to SADATA PROPERTIES, INCORPORATED, an Arizona 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 7. "Developer" shall mean and refer to SADATA PROPERTIES, INCORPORATED, an Arizona corporation, and its successors and assigns, and to any other contractor who builds for resale a significant number of the houses on the subject property.

Section 8. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as from time to time amended.

Section 9. "Member" shall mean **and refer** to those persons or entities entitled to membership in the Homeowner's Association.

## ARTICLE II

### Property Rights

Section 1. Owners Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every Lot, subject to the following provisions:

- (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 impose fines and suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against the owner's Lot remains unpaid; and for a **period** not to exceed sixty (60) 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.
- (d) The right of the Association to limit the number of guests of members.

- (e) The right of the Association to establish uniform rules and **regulations** pertaining to the use of the Common Area and the recreational facilities thereon.
- (f) The right of Developer (and its sales agents and representatives) to the non-exclusive use of the Common Area and facilities for display, sales and exhibit purposes, which right Declarant hereby reserves to Developer, for the period of time limited to the development phase of the project.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of **enjoyment** of the Common Area and Facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Waiver of Use. No Member may exempt **himself** from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and Facilities thereon or by **abandonment** of his Lot.

Section 4. Parking.

- (a) The right of individual Owners to the exclusive use of parking spaces as provided in this Article.
- (b) Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than one (1) automobile parking space, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. **The** Association shall permanently assign one (1) vehicle parking space for each dwelling.

**ARTICLE III**

Membership and Voting Rights

Section 1. Membership in the Association, except for membership of the incorporators, the Declarant and the first Board of Directors, shall be limited to record **Owners** of equitable title (or legal title if equitable title has merged) of houses constructed or planned to be constructed on the property described above or on any duly annexed property. An Owner of a Lot shall automatically, upon becoming the Owner of a Lot, be a Member of the Association, and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease. Ownership of a Lot shall be the sole qualification and criteria for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale for such Lot and then only to such purchases, or by intestate succession, testamentary disposition, foreclosure or mortgage of record or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall record the transfer upon the books of the Association and issue a new membership to a purchaser and thereupon the old membership outstanding in the name of the seller shall be null and void.

The record **Owner** of equitable title (or legal title if equitable title has merged) of each Lot shall be entitled to one membership in the Association, for himself and his family, which membership shall be subject to all of the provisions of the Association's Articles of Incorporation, Bylaws, Management Agreement and these Restrictions, as **now** in effect or duly adopted or amended.

Section 2. 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 3. The Association shall have two classes of voting membership, as follows:

Class A. Class A **member(s)** 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 equals the total votes outstanding in the Class B membership; OR
- (b) Within **two** (2) years from the date of this Declaration.

#### ARTICLE IV

##### Covenant For Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Parcel owned within Properties, hereby covenants, and each Owner of any Parcel by acquiring an Ownership interest therein, whether or not it shall be so expressed in the conveying document, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments as **authorized** by the Association's Board of Directors, such assessments to be established and collected as provided herein.

The annual and special assessments, together with interest, costs of collection and reasonable attorneys' 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 of collection 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 the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The **assessments** by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project for the improvement and maintenance of the **Common Area** for the common good of the Project. In addition to the Improvement and maintenance of the **Common Area**, the Association shall provide water for the Project for domestic consumption and landscape maintenance. The

cost of said water shall be paid by the Association from the Annual Assessments as provided in this Article. Annual Assessments shall include an adequate reserve fund for maintenance, repairs and replacements of the Common Area, as well as cost of water for the Project. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

Section 3. Establishment of Assessment. Declarant and each Owner of a Lot covenants for themselves and their heirs, successors and assigns, that such Lot shall be subject to an assessment, in an amount to be determined by the Association, as permitted by this Declaration of Covenants, Conditions, and Restrictions. The amount to be pro-rated among the Members of the Association shall be established annually by the Board of Directors.

Section 4. Maximum Annual Assessment. Until the first annual meeting of the Association, the maximum annual assessment per each Lot conveyed shall be an amount equal to Sixty Dollars (\$60.00), per month.

- (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 Five percent (5%) above the maximum assessment for the previous year without a vote from 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 each year an additional Five percent (5%) by a vote of two-thirds (2/3) of each class of members 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.

60  
 66  
 72.30  
 78.00

Section 5. Replacement Fund. The annual maintenance assessment shall include an amount for a replacement fund, which the Board of Directors determines to be adequate for the maintenance, repair and replacement of Common Area improvements and such amount shall be set aside as a pro-rata portion of each installment of the maintenance assessments.

Section 6. 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 upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7. 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 Sections 4 and 6 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance

of the meeting. At the first such meeting called, the presence of Members of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership 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 sixty (60) days following the preceding meeting.

Section 8. 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 9. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots 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 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 10. 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, without electing a remedy, any and all actions and seek any and all relief against the Owner personally obligated to pay the same, and/or to foreclose the lien against the Property in a like manner as a mortgage of real property, and such Owner hereby expressly grants to the Association the power of sale in connection with said lien. No Owner may waive or otherwise escape liability for the assessments provided for hereby by non-use of the Common Area, recreational facilities, or abandonment of his Parcel. In any action taken against an Owner to collect delinquent assessments, whether through lien foreclosure or otherwise, the Owner shall be obligated to pay, in addition to any and all other amounts required herein, all costs and all attorneys' fees incurred by the Association in such action.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust or assessment lien. However, the sale or transfer of any Parcel pursuant to mortgage foreclosure, deed of trust sale, or any proceeding 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 Parcel from liability for any assessments thereafter becoming due or from the lien thereon.

ARTICLE V

Damage or Destruction of Common Elements

In the event any Common Area is damaged or damaged by an Owner or any of his guests, tenants, licensees, agents, or members of his family, such Owner does hereby irrevocably authorize the Association to repair the damaged area, and the Association shall so repair the damaged area in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner, if found legally liable under Arizona State law, shall then repay the Association in the amount actually expended for such repairs. If not so paid, the Association shall be entitled to record a lien on the Lot of such Owner pursuant to the laws of Arizona.

Each such Owner, by his acceptance of a deed to a Lot and residence hereby expressly vests in the Association or its agent the right and power to bring all actions against such **owner** for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such **Owner** hereby expressly grants to the Association a power of sale in connection with the lien.

In the event of a dispute between an Owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then, upon written request of the Owner, addressed to the Association the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association or its Board of Directors. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by the Board of Directors, one chosen by the Owner, and these **two** arbitrators shall then choose a third arbitrator. If the two arbitrators cannot agree as to the selection of **the** third arbitrator, then he shall be chosen by any Judge of the Superior Court of Maricopa County, Arizona. A determination by any two of the three arbitrators shall be binding upon the Owner and the Association, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then the other party shall have the right and power to choose both arbitrators.

## ARTICLE VI

### Use Restrictions

Section 1. The premises are hereby restricted to residential dwellings for residential use. All buildings or structures erected upon the premises shall be of new construction and no buildings or structures shall be moved from other locations onto the premises, and no subsequent buildings or structures shall be built on any Parcel where the builder theretofore programmed and constructed a residence. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any **portion of** the premises at any **time** as a residence, either temporarily or permanently.

Section 2. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the builder of a major portion of the development to maintain during the period of construction and sale of the residences, upon such portion of the premises as such builder may choose, such facilities as in the sole opinion of the builder may be reasonably required, convenient or incidental to the construction and sale of the residence, including, but without limitation, a business office, storage area, construction yards, signs, model units, and sales office.

Section 3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any **commercial** purposes.

Section 4. No advertising signs (except one of not more than five (5) square feet "for rent" or "for sale" sign per parcel), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner **of** any residence or any resident thereof. Further, no business activities of any kind whatsoever shall be conducted in any building or on any portion of the **premises**; provided further, however, the foregoing **covenants** shall not apply to the buildings, if any, of the builder, its agents and assigns during the construction and sale period, and of the Association, its successors and assigns, in the furtherance of its power and purposes, as herein set forth.

Section 5. All clotheslines, equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring houses and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

Section 6. No vehicle of any type, boat, camper, bicycle, tricycle or other wheeled toy shall be parked or left unattended in any Common Area.

All authorized vehicles must be parked in their assigned spaces or unassigned Common Area parking spaces.

The Board of Directors may from time to time restrict vehicular parking on the Common Areas. Vehicles parked in restricted areas may be towed away at the vehicle owner's expense, including the storage charges.

No vehicle of any type which is abandoned or inoperable shall be stored or kept on any Parcel, parking area, private street or drive within this subdivision in such a manner, as to be seen from any other Parcel or from any streets, drives or alleyways within this subdivision.

Section 7. The Common Areas shall remain undivided and shall, at all times, be owned by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Areas. No Owner shall have the right to bring an action for partition.

Section 8. No noxious or offensive activity shall be carried on upon any Lot or any part of the Properties, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective dwelling unit, or which shall in any way increase the rate of insurance.

Section 9. All Owners and occupants shall abide by Bylaws and any rules and regulations adopted by the Association.

Section 10. No residence shall be leased by an Owner, nor landlord-tenant relationship established unless such lease or landlord-tenant relationship is in writing and the lessee or tenant has agreed in writing that the lease is subject in all respects to the provisions of the Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation of the Association, the Bylaws of the Association and all rules and regulations duly adopted by the Association. Said writing shall provide that any failure of the lessee or tenant to comply with the terms of such documents or rules and regulations shall be a default under the lease.

*LIMIT TENANTS TO 2 PER UNIT*

Section 11. Within any valid easement, no structure, planting or other use shall be made or permitted to remain, which might interfere with the installation and maintenance of utilities or which might interfere with any other permitted use by those entitled to the benefit of the easement.

## ARTICLE VII

### Party Walls

Section 1. Creation of Party Wall Rights and Duties. Each wall including patio walls, which is constructed as part of the original construction of the townhouse, any part of which is placed on the dividing line between separate townhouse units, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be

entitled to the benefits of these restrictive covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party walls **shall** be applied thereto.

Section 2. Damage by Act of Owner. In the event any such party wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests, tenants, licensees, agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owners, if found legally liable under Arizona State law, shall forthwith proceed to rebuild and repair the same to as good condition as **formerly**, without cost to the adjoining Owner.

Section 3. Damage by Other Cause. In the event any such party wall **is** damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, **in** such event, both such adjoining **Owners** shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

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

Section 5. Covenant of Contribution. 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. Alterations or Modifications. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his townhouse in any manner which requires the extension or other alteration of any party wall, shall first obtain the written consent of the adjoining Owner.

Section 7. Disputes. In the event of a dispute **between Owners** with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then, upon written request of one of such **Owners** addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. **If** no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third by the two so chosen, or, if the arbitrators **cannot** agree as to the selection of the third arbitrator within five (5) days, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the **Owners**, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in **writing** for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

Section 8. Benefit and Binding Effect. These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while an **Owner**.

## ARTICLE VIII

### Easements

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 and/or telephone company to erect and maintain the necessary poles and other necessary equipment on the **Common Area** and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the **Common Area**. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the premises, except as initially programmed and approved by the major building of the premises. This easement shall in no way affect any other recorded easements on the premises.

Each townhouse and the **Common Area** shall be subject to an easement for encroachments created by construction, settling and overhangs,, as designed or constructed and for the maintenance of same, so long as it stands, shall and does exist.

## ARTICLE IX

### Duties and Powers of the Association

In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Own, maintain and otherwise manage all of the **Common Area** and all facilities, improvements and landscaping thereon, and all other property acquired by the Association.
- (b) Provide exterior maintenance of units as outlined in ARTICLE IV, Section 2.
- (c) Pay any real and personal property taxes and other charges assessed against the **Common Area**.
- (d) Have the authority to obtain, for the benefit of the **Common Area**, all water, gas, **sewer** and electric service and refuse collection and to pay for such services.
- (e) Grant easements where necessary for utilities and sewer facilities over the **Common Area** to serve said areas and **the Lots**.
- (f) Have the authority to employ a **manager** or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the same at the first annual meeting of the members of the Association.
- (g) Maintain a blanket property insurance policy on the project sufficient for replacement cost of buildings or appurtenant in an amount sufficient to properly protect the Association.

The Association, through its Board of Directors, shall have the express authorization, right and power to enter into one or more management agreements with third parties in order to facilitate efficient operation of all **Common Areas** and the improvements thereon. It shall be the primary purpose of such

management agreements to provide for the administration, management, repair and maintenance of the **Common** Area and all improvements thereon, and to assess, collect and apply the management and **common** expenses, and to enforce the Declaration of Covenants, Conditions and Restrictions. The terms of said management agreements shall be as determined by the Board of Directors to be in the best interests of the Association, and shall be subject to the Articles of Incorporation, the Bylaws and this Declaration of Covenants, Conditions and Restrictions affecting said Property. Notwithstanding the above, any and all such management agreements shall be written for a term not to exceed one year, subject to renewal by agreement of the parties for successive one year periods, and shall further provide that said management agreement may be cancelled and terminated by the Board of Directors for any reason whatsoever upon giving thirty (30) days **written** notice of such cancellation and termination to the managing entity. The Board of Directors shall make all necessary arrangements for continuity of management and maintenance prior to the expiration of the term of any prior management agreements or the termination of the same. Any and all management agreements shall be entered into with a responsible party or parties having considerable experience with the management of a project of this type.

Each **Owner** shall be bound by the terms and conditions of all management agreements entered into by the **Owner** Association. A copy of all management agreements **shall** be available to each owner upon request.

- (h) Contract for and pay fire, casualty, liability and other insurance insuring the Association, its property and its Board of Directors and Owners.
- (i) Contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, and to employ personnel necessary for the operation of the project, including legal and accounting services provided, however, that any such service contract shall be limited to a duration of one (1) year unless a longer term is approved by a majority of the members of the Association.
- (j) Delegate its powers to its committees, officers and employees.
- (k) At the request of the public body authorized to accept such, dedicate those portions of the Common Area which are used for vehicular ingress and egress as public streets.

#### ARTICLE X

##### 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, 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 XI

General Provisions

Section 1. Attorneys' Fees. In the event the Association employs an attorney or attorneys to enforce the collection of any amounts due pursuant to this Declaration or in connection with any lien provided for herein, or the foreclosure thereof, or to enforce compliance with or specific performances of the terms and conditions of this Declaration, the Owner, Owners and parties against whom the action is brought shall pay all attorneys' fees, costs and expenses thereby incurred by the Association in the event the Association prevails in any such action.

Section 2. Enforcement. The covenants, restrictions,, reservations and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing, occupying, owning or otherwise having an interest in any Lot, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations and conditions may be enforced by the Association, or its Board of Directors, which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof, and also may be enforced by the Owner of any Lot. Any lien, liability or obligation arising as the result of a breach of the covenants, restrictions, reservations and conditions shall be binding upon and effective against any Owner of the premises, other than one whose title thereto is acquired by foreclosure of a mortgage, or deed of trust sale, or deed in lieu of foreclosure or sheriff's sale or equivalent proceedings. Any person or entity taking title to said premises, other than one whose title thereto is acquired by foreclosure of a mortgage, or deed of trust sale, or deed in lieu of foreclosure, or sheriff's sale or equivalent proceedings, shall take title subject to the liens hereof for only those charges that accrue subsequent to the taking of such title. The breach of any of the covenants, restrictions or conditions may be enjoined, abated or reviewed by appropriate proceedings, notwithstanding the lien or existence of any mortgage or deed of trust. All instruments of conveyance of any interest of all or any part of a Lot shall contain reference to this instrument and shall be subject to covenants, restrictions, reservations and conditions herein as fully as though the terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether or not express reference is made to this instrument in any such instrument of conveyance. Enforcements shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Section 3. Saving Clause. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not effect 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, clauses, paragraphs or sections contained herein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs or 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 agains 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 incorporator of VIRGINIA PARK VILLAS HOMEOWNERS ASSOCIATION or twenty-one (21) years after the death of the last survivor of all of the incorporator's children or grandchildren who shall be living at the time this instrument is executed, whichever is the later.

Section 4. 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 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 5. 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) year period by an instrument signed by the Owners of not less than ninety percent (**90%**) of the Parcels, and, thereafter, by an instrument signed by the **Owners** of not less than seventy-five percent (75%) of the Parcels. Lienholders' signatures are not required for any amendment to be valid. Any amendment must be recorded.

Section 6. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

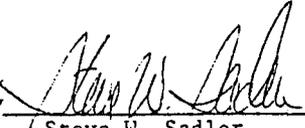
As long as there is a Class B membership, the following actions **will** require the approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 7. 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.

For as long a period of time as may be required to fully **amortize** any mortgage upon any of the residence units in which the Federal National Mortgage Association (FNMA) or the Government National Mortgage Association (**GNMA**) have any interest, no amendment shall be made which would be deemed to be in conflict with, or contrary to, the terms of any promissory note, mortgage, regulatory agreement or document executed by the Association or any of the owners of residence units for the purpose of obtaining **insurance** of financing involving FNMA or GNMA without obtaining written approval and consent of FNMA and GNMA.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 13th day of May, 1983.

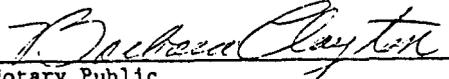
SADATA PROPERTIES, INCORPORATED,  
an Arizona Corporation

By   
Steve W. Sadler  
President

STATE OF ARIZONA    )  
                          ) **ss.**  
County of Maricopa )

On this, the 13<sup>th</sup> day of May, 1983, before me, the undersigned officer, personally appeared STEVE W. SADLER, who acknowledged **himself** to be the President of **SADATA PROPERTIES INCORPORATED**, an Arizona Corporation, and that he being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by **himself**, as **such** officer.

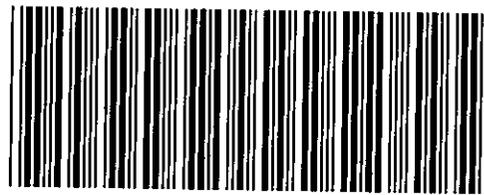
IN WITNESS WHEREOF, I have hereunto set my hand and seal.

  
Notary Public

My Commission Expires: 9/29/84

When recorded mail to:

Virginia Park Villas Homeowners  
Association  
2535 N. 15th Street, #11  
Phoenix, AZ 85006



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

97-0724003 10/16/97 02:49

LILIAN 1 OF 11

**FIRST AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
VIRGINIA PARK VILLAS**

The undersigned, President of Virginia Park Villas Homeowners Association, an Arizona nonprofit Corporation, hereby amends the Declaration of Covenants Conditions and Restrictions for Virginia Park Villas, dated May 10, 1983, and recorded May 16, 1983 at Records No. 83-183673, records of Maricopa County, Arizona (the Declaration), as follows:

1. Section 10 of ARTICLE I of the Declaration is added as follows:

Section 10. "Limited Common Area" shall mean those portions of the Common Area lying between the side boundaries of a Lot and extending from the rear Lot Line to the exterior boundary of the Subdivision. The Limited Common Area behind each lot shall be for the exclusive use of the residents of that Lot.

2. Section 4 (b) of ARTICLE II of the Declaration is amended in its entirety to read as follows:

4 (b) Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign two (2) vehicle parking spaces for each dwelling. The assignment of the parking spaces is depicted on the attached Exhibit "A".

3. Section 9 of ARTICLE IV of the Declaration is amended in its entirety to read as follows:

Section 9. Date of Commencement of Annual Assessments: Due Dates.  
The annual assessments provided for herein shall commence as to all Lots 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 period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date shall be on the first day of each month. The Association shall, upon demand, and for a charge of \$50.00, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

4. Section 10 of ARTICLE IV of the Declaration is amended in its entirety to read as follows:

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be assessed a \$15.00 late fee. The Association may bring, without electing a remedy, any and all actions and seek any and all relief against the Owner personally obligated to pay the same, and/or to foreclose the lien against the Property in a like manner as a mortgage of real property, and such Owner hereby grants to the Association the power of sale in connection with said lien. No Owner may waive or otherwise escape liability for the assessments provided for hereby by non-use of the Common Area, recreational facilities, or abandonment of his Parcel. In any action against an Owner to collect delinquent assessments, whether through lien foreclosure or otherwise, the Owner shall be obligated to pay, in addition to any and all other amounts required herein, all costs and attorneys' fees incurred by the Association in such action.

5. Section 5 of ARTICLE XI of the Declaration is amended in its entirety to read as follows:

Section 5. 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) year period by an instrument signed by the Owners of not less than eighty percent (80 %) of the Parcels, and, thereafter, by an instrument signed by the Owners of not less than seventy-five percent (75 %) of the Parcels. Lienholders' signatures are not required for any amendment to be valid. Any amendment must be recorded.

The undersigned hereby certifies that this First Amendment has been approved as required by Section 5 of ARTICLE XI of the Declaration.

IN WITNESS WHEREOF, the undersigned has executed this First Amendment this 14th day of October, 1997.

VIRGINIA PARK VILLAS HOMEOWNERS  
ASSOCIATION, An Arizona nonprofit  
corporation

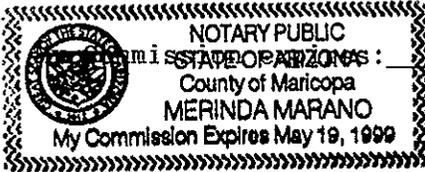
by Albert G. Boler

Albert G. Boler  
President

STATE OF ARIZONA            )  
                                      ) ss.  
County of Maricopa         )

On this 14th day of October, 1997, before me, the undersigned Notary Public, personally appeared Albert G. Boler, who acknowledged himself to be the President of VIRGINIA PARK VILLAS HOMEOWNERS ASSOCIATION, An Arizona nonprofit corporation, and as such officer being authorized to do so, executed the foregoing instrument for the purpose therein contained.

*Merinda Marano*  
\_\_\_\_\_  
Notary Public



5-19-99