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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR PUEBLO BONITO

1992

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is to be effective the 15th day of June, 1992 by the Pueblo Bonito Limited Partnership as the original "Developer." The Developer declares that the property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Property as defined herein below, and which is subjected to this Declaration and which shall be binding on all parties having any right, title or interest in such Property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner of all or any part thereof.

1. Property. The Original Developer is the recorded owner of real property (the "Property") in Maricopa County, Arizona, described as Pueblo Bonito Unit One, a subdivision according to the plat recorded in Book 351 of Maps, page 2, records of Maricopa County, Arizona.

2. Scope. This declaration provides for extensive control of the Property by the Developer including, without limitation: (i) control of the Association, of the type and design of the Improvements which may be built within the Property and of the uses which may be made of the Property and its Common Areas; (ii) The right to amend this Declaration; and the acceptance hereof, every person acquiring any right, title or interest to any Lot acknowledges, agrees to and accepts the Developer's control of the Property and the limited liability of the Developer and its agents as provided in this Declaration. Such control and liability limitation is an integral part of this Declaration and the Developer's general plan for the development and operation of the Property. As used herein, the term "Developer" shall be deemed to include, as the context requires, the Original Developer, and successor Developer or all of them, and their respective successors and assigns.

2.1 Right to Add Lands. The Developer, at his election, shall have the right to extend from time to time the Property subject to this Declaration to other adjacent property. Such additional land, when added, shall become part of the Property. Any and all new land so added, and the Owners thereof, shall be subject to and bound by this Declaration. The procedure for adding new land to be subject to this Declaration shall be as follows: The Developer shall record in the office of the County Recorder of Maricopa County, Arizona, a supplement to this Declaration (hereinafter called "Supplemental Declaration"), signed by the Developer, which Supplemental Declaration shall (a) describe the new land being subjected to this Declaration, (b) state such lands

and the improvements thereon, and the present owners and persons subsequently becoming Owners of Lots within said lands, shall be subject to and bound by all of the terms of this Declaration except any stated additions, deletions or other changes or modifications, if any, have been made in the use restrictions with respect to such new land.

3. Purpose. Pursuant to the provisions hereof, the Developer intends:

3.1 To sell and convey the Property, or portions thereof, and, in doing so, to place upon the Property mutual and beneficial assurances, restrictions, covenants, conditions, reservations, easements, liens, charges and development standards under a plan of improvement for the benefit of the Property and its owners;

3.2 That the Property be developed in accordance with the applicable provisions of the Zoning Ordinance, as and when amended, and in compliance with the general plan for the development of the Property by Single Family Residences and related facilities;

3.3 To establish covenants, conditions and restrictions upon the Property and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property; and

3.4 To incorporate and maintain as a nonprofit corporation, the Pueblo Bonito Community Association, for the purposes set forth in paragraph 6 hereof; so as to preserve the values and amenities of the Property and to which ultimately shall be delegated the power of maintaining and administering the Common Areas, administering and enforcing this Declaration and collecting and disbursing the Assessments herein created.

4. Establishment. The Developer intends to develop the Property in accordance with the general plan depicted on the Plat. The Property will be developed with Single Family Residences mutually utilizing the Common Areas. This Declaration establishes a general plan for the improvement of the Property and its use, occupancy and enjoyment.

5. Use and Occupancy Restrictions.

5.1 Residential. Each Lot shall be used only for residential purposes. No business or commercial building may be erected on any Lot and no business or commercial enterprise shall be conducted upon or from any Lot except for "home occupations" if and as defined and allowed under the Zoning Ordinance. No temporary buildings, structures or trailers may be erected, placed

or maintained on any Lot, except as expressly permitted and approved by the Design Review Board. No Lot shall be used for hotel or other lodging or transient service or purpose except that a Lot may be used by Owner for the temporary housing of guests of the Owner. No lot shall be leased or rented except in its entirety.

5.2 Construction. No building, structure or other Improvements of any kind may be erected, modified, altered or placed on any Lot without the prior written approval of the Design Review Board. Except for any perimeter walls installed to enclose the boundaries of the Property as limited by the applicable portions of the Zoning Ordinance, all Improvements shall be located to comply with the applicable provisions of the Zoning Ordinance which are summarized as follows as of Development Standards Case No. 60 ZN 91:

Minimum Yard Setbacks	LOTS 1-20		
	UNIT ONE		
Zoning:	R1-43	R1-35. PRD	R1-18 PRD
Front Yard	40'	30'	25'
Rear Yard	35'	35'	30'
Side Yard	20'	15'	Varies(10')
Distance between structures	40'	30'	10'

The "Front Yard", " Side Yard" and "Rear Yard" refer to those portions of a Lot as so defined by the Zoning Ordinance. The minimum distance between Improvements (except for Lot boundary walls) on adjacent lots shall be as outlined above. None of the Improvements may project beyond the Minimum Setbacks, except for Lot boundary walls which enclose such Lot, fences on the boundaries erected by the Original Developer, landscaping, driveways and parking areas as controlled by the Design Review Board. No structure whatever, other than one single-story private Single Family Residence, together with a single story private garage, guest house, servants' quarters and customary out buildings, and one or more ramadas, pergolas, or similar improvements shall be permitted to remain on any Lot. All homes shall be Single Story having a single level area not exceeding twenty-four (24) feet at its highest point above finish floor (exclusive of chimneys), provided that as to Lots 16, 17 and 18 shall have a height restriction of 22 feet above finished floor grade. No main residence shall be erected which shall have a floor area of less than three thousand (3,000) square feet, exclusive of open porches, garages, guest houses, servant's quarters and outbuildings. A private garage, a guest house, servants' quarters, and / or customary outbuildings may be erected either simultaneously with or after the erection of the main residence but not before the main residence has been erected. All garages shall be of a size adequate to contain no fewer than three full-sized American-made

automobiles. All such garages, guest houses, servants' quarters, and customary outbuildings shall be attached to the main residence either by walls, fences, or patios so as to make one contiguous unit.

5.3 Landscaping. Landscaping shall be in compliance with the Zoning Ordinance, as it applies to the Property, and other applicable state, county or municipal statutes, ordinances, rules or regulations: including those dealing with native plant preservation. A landscaping plan shall be submitted to the Design Review Board together with the proposed plan for Improvements on any Lot pursuant to paragraph 9 and be in compliance with the Architectural Guidelines which pertain to landscaping.

5.4 Accessories. Accessories such as, without limitation, clothes lines, service yards, sports apparatus, trash receptacles, heating and air conditioning equipment and other exterior fixtures, machinery and equipment shall be permitted only if screened from the view of neighboring Lots and with the prior written approval of the Design Review Board.

5.4.1 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any portion of the Property, whether attached to a building or structure or otherwise. The Association shall have the right to determine whether such devices shall be permitted on any Lot. Satellite dishes may be installed if screened properly and approved by the Design Review Board.

5.4.2 Roof Mounted Air Conditioning Units. No air conditioning units, air coolers, furnaces or other mechanical equipment may be mounted on the roof of any dwelling unit or building located on any Lot.

5.4.3 Lights. Spot lights or other lights which may reflect upon or cause glare to neighboring property, including sport court or swimming pool lights, shall not be allowed. All street lights will be of a height, design, and type approved by the Design Review Board.

5.4.4 Reflective Materials. Foil or other light-reflective material shall not be placed or maintained in the windows or glass of any Improvement erected on any Lot. Other reflective articles, including reflective house sidings and roofing material, shall not be maintained on any Lot. No glass used in the construction of any Improvement on any Lot shall have a reflectance in excess of twenty percent (20%).

5.4.5 Roofs and Flashings. No asbestos shingle roofs, wood shake roofs, light-reflective roofs or flat roofs (unless fully concealed by a parapet wall so as not to be visible from



Neighboring Property) shall be constructed or maintained on any Lot. No concrete tile roofs shall be constructed on any Lot, except flat concrete shake roofs that have the approval of the Design Review Board for said roof's compatibility with style and color scheme of the Improvement and on adjacent Lots.

5.5 Vehicles. Vehicles shall be parked and kept only in garages or designated parking areas and shall not be parked in the streets at any time for any reason except temporarily with the prior written approval of the Association Board. No Vehicle, regardless of ownership, age, condition or appearance shall remain on any Lot in any manner which could be construed as being stored, neglected, abandoned or otherwise not in active use except within an enclosed garage or other structure approved in advance by the Design Review Board. The Association Board may adopt specific rules and regulations pertaining to recreational vehicles, boats, trailers and other vehicles other than standard passenger vehicles.

5.6 Utilities. All gas, electric, power, telephone and other utility and service conduits, connections and lines shall be located either underground or concealed in, under or on buildings or other structures, except when prohibited by law. Service pedestals, transformers, switch cabinets and similar installations may be located above ground but shall be screened from the view of neighboring Lots as provided in Paragraph 5.4. No outside speakers or amplifiers shall be permitted except the prior approval of the Design Review Board, subject to the regulation by the Association Board as to noise level and time of use. All outside lighting shall be of a type that does not annoy other Owners and shall be subject to prior approval by the Design Review Board.

5.7 Signs. No "For Sale" or other advertising sign, billboard or display of any kind shall be permitted except in areas designated in advance by the Developer, any successor Developer or the Association Board. Street names and numbers, mailing addresses and other identification and directory designations, markings and insignia shall be permissible only as installed by the Developer or as approved in advance by the Design Review Board. All signs shall comply with applicable laws and ordinances, including without limitation any Sign Ordinance of the City of Scottsdale.

5.8 Maintenance. All Lots shall be kept in good condition and repair with the Improvements adequately painted. No garbage, rubbish, trash or debris shall be burned on a Lot or be placed or allowed on a Lot except within the containers complying with City of Scottsdale requirements. Replacement or maintenance of such containers shall be subject to regulations by the Association Board. No Lot shall be allowed to present an unsightly appearance, endanger health of Owners, emanate offensive noises or odors, or constitute an aggravation, annoyance or nuisance.

5.9 Subdivision. No Lot shall be further subdivided or separated into smaller or different portions or conveyed or encumbered in less than the full dimension as set forth in the Plat and no Lot shall contain less than 20,000 square feet of land surface area. Dedication, conveyance or other granting of easements to public utilities or other public or quasi-public entities may not be permitted without the prior written approval of the Association Board. Two or more Lots may be combined so as to become one Lot at the discretion of the Developer or any successor Developer at any time prior to the sale of such Lots to an Owner other than the Developer or any successor Developer or thereafter only with prior approval of the Association Board and, in either event, the combined Lots shall be deemed one Lot for purposes hereof; provided, however, that the Developer, any successor Developer or the Association Board may require, as a pre-condition of any such combination, that the Owner of such combined Lot continue to be liable for Assessments as though there had been no combination of Lots.

5.10 Mining. No exploration or mining operations of any kind shall be permitted whether involving discovery, location, removal, milling or refining and whether related to water, oil, gas, hydrocarbons, gravel, uranium, geothermal steam or otherwise.

5.11 Animals. No Animals, reptiles, birds or other creatures shall be permitted or kept on a Lot except that commonly accepted household pets such as dogs, cats, ~~birds~~ and fish in reasonable numbers may be maintained within a Lot for domestic but not commercial purposes. Household pets shall be restrained by fence, cage or leash at all times and shall not be allowed to eliminate excrement in the Common areas or other Lots. The Association shall determine what a commonly accepted household pet is, and shall determine a reasonable number of such animals.

5.12 Modification. The Board may modify or waive the foregoing restrictions or otherwise regulate the use and occupancy of the property and the Lots by reasonable rules and regulations adopted by the Board from time to time as provided in paragraph 6.5.

5.13 Enforcement. The Association, or its authorized agent, may enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner thereof. The expenses so incurred by the Association, and such fines as may be imposed pursuant to the Bylaws or the Association Rules, shall be a Special Assessment secured by lien upon the Lot enforceable in accordance with the provisions of paragraph 8.

5.14 Exemption. In developing the property and constructing the improvements, the Developer shall not be subject to the limitations of this paragraph 5 and nothing contained in this Declaration shall prohibit or interfere with such activities

by the Developer or its agents. The Developer may utilize any portion of the Property ( except Lot previously conveyed to Owners other than the Developer) for any and all construction and sales activities. During such time as it retains ownership, all Lots owned by the Developer are free of the use and other restrictions of this Declaration and the Developer may make such use of its Lots as permitted by law notwithstanding that such use otherwise would be prohibited by this Declaration. All Improvements constructed or installed by the Developer shall be permissible without necessity for approval by the Design Review Board or others and notwithstanding any restriction or prohibition to the contrary set forth herein.

6. Pueblo Bonito Community Association.

6.1 Organization.

6.1.1 Purpose of the Association. The Association has been incorporated as a nonprofit, membership corporation to serve as a governing body of the Members for the protection, improvement, alteration, maintenance, repair, replacement administration and operation of the Property, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds and other matters as provided in this Declaration, the Articles, the Bylaws and the Association Rules. The Association shall not be deemed as conducting a business of any kind. All funds received by the Association shall be held and applied by it ~~for the Members~~ in accordance with the Provisions of this Declaration, the Articles and the Bylaws. The Association shall have no power to issue stock. The Articles and the Bylaws shall not be construed or amended so as to be inconsistent with this Declaration.

6.1.2 Subsidiary Associations. The Association shall have the right to form one or more subsidiary associations for the purpose or purposes deemed appropriate by the Association Board. Without limiting the generality of the foregoing, one or more subsidiary associations may be formed for the operation and maintenance of any specific area located within the Property. However, such subsidiary association shall be subject to this Declaration and may not take any action to lessen or abate the rights of the Owners as herein provided.

6.1.3 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board of Directors ( the "Association Board") and such officers as the Association Board may elect or appoint, in accordance with the Articles and Bylaws. The Association Board shall consist of not less than three and not more than seven members as may be prescribed from time to time by the Articles or the Bylaws.

6.2 Powers and Duties. The Association shall have such rights, duties and powers as are prescribed by law and as set forth

herein and in the Articles and the Bylaws.

6.3 Membership. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of an Owner's Lot and then only to the transferee of ownership of such Lot. Provided, however that the original Developer or any successor Developer may assign absolutely or conditionally or both its voting rights for any or all Lots then owned by it to any successor Developer, subject to any limitations provided for in any such assignment. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer membership to the new Owner. In order to assist the Association Board in maintaining its books and records and in the orderly transaction of its affairs, all requests and other communications by Members of the Association Board shall be in writing and the Association Board may disregard any other form of communication.

6.4 Voting Rights. The Association shall have two classes of voting Members.

6.4.1 Class A. Class A shall consist of all Owners except the Developer, each of whom shall be entitled to one vote for each Lot owned.

6.4.2 Class B. Class B shall be the original Developer who shall be entitled to ten votes for each Lot owned either directly or beneficially, through a trust or other arrangement, or shall include any successor Developer, subject to any limitations imposed on any absolute or conditional transfer or assignment of such Class B voting rights by the original Developer or any successor Developer. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events whichever occurs earlier:

6.4.2.1 Upon conveyance to an Owner, other than a Developer, of the last Lot owned by any Developer to any other Person as Lot Owner; or

6.4.2.2 Five years from the date of this Declaration.

6.4.3 Suspension. If any Owner shall be in arrears in the payment of any amounts due under any of the provisions of this Declaration for a period of 15 days, or shall be in default of any other terms of this Declaration for a period of 15 days, that Owners rights to vote as a Member shall be suspended automatically and shall remain suspended until all payments are made and defaults cured.

6.4.4 Procedure. The votes for each Lot shall be cast as a unit, and a division of the votes shall not be allowed. If joint Owners are not able to agree amongst themselves as how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote or votes representing a certain Lot, it thereafter will be conclusively presumed for all purposes that the voter(s) were acting with authority and consent of all the other Owners of that Lot. In the event more than one voter casts the vote or votes for a particular Lot, none of the votes shall be counted and such vote shall become void. The candidate or motion receiving the highest number of votes shall be deemed elected or carried. At the option of the Association Board, the elected members of the Association Board, may be by written ballot duly mailed to the Members or at a meeting of the Members.

6.4.5 Articles and Bylaws. Each Member shall have such other rights, duties and obligations as are set forth in the Articles and the Bylaws.

6.5 The Association Rules. By a majority vote of the Association Board, the Association, may from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Association Rules." The Association Rules may restrict and govern the use of any area by any Owner, the family of such Owner or guest, invitee, licensee of such Owner; provided, however, ~~that the~~ Association Rules may not discriminate among the Owners and shall not be inconsistent with this Declaration, the Articles or the Bylaws. A copy of the Association rules as they may be from time to time adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and may be recorded. The Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Association Board shall have the right to impose fines for violations of the Association Rules and if such fines are not paid within ten days after written notice to the Owner in violation, the fines may, at the Associations Board direction, become a lien on the lot of the Owner and enforceable as to any other lien created by paragraph 8. Each occasion of violation and each day during which such violation continues shall be deemed a separate offense subject to a separate and additional fine.

6.6 Personal Liability. No Member of the Association Board, any committee or officer of the Association, any compensated or voluntary manager or any employee or agent or any member of the Design Review Board shall be personally liable to any Owner or any other party, including the Association, for any damage, loss or prejudice claimed or suffered on account of any act, omission, error or negligence of the Association, the Association Board, its manager or any other representative or employee of the Association, the Design Review Board, or any other committee, or any other

officer of the Association, provided that such a person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct. Officers and Directors of the Association shall be indemnified against personal liability for acts or omissions in the manner set forth in the Articles.

7. Covenants for Maintenance.

7.1 Owners. Each Owner shall be responsible for and bear the expense of all of the maintenance, repairs and replacements for his Lot and its improvements including all areas and features not herein expressly provided to be maintained by the Association. In such repair and maintenance, an Owner shall not interfere with, hinder or damage any Common Area or the area or Improvements of any other Lot. The removal, replacement, installation or repair of any fence, wall or other component of a Lot, placed or constructed by the Developer or any Owner, on, within or about any utility or other easement or service line or system shall be the responsibility of the Owner, either directly or through increased assessments at the option of the Association Board. Additionally, if repairs or maintenance of areas to be repaired and maintained by the Association are caused through the negligent or willful acts or omissions of the Owner, his family, licensees, guests, tenants or invitee, the cost of such repairs or maintenance shall be the responsibility of the Owner either directly or indirectly through the use of a Special Assessment, at the option of the Association Board. Repair or maintenance of the interior or exterior of any Lot or its Improvements, undertaken by the Association because of the failure or neglect of the Owner, shall be the responsibility of the Owner, either directly or through Special Assessment by the Association, at the option of the Association Board.

7.2 Association. The Association shall be responsible for and bear the cost of the repair and maintenance of the Common Areas and facilities, signs, street signs, sign walls and the like if and as installed by the Original Developer or the Association even if not located in the Common Areas; and all portions of the property outside of the boundary of the Lots and public streets. The Association may repair and maintain Lots, or portions thereof, as are not properly constructed, landscaped or maintained by the Owners. The costs and expenses of the repair and maintenance undertaken by the Association shall be allocated among the Owners pursuant to the provisions of paragraph 8.

7.3 Association Right of Access. An authorized representative of the Association, and all contractors, repairmen and other agents employed or engaged by the Association, shall be entitled to reasonable access to such of the Lots as may be required in connection with the maintenance, repair or replacement of or to the Common Areas and otherwise as necessary to perform any of the Association's duties or responsibilities hereunder.

## 8. Covenants for Assessments.

8.1 Creation of Lien and Personal Obligation. By accepting any interest in a Lot each Owner thereof covenants and agrees to pay to the Association: Regular Assessments, Special Assessments and Capital Improvement Assessments, if applicable. Such Assessments shall be established and collected from time to time as provided by this Declaration. The Assessments together with interest thereon, late charges, attorney's fees, court costs and other costs of collection thereof, as herein provided, shall be a continuing lien upon such Owner's Lot (or combined Lots) against which the Assessments are made. Each assessment, together with interest and other costs, also shall be the personal obligation of the Owner of such Lot at the time when the Assessment becomes due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them albeit the lien shall continue irrespective of the change in ownership. The obligation of an Owner to pay Assessments shall not be affected by the incompleteness of or any diminished use with respect to the Common Areas or the abandonment of a Lot.

8.2 Purpose of Assessment. The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners including, without limitation, the purposes described in paragraph 4.2, and for the improvement and maintenance of the Property and the Common Areas including, without limitation the payment of taxes, governmental assessments, insurance premiums, repair, maintenance, and construction costs, and supervision, management and related expenses.

8.3 Regular Assessments. Regular assessments shall be determined by the Association Board in such manner as shall be set forth in the Bylaws. Written notice of the amount of the Regular assessments and the due date shall be provided to the Owners not less than ten days prior to the due date, although the failure to provide such notice shall not relieve any Owner from the obligation to pay such Regular Assessments. The first Regular Assessment period shall not commence earlier than the first day of the first month following the conveyance of the first Lot to an Owner other than the Developer. Upon demand and for a reasonable charge, the Association Board shall furnish to any Owner a certificate setting forth whether the Assessments on his Lot are paid, and if unpaid, the unpaid amount. The certificate when signed by an officer or director shall be binding upon the Association as of the date of issuance.

8.4 Special Assessments. If the Association Board determines that any repairs or maintenance of areas to be repaired or maintained by the Association arise from the negligent or willful acts or omissions of an Owner, his family, licensees, guests, tenants, or invitees; if the Association incurs expenses to maintain a Lot because of the failure or neglect of the Owner; or

if the Association incurs expenses in causing the owner to comply with this Declaration, the Articles, the Bylaws or the Association Rules, then the Association Board may obtain reimbursement of such expenses from the Owner through the issuance of a special Assessment for that purpose. Written notice of the Special Assessment and the due date shall be provided to the Owner not less than ten days prior to the due date, although the failure to provide such notice shall not relieve the Owner of the obligation to pay such Special Assessment.

8.5 Capital Improvement Assessments. The Association Board shall have the right and power to impose Capital Improvement Assessments to provide for the construction of recreational and other facilities in the Common Areas, or for the alteration, demolition, removal or reconstruction of the Common Areas, from time to time, as in its discretion appears to be in the best interest of the Association and the Property. Any such alteration, demolition, removal, construction, or addition shall be authorized by an affirmative of members of the Association Board at a duly called meeting at which a quorum is present, and ratified, and approved by the affirmative vote of a majority of the Members present in person or by proxy at a duly called meeting at which a quorum is present. For purposes of this paragraph, the presence, at a duly called meeting, of the Members or proxies entitled to cast 50 percent of the votes of the Membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, another meeting may be called by sending written notice to all Members not less than ten days and not more than twenty days in advance of such meeting, setting forth the purpose of the meeting and the required quorum at any such subsequent meeting shall be one-half of the required quorum of the preceding meeting. Capital Improvement Investments shall be payable at the same time and in addition to the Regular Assessments or, at the option of the Association Board, at different times or in one installment. Approval of Capital Improvement Assessments is hereby reserved for the Association Members.

8.6 Assessment Rate. The pro rata share of the total Regular or Capital Improvement Assessments to be born by each Lot shall be the "Assessment Rate" for that Lot. The Assessment rate shall be uniform for all Lots, except that the Association may vary the Assessment to a Lot to reflect the extent of use attributable to that Lot. The Lots owned by any such Developer other than the original Developer shall be subject to the payment of assessments in the same manner as any other Lot. Assessments may continue to be imposed on combined Lots if and as provided in paragraph 5.9.

8.7 Remedies. Each Owner shall be deemed to covenant and agree to pay to the Association the Assessments provided for herein on or before the due date, as established by the Association Board, and agrees to the enforcement of the Assessments as herein specified. In the event the Association employs attorneys for



collection of any Assessment, whether by suit or otherwise, or to enforce compliance with specific performance of the terms and conditions of this Declaration, the applicable Owner shall pay reasonable attorney's fees and costs thereby incurred in addition to any other amount due or any other relief or remedy obtained against such Owner. In the event of a default in the payment of any Assessment when due, the Assessment shall be deemed delinquent, and, in addition to any other remedies herein or by law provided, the Association may enforce such obligation in any manner provided for by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

8.7.1 Suit. The Association Board may cause a lawsuit to be commenced and maintained in the name of the Association against an Owner to enforce the payment of any delinquent Assessment. Any judgement rendered for the Association in any such action shall include, without limitation, the amount of the delinquency, interest from the date of the delinquency at the "Default Rate" which shall be the greater of one percent per annum above the prime rate of Valley National Bank (Arizona), Phoenix, Arizona (or its successor) or 18 percent per annum, court costs and reasonable attorneys fees as determined by the court.

8.7.2 Lien. There is hereby created a lien, with private power of sale, on each and every Lot to secure payment to the Association of any and all Assessments levied against any and all Owners, interest thereon at the Default Rate from the date of the delinquency, and all costs of collection ~~which may~~ paid or incurred by the Association in connection therewith including, without limitation, costs and reasonable attorney's fees. After the occurrence of any default in the payment of any Assessment, the Association Board, or its authorized representative, may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. The demand shall state the date and the amount of the delinquency. Each default shall constitute a separate basis for demand or lien, but any number of defaults may be within a single demand or lien. If such delinquency is not paid after delivery of such demand, or, even without such written demand being made, the Association Board may elect to file a claim of lien on behalf of the Association against the Lot of the defaulting Owner. However, a claim of lien is not required and any and all delinquent Assessments shall be a continuing lien on the Lot with or without the preparation or recording of a claim of lien. A claim of lien may be executed, acknowledged by any officer of the Association, and shall contain substantially the following information: the name of the delinquent Owner; the legal description and street address of the Lot; the amount due including interest thereon, collection costs and reasonable attorney's fees; and that the lien is claimed by the Association pursuant to this Declaration. Upon the occurrence of the delinquent Assessment or the recordation of a duly executed original or copy of the claim of lien, the lien immediately shall

attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Except as provided in paragraph 8.7.3 hereof, the lien shall have priority over all liens or claims created subsequent to the due date of the first delinquent Assessment for which the lien is claimed. Any lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a realty mortgage or for the enforcement of a deed of trust, with private power of sale, as set forth by the laws of Arizona, as and if amended. The lien shall be in favor of the Association and shall be for the benefit of all of the Owners. The Association shall have the right to purchase at the sale and power to bid in at any foreclosure or trustee's sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. In the event that any such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees interest at the Default Rate, and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, on becoming an Owner of the Lot, hereby expressly approves the foregoing and waives any objection to the enforcement and foreclosure of the lien in this manner.

8.7.3 Subordination of Lien. The Lien for the Assessments provided for herein shall be subordinate to the lien of the First Mortgage on the Lot. Sale or transfer of any Lot shall not effect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding similar to or in lieu thereof shall extinguish the lien of such Assessment as to payments which become due prior to such ~~sale or transfer~~. No sale or transfer shall relieve such Lot from any liability from any Assessments thereafter becoming due or from the lien thereof. Sale or transfer shall not relieve the previous Owner from personal liability for Assessments that became due while such Owner was the Owner.

8.7.4 Offsets. All Assessments shall be payable in the amounts specified in the notice of Assessments and no offsets to such amounts shall be permitted for any reason including, without limitation, a claim that (i) the Association, the Association Board or the Developer, is not properly exercising his duties and powers as provided in this Declaration; (ii) Assessments for any period exceed Common Expenses; or (iii) a Member has made no use of the Common Areas.

8.7.5 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created to the Association pursuant to this Declaration, whether such liens are now in existence or created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

9.0 Architectural Control.

9.1 Organization. There shall be a Design Review Board organized as follows:

9.1.1 Design Review Board Composition. The Design Review Board shall consist of three members who shall be appointed initially by the Developer. At his option, but without a requirement or responsibility to do so, and then only as long as the original Developer owns ten or more Lots, Pueblo Bonito or its designated representative may be one member of the Design Review Board. The Developer shall retain the right to appoint, augment or replace all members of the Design Review Board ( other than the Pueblo Bonito member, if so appointed) until all of the Lots are sold or conveyed by the Developer to Owners other than the original Developer or any successor Developers or until five years after the date of this Declaration in 1992, whichever first occurs. Thereafter, members of the Design Review Board shall be appointed by the Association Board. The Developer may, but need not, permit the Association Board to appoint one or more members of the Design Review Board at any time. Persons appointed to the Design Review Board, other than those persons appointed by the Developer, must satisfy such requirements as may be established from time to time by the Developer or the Design Review Board. The address of the Design Review Board shall be the address established for the giving of notice to the Association, unless otherwise specified by the Design Review Board.

9.1.2 Alternate Members. In the event of the absence or disability of one or two of the regular members of the Design Review Board, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

9.1.3 Term of Office. Design Review Board members and alternates shall have a renewable, one year term of office. The one year term of office shall commence on the date of appointment and shall terminate one year thereafter irrespective of the commencement or termination date of the term of office of other members of the Design Review Board. Any member of the Design Review Board may resign at any time and may be removed by the Association Board (except that Pueblo Bonito may not be removed if it elects to designate or act as a member under paragraph 9.1.1 and as limited therein).

9.1.4 Design Limits. The Design Review Board shall establish procedural rules, regulations, restrictions, architectural standards and design guidelines which the Design Review Board may, from time to time in its sole discretion, amend, repeal or augment including:

9.1.4.1 Time Limitations. Time limitations for the completion of construction, within specified periods after the

approval of the Improvements by the Design Review Board.

9.1.4.2 Perimeter or Other Walls. The placement, design, materials and color of any perimeter walls placed on or near the boundaries of any Lot, subject to the applicable provisions of the Zoning Ordinances. No masonry walls or other permanent structures shall be erected in the Public Utility Easements between Lots 8 and 9 and between Lots 16 and 17.

9.1.4.3 Conformity with Approved Plans. Requirements for the conformity of the Improvements with plans and specifications approved by the Design Review Board; provided, however, as to purchasers and encumbrances in good faith for fair value, the completed Improvements shall be deemed to be in compliance with plans and specifications approved by the Design Review Board and in compliance with the architectural standards of the Association and its Declaration, unless:

(a) Notice of noncompletion or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the Design Review Board, shall be recorded with the Maricopa County Recorder, and be given to the Owner within one year of the expiration of the time limitation described in paragraph 9.1.4.1 or within one year following completion of the Improvements whichever is later; or

(b) Legal proceedings shall have been instituted to enforce compliance or completion of the Improvements.

9.1.4.4 Other Restrictions. Such other limitations and restrictions as the Design Review Board, in its discretion shall adopt including, without limitation, the regulation of all landscaping (including, without limitation, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change, alteration or maintenance of any building, structure, perimeter walls or interior fences including, without limitation the nature, kind, shape, height, materials, exterior color, surface texture and location of such Improvements.

9.1.4.5 City Restrictions. Such requirements and limitations as the city may impose including, without limitation, procurement of a valid building permit and compliance with all applicable laws and policies of the City then in effect including, without limitation, the Zoning Ordinance.

9.2 Duties. It shall be the duty of the Design Review Board to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to perform other duties delegated to it from the Association Board and to carry out all other duties imposed upon it by this Declaration.

9.3 Meetings and Compensation. The Design Review Board shall meet from time to time as necessary to perform its duties

hereunder. Subject to the provisions of paragraph 9.1.2 the vote or written consent of any two regular members at a meeting or otherwise, shall constitute the act of the Design Review Board. The Design Review Board shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Design Review Board shall be entitled to compensation for their services only if and as provided by the Association Board in its discretion.

9.4 Waiver. The approval or disapproval by the Design Review Board of any plans, drawings or specifications for work done or proposed, or for any other matter requiring the approval of the Design Review Board, shall be in writing and shall not be deemed to constitute a waiver of any right to approve or withhold approval of any similar plans, drawings, specifications or matters subsequently submitted for approval.

9.5 Liability. Neither the Design Review Board nor any member thereof shall be liable to the Association, any Owner, or to any other party for damage, loss or prejudice claimed or suffered on account of approval or disapproval of any plans, drawings or specifications, whether or not defective; the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; the Development of any portion of the Property; or the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided that with respect to liability of a member of the Design Review Board, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions, the Design Review Board, or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or other proposals submitted to the Design Review Board. The Design Review Board shall not be deemed to have approved or disapproved any proposal unless in writing signed by at least two current, regular members. The original Developer, the Pueblo Bonito Partnership shall have no liability on account of the appointment or failure to appoint a Pueblo Bonito Partner or designated representative to the Design Review Board.

9.6 Time for Approval. In the event the Design Review Board fails to approve or disapprove in writing within 45 days after complete plans and specifications have been submitted to it, the approval will not be required and this paragraph will be deemed to have been waived as to such plans and specifications.

9.7 General Provisions. The Design Review Board may assess reasonable fees in connection with its review of plans and specifications. The Design Review Board may delegate its plan review responsibilities, except final review and approval, to one or more of its architectural consultants retained by it. Upon such

delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the Design Review Board. The Design Review Board may promulgate such additional architectural and landscape standards, rules and regulations as it deems appropriate and as are not in conflict with this Declaration. The Design Review Board may assess a fine of up to \$100.00 per day for any failure to obtain the required approval from the Design Review Board and such fine shall be imposed upon the applicable Owner by a Special Assessment by the Association as provided in paragraph 8.4. The establishment of the Design Review Board and procedures herein for architectural approval shall not be construed to diminish any obligation of the Owners to maintain or repair their Lots as otherwise may be provided in this Declaration or the Association Rules.

9.8 Architectural Compatibility. It is the Developers express intention that there be harmony (but not uniformity) of architectural character between Improvements on adjoining Lots specifically, and among all Improvements on the Lots generally. Accordingly, Improvements on Lots shall conform with the requirements of the Architectural Guidelines and shall be of southwestern, Mediterranean or territorial design, and no Improvements shall be Tudor, colonial or contemporary design; provided however, the Design Review Board shall have the authority to approve the design of the Improvements.

## 10. Property Rights and Easements.

10.1 Owners' Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

10.1.1 Fees. The Association shall have the right to limit the number of guests of Owners and to charge reasonable admission and other fees for the use of any portion of the Common Areas except streets and walks. No provision of this Declaration shall be construed to deprive any Owner of access to his Lot.

10.1.2 Suspension. The Association shall have the right to suspend the voting rights and the right to use the Common Areas by an Owner for any period during which any Assessment against his Lot remains unpaid or such Owner otherwise is in violation of this Declaration or the Association Rules.

10.1.3 Dedication. The Association shall have the right to dedicate or transfer any part of the Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association Board.

10.1.4 Conveyance. The Developer or the Association Board shall have the right to create easements and rights-of-use to

and for the benefit of properties in the vicinity of the Property or for the Common Areas or for one or more Lots whether for parking, access or otherwise.

10.1.5 Reserved Areas. Certain portions of the Common Areas ("Reserved Areas") may be reserved by the Developer or the Association Board for the exclusive control, possession and use of a certain Owner or Owners. If a Reserved Area serves as access to or from two or more Lots, the Owners of the applicable Lots shall have joint control, possession and use of the Reserved Area and each such Owner shall have an easement of use thereof. The right of the owners to use the Reserved Areas shall be subject to the blanket utility easement, maintenance and architectural and landscape control provisions of this Declaration, to all easements on the Plat, and to such reasonable rules and regulations with respect to possession, control, use and maintenance as the Association Board may from time to time promulgate.

10.2 Blanket Easement. There is hereby created a blanket easement upon, across, over and under the Property and the Lots for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems including, without limitation, water, sewer, gas, telephone, electricity and television cable and communication lines and systems. By virtue of this easement, it shall be permissible for the providing utility, service company, the Association and their agents to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of the Improvements. Notwithstanding any contrary provisions hereof, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated except as initially programmed and approved by the Developer or thereafter as approved by the Design Review Board. This blanket easement shall in no way affect any other recorded easements. There shall be an access easement over the Common Areas for the delivery and collection of the U.S. mail. Each Lot and the Common Areas are subject to an easement for drainage and runoff from other Lots and the Common Areas.

10.3 Common Driveways. As the lots are designed and the Improvements are constructed thereon, each Owner is to have vehicular and pedestrian access to his Lot by means of the streets and, as to certain Lots, by means of a common driveway located wholly or partially upon an adjacent Lot or upon the Common Areas. Each Owner of a Lot served by common driveway shall have and is hereby granted a nonexclusive easement for free and unrestricted pedestrian and vehicular access to his Lot by means of the common driveway. The easement shall be for the benefit of and appurtenant to each Lot served by the common driveway. Neither the Association nor any Owner of any Lot over which any portion of a common driveway traverses shall in any way interfere with the easement or access to the Lot thereby. Except with respect to the foregoing

easement, the existence of a common driveway shall not effect ownership or maintenance rights or responsibilities and each Owner (or the Association as to that portion of a common driveway located within the Common Areas) shall own and maintain that portion of the common driveway located within the Owner's Lot with no right of contribution from any other Owner sharing the common driveway.

10.4 Title to Common Areas. In its discretion, the Developer may convey all or any portion of the Common Areas, or any other property, to the Association at any time. The Developer shall convey the Common Areas to the Association upon the cessation of Class B membership in the Association as provided in paragraph 6.4.2 hereof, or at such earlier date as the Developer may elect in its discretion. This right to hold title to the Common Areas shall remain with the original Developer, who may, nonetheless, assign and convey such title and control to a successor Developer subject to such terms and conditions as may be imposed thereon by the original Developer.

10.5 Original Plat Tracts. Tracts "A" and "B" of the original Plat are Common Area open spaces and Tract "C" is Common Area streets belonging to the Association. Tracts "D" "E" and "F" are retained by the Developer for future addition of new lands per paragraph 2.1.

11. Damage or Destruction. In the event any Improvements are damaged or destroyed from any cause, within ~~60 days~~ from the date of the occurrence of the damage or destruction, its Owner shall begin repair and rebuilding of the Improvements (and damage to adjacent Lots or property for which such Owner may be legally responsible) in a workmanlike manner in conformity with the original plans and specifications used in the construction thereof, subject to such changes as are then required by applicable laws, ordinances and governmental regulations, and shall complete the repair and rebuilding in a reasonably expeditious manner not to exceed one year from the date of damage or destruction. The one year period shall be extended by the period of any delays resulting from occurrences or circumstances which are beyond the control of the Owner and his contractor. Such repair and restoration shall be at the expense of the Owner although the Association Board shall reimburse to the Owner any such expense covered by insurance proceeds received by the Association therefor. In the event the Owner refuses or fails to commence or to complete such rebuilding within then time required, then the Association, by and through its Board, hereby is irrevocably authorized by such Owner to undertake such repair and rebuilding in a good and workmanlike manner in conformity with the original plans and specifications of the Improvements and the then applicable law. The Owner shall repay the Association, upon demand, the amount actually expended for such repairs together with interest at the Default Rate of expenditure until paid. Each Owner further agrees that charges for repairs, if not paid within ten days after demand, shall be delinquent and



shall become a lien upon the Lot and the personal obligation of the Owner in the manner provided for Assessments. Such charges shall bear interest at the Default Rate and shall constitute a debt collectable by the Association from the Owner through any lawful procedures. Each Owner vests in the Association, or its agents, the right and power to bring all actions against such Owner for the collection of such charges and to enforce the lien by all methods available for the enforcement of such liens, including those provided for Assessments, and such Owner grants to the Association a private power of sale in connection with the lien. The lien shall be subordinate to the lien of any First Mortgage. Nothing contained herein shall be construed in any way so as to relieve any insurance company from payment of any and all amounts which would be payable under any policy or policies. In the event of a dispute between an Owner and the Association Board with respect to the extent of necessary repairs or cost thereof, then upon written request of either the Owner or the Association Board, the matter shall be submitted to arbitration in accordance with the applicable rules and procedures of the American Arbitration Association and A.R.S. Sec. 12-1501 et. seq.

12. Insurance. The Association Board or its authorized agent shall have the authority to obtain insurance for all Improvements situated on the Common Areas, against loss or damage by fire or other hazards under the broadest reasonably available coverage in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insurable hazards, may obtain a broad form of public liability policy covering all Common Areas, and all damage or injury caused by the negligence of the association or its agents; and may obtain such other insurance as it deems necessary at the time for any purpose. At the Association's Board's discretion, premiums for all such insurance may be Common Expenses subject to inclusion in the Assessments. All such insurance shall be written in the name of the Association. The Association Board may require that fire and extended coverage insurance and liability insurance on individual Lots be written either by a carrier selected by the Association Board or by any carrier qualified to transact insurance business in Arizona with a financial rating of at least A status as rated in the most recent edition of Best's Insurance Reports. The Association Board may establish minimum coverages for insurance on individual Lots. Premiums for insurance obtained on individual Lots, either by the Association Board or by the Owner, shall not be part of the Common Expense, but shall be an expense of the Lot so covered and a Debt owed by the Owner, and shall be collectable by any lawful procedures. In addition, if the debt is not paid within ten days after notice of such debt, such amount may, at the Association Board's discretion, become a lien upon such Owner's Lot and, if so, it shall continue to be a lien until fully paid. The lien shall be subordinate to the lien of any First Mortgage, and shall be enforceable in the same manner as any lien arising out of Assessments. In addition to the insurance

required to be carried by the Association, any Owner may, if he wishes, at his own expense, insure his own Lot for his own benefit and carry all other insurances he deems advisable. It shall be the individual responsibility of each Owner, at his own expense, to provide, as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage and loss. In the event of damage or destruction by fire or other casualty of any of the Common Areas covered by insurance written in the name of the Association, the Association Board shall, upon the receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Common Areas to as good condition as existed formerly. All such proceeds shall be deposited in a bank or other financial institution the accounts of which bank or institution are insured by federal governmental agency, with the provision, agreed to by the bank or institution, that funds may be withdrawn only by signature of at least two members of the Association Board, or by agency duly authorized by the Board. The Association Board shall contract with a licensed contractor, who may be required to provide a full performance and payment bond for repair, reconstruction or rebuilding of a destroyed structure. In the event the insurance proceeds are insufficient to pay costs of repairing or rebuilding to the same condition as formerly, the Association Board may utilize reserves, levy a Special Assessment or proceed as otherwise herein provided.

13. Mortgage. Notwithstanding any contrary provisions of this Declaration, the Articles, the Bylaws, or the Association Rules, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Lot:

13.1 Exoneration. Except as hereinafter provided, a Mortgagee shall not be personally liable for payment of any Assessment for the observance or performance of any other provision hereof, except for those matters which are enforceable by injunctive or other equitable action.

13.2 Substitution. During the pendency of any proceeding to foreclosure the First Mortgage, including any period of redemption, the Mortgagee (or any receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner including, without limitation, the right to vote as a Member to the exclusion of the Owner's exercise of such rights and privileges.

13.3 Acquisition. At such time as the Mortgagee shall become the Owner of a Lot the Mortgagee shall be subject to all of the terms and conditions of this Declaration including, without limitation, the obligation to pay all Assessments accruing thereafter, in the same manner as any other Owner.

13.4 Foreclosure. The Mortgagee or any other party acquiring title to a mortgaged Lot through foreclosure suit or

through any equivalent proceeding such as, without limitation, the taking of a deed without foreclosure, shall acquire title to the Lot free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secure the payment of any Assessment accrued prior to the conclusion of the foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption, except as follows: Any such unpaid Assessment against the Lot foreclosed may be treated as a Common Expense applicable to all of the Lots, including the Lots foreclosed against, which expense may be collected by pro rata Assessment against all Lots subject to the Assessment nevertheless such unpaid Assessment shall continue to exist as a personal obligation of the defaulting Owner of the Lot to the Association. There shall be a lien upon the interest of the Mortgagee or other party acquiring title to a mortgaged Lot by foreclosure or equivalent proceedings for all Assessments authorized by this Declaration which accrue or are assessed after the date the Mortgagee has acquired title to the Lot free and clear of all rights of redemption.

#### 14. General Provisions.

14.1 Enforcement. The provisions of this Declaration shall be construed as covenants running with the land and as equitable servitudes for the benefit of and binding upon all persons purchasing, owning, leasing, subleasing, occupying or otherwise having any right, title or interest in any of the Property, their heirs, personal representatives, executors, administrators, successors, grantees and assigns, irrespective of whether referred to in a deed or other instrument of conveyance. After the date on which this Declaration has been recorded, this Declaration may be enforced by any one or more of any Lot, the Association, the Developer or the Owner or Owners of any Lot. The Developer shall have no obligation to enforce this Declaration. Prior to initiating legal action to enforce this Declaration against the association or the Developer, an Owner shall notify the Developer and the Association in writing of the grievance and the nature of any asserted violation hereof and the Developer and the Association shall have 45 days thereafter within which to cure or eliminate such violation. Enforcement shall be by proceedings at law or in equity against the person or persons violating or attempting to violate any provision whether to restrain violation, to recover damages or otherwise. If any party employs attorneys to enforce a lien or the collection of any amounts due pursuant to this Declaration, or to interpret or enforce compliance with or specific performance of the terms and conditions of this Declaration, the prevailing parties shall be entitled to receive all reasonable attorney's fees and costs thereby incurred from the party against whom judgement is entered in any such action. Nothing herein shall be deemed to indicate that damages constitute an adequate remedy for violations hereof.

14.1.1. Waiver or Abandonment. The waiver of or failure to enforce any breach or violation hereof shall not be deemed to be a waiver or abandonment of such provision, or a waiver of the right to enforce any subsequent breach or violation hereof. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce this Declaration) had knowledge of the breach or violation. No provision contained herein shall be deemed to have been waived or abandoned unless this Declaration is amended to delete such provision.

14.2 Equal Protection. This Declaration shall be applied to all similarly situated Owners without discrimination.

14.3 Severability. The invalidity of any one or more provisions hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law. In the event, that one or more of provisions hereof should be invalid or should operate to render this Declaration invalid, this Declaration shall be construed as if such invalid provision had not been inserted.

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

14.5 Topical Headings. The marginal or topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of this Declaration.

14.6 Amendment. This Declaration shall remain in full force and effect for a period of 20 years from the date of this amended Declaration in 1992. Thereafter it shall be deemed to have been renewed for successive terms of ten years each, unless revoked, amended by an amendment in writing executed and acknowledged by the then Owners of not less than two-thirds of the Lots within one year after the expiration of the initial effective period hereof, or any ten-year extension. This Declaration may be amended at any time by the then Owners of not less than 75 percent of the Lots. Notwithstanding the foregoing or any provision herein to the contrary, this Declaration may be revoked or amended by the original Developer acting alone, or any successor or assign of Developer which is granted in writing the right to amend this Declaration, without the consent or approval of any Owner or any others, at any time on or before one year after the sale of the last Lot to an Owner other than the Developer or any successor Developer.

14.7 Zoning Support Every person acquiring any right, title, or interest to any Lot acknowledges, accepts and agrees to support

future rezoning of the property to the north of Pueblo Bonito Subdivision, east of the Congregation of the Valley Church, south of Shea Boulevard, and west of the C.A.P. Canal, (approximately 11.7 acres) to Service Residential or comparable commercial useage with a height limitation of no more than twenty (20) feet.

15. Definitions. The following terms used in this Declaration are defined as follows and appear throughout this Declaration with the initial letter of each word of each such term capitalized:

15.1 "Architectural Guidelines" shall be a set of standards to be followed in the design and construction of Improvements on each Lot.

15.2 "Articles": the articles of incorporation of the Association, as and when amended, which are, or shall be, filed with the Arizona Corporation Commission.

15.3 "Assessments": include the following:

15.3.1 "Regular Assessment" the amount which is to be paid by each Member of the Association as such Member's proportionate share of the Common Expenses of the Association, as provided in paragraph 8 hereof.

15.3.2 "Special assessment": a charge against a Member, Owner or Lot, directly attributable to such Member, Owner or Lot, to reimburse the Association for costs and expenses incurred by the Association as a result of the action or neglect of the Owner, his family, licensees, guests, tenants or invitees or in causing the Member, the Owner or the Lot to comply with this Declaration, the Articles, the Bylaws or the Association Rules, together with attorney's fees and other charges payable with respect thereto as herein provided.

15.3.3 "Capital Improvements Assessment": the amount which is to be paid by each Member as his proportionate share of the cost to the Association for the installation or construction of any capital improvements on any of the common Areas which the Association may from time to time authorize including, without limitation, the costs to the Association of the reconstruction of any portion of the Common Areas.

15.4 "Association": the Pueblo Bonito Community Association, an Arizona nonprofit corporation, its successors and assigns.

15.5 "Association Board": the Board of Directors of the Association.

15.5 "Association Rules": the rules and regulations

adopted by the Association pursuant to paragraph 6.5.

15.7 "Bylaws": the bylaws of the Association, as and when amended.

15.8 "City": the City of Scottsdale, Arizona or such successor municipality or governmental jurisdiction as hereafter may replace or supercede the City of Scottsdale.

15.9 "Common Areas": all property and the improvements and equipment thereon which may be owned by the Association for the mutual use and enjoyment of the Owners. The Common Areas shall encompass the letter-designated Tracts as shown on the Plat (except Tracts D E and F) and all other portions of the Property, if any outside of the Lots and public streets as shown on the Plat and shall include, without limitation, any fence or wall enclosing the Property, any gate house, security gate, bridge, roadway, sidewalk, curb, gutter, landscaping, parking area, right-of-way, trail, drainage course, natural area and utility line or system located on the Property but outside the boundaries of the Lots or public streets.

15.10 "Common Expenses": the actual and estimated costs incurred in administering, maintaining and operating the Property and the Association including, without limitation, the following:

15.10.1 Maintenance, management, operation and repair of the Common Areas and of such areas within the right-of-way of public streets within the Property or in the vicinity of the Property as may be provided in this Declaration or pursuant to agreements with the City, including private roads and all other areas of the Property which are to be maintained by the Association;

15.10.2 Unpaid Assessments;

15.10.3 Costs of management and administration of the Association including, without limitation, compensation paid by the Association to managers, accountants, attorneys, employees and agents;

15.10.4 The costs of utilities including, without limitation, water, electricity, gas, sewer, trash pickup and disposal which are provided to the Association or the Property and not individually metered or assigned to a Lot and landscaping maintenance and other services which generally benefit and enhance the Property and which are provided by the Association;

15.10.5 The costs of fire, casualty, liability, workers' compensation and other insurance covering the Common Areas or otherwise obtained by the Association;

15.10.6 Taxes and governmental assessments on the Common Areas;

15.10.7 Amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

15.10.8 Design Review Board costs and expenses;

15.10.9 Security, security guards, operation of guard gate and key gates, if any are so employed by the Developer, any successor Developer or the Association, at their option, at the entrances to the Property from public streets, and any other security systems or services installed, operated or contracted for by the Association;

15.10.10 The costs of bonding the members of the Association Board, officers of the association, any professional managing agent or any other person handling the funds of the Association;

15.10.11 Sums determined by the Association Board to be prudent for the establishment for contingencies, replacements and other purposes as deemed appropriate by the Association Board, which reserve funds shall be adequate to meet the costs and expenses of taxes, insurance, maintenance, repairs and replacement of those Common Areas which must be maintained, repaired or replaced on a periodic basis; and,

15.10.12 The cost of any other item or items to be provided or performed by the Association pursuant to this Declaration, the Articles, the Bylaws, the Association Rules, or in the furtherance of the purpose of the Association in the discharge of any of the duties or powers of the Association, together with all other expenses incurred by the Association for any reason whatsoever in connection with the Property, except capital improvements costs which shall be allocated as provided in paragraph 6.5.

15.11 "Declaration": this instrument and the provisions herein set forth, as and if amended;

15.12 "Design Review Board": the Board provided for in paragraph 9 hereof.

15.13 "Developer" includes Pueblo Bonito Limited Partnership, an Arizona Limited Partnership, as the original developer, and its successors and assigns.

15.14 "First Mortgage" or "Mortgage": any mortgage, deed of trust or agreement for sale made in good faith, for value, duly executed and recorded so as to create a lien that is prior to

the lien of any other mortgage, deed of trust or agreement for sale. The mortgagee, beneficiary, and vendor of such mortgage, deed of trust or agreement of sale, respectively, shall be referred to as the "Mortgagee".

15.15 "Improvements": the buildings, garages, fixtures, streets, roads, driveways, parking areas, interior fences, interior and perimeter walls, hedges, plantings, trees and shrubs, and all other structures and landscaping of every type and kind located on the Property.

15.16 "Lot" each component of the Property which has been divided by the Plat into a separate unit for use as a Single Family Residence regardless of whether any Improvements have been constructed thereon. The Lots include all of the Property excluding the Common Areas and the public streets. Each Lot shall have a minimum of twenty thousand (20,000) gross square feet.

15.17 "Member" every person, corporation, partnership, joint venture, or other legal entity, which is a Member of the Association as provided in paragraph 6 hereof.

15.18 "Minimum Setbacks": the distance required between the Improvements and the boundary lines of a Lot as provided by applicable portions of the Zoning Ordinance.

15.19 "Owner": the record owner, whether one or more persons or entities, of equitable title (or legal title if same has merged) of any Lot. "Owner" shall include the purchaser of a Lot under an executory contract for the sale of real property. "Owner" does not include a Mortgagee or other persons who hold an interest in a Lot merely as security for the performance of an obligation.

15.20 "Person": an individual, corporation, partnership, trustee or other entity capable of holding title to real property, their respective heirs, personal representatives, successors and assigns.

15.21 "Plat": the original subdivision plat of the Property recorded in Book\_\_\_\_, of Maps, page \_\_\_\_, Recorder's No. 92-\_\_\_\_\_, records of Maricopa County, Arizona.

15.22 "Property": the property described in the Plat and such additions thereto or subtractions therefrom as may be made by the Developer.

15.23 "Single Family": a group of one or more persons each related to the other by blood, marriage, legal adoption or a course of cohabitation, together with their domestic servants, who maintain a common household within a Lot.

15.24 "Single Family Residence": a Lot occupied and



used by a Single Family in conformity with this Declaration and the requirements imposed by the Zoning Ordinance and other applicable state, county or municipal statues, ordinances, rules or regulations.

15.25 "Single Story" a structure having a single living area not exceeding twenty four-feet in height at its highest point above finish floor grade (exclusive of chimneys).

15.26 "Successor Developer": any person who acquires an option to purchase four or more Lots from the original Developer for the purposes of development, resale or both, or who is otherwise a successor to or assignee of the original Developer, or its immediate successor(s) or assign (s).

15.27 "Supplemental Declaration": a supplement to this Declaration for the purpose of adding additional lands or making modifications to this Declaration.

15.28 "Vehicles": automobiles, trucks, buses, campers, buses, campers, motor homes, recreational vehicles, travel trailers, trailers, motorcycles, boats, and all other apparatus of mechanized transport.

15.29 "Visibility from Neighboring Property" shall mean with respect to a given object that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property, at an elevation of the base of the object being viewed.

15.30 "Zoning Ordinance" collectively, the Zoning Code of the City, as and if amended, including without limitation, the applicable Development Standards and Zoning Stipulations and the Development Review Board Stipulations, each as amended.



DATED to be effective as of the 11th day of June, 1992.  
Original Developer: Public Electric Limited Partnership

By: *Howard H. Ginsburg*  
Howard H. Ginsburg  
General Partner

By: *William F. O'Neill*  
William F. O'Neill  
General Partner

STATE OF ARIZONA  
County of Maricopa

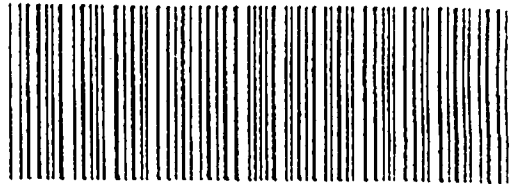
The foregoing instrument was acknowledged to me on the  
11 day of June, 1992 by Howard H. Ginsburg and William  
O'Neill as General Partners of the Public Electric Limited  
Partnership, a Partnership registered in Arizona, on the behalf of  
the Partnership.

*Mary F. Trahan*  
Notary Public

My commission expires:  
3-5-95



When recorded return to:  
Pueblo Bonito Limited Partnership  
c/o Fennemore Craig (Attn GTC)  
6263 North Scottsdale Road  
Suite 290  
Scottsdale, AZ 85250-5402



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

94-0832200 11/23/94 02:50

L11100 03 OF 11

-7 NTL-

AMENDMENT TO DECLARATION  
for  
PUEBLO BONITO

This Amendment to Declaration is made and entered into as of the 22 day of November, 1994, by Pueblo Bonito Limited Partnership (the "Partnership").

RECITALS


- A. The Partnership executed and caused to be recorded in the official records of Maricopa County, Arizona, as Instrument No. 92-0324215, that certain Declaration of Covenants, Conditions and Restrictions for Pueblo Bonito (the "Declaration") dated June 11, 1992, imposing certain covenants, conditions and restrictions on real property included within the master planned community known as Pueblo Bonito.
- B. The Partnership is named the "Developer" under the Declaration.
- C. Section 14.6 of the Declaration authorizes the Developer to amend the Declaration without the approval or consent of any owner of a Lot in Pueblo Bonito or other person.
- D. The Partnership desires to amend the Declaration to prohibit interference with drainage of surface waters within and across Pueblo Bonito.

DECLARATIONS

NOW, THEREFORE, Partnership acting as the Developer under the Declaration, hereby amends the Declaration and declares as follows:

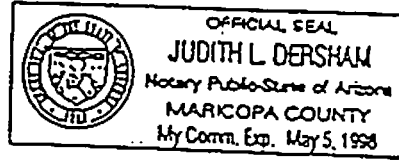
- 1. Defined terms used herein shall have the first letter of each word in the term capitalized. Unless otherwise provided herein, defined terms shall have the meanings given to them in the Declaration.

partner of Pueblo Bonito Limited Partnership, an Arizona limited partnership, for and on behalf thereof.

  
Notary Public

My Commission Expires: 5-5-98

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When recorded mail to:

PEB-4-1-1--  
Yorkm

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

City/State/Zip: \_\_\_\_\_  
\_\_\_\_\_

this area reserved for county recorder

*CAPTION HEADING:*

---

DO NOT REMOVE

This is part of the official document.

**When Recorded Return To:**

**Shaw & Lines, LLC**  
 4523 E. Broadway Road  
 Phoenix, AZ 85040

**AMENDMENT TO THE  
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR PUEBLO BONITO**

This AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PUEBLO BONITO (the "Amendment") is made as of this 20<sup>th</sup> day of January, 2023, by the Pueblo Bonito Community Association, Inc. (the "Association").

**WITNESSETH**

**WHEREAS**, that certain Declaration of Covenants, Conditions and Restrictions for Pueblo Bonito originally recorded at recording number 1992-0324215, records of Maricopa County, AZ, as amended (hereafter, the "Declaration") as subsequently amended; and

**WHEREAS**, pursuant to Section 14.6 of the Declaration, the Declaration may be amended at any time by an instrument signed by owners who own not less than seventy-five (75%) percent of the Lots; and

**WHEREAS**, this Amendment has been approved by an instrument signed by owners who own in not less than seventy-five (75) percent of the Lots.

**NOW, THEREFORE**, the Declaration is hereby amended as follows:


**The sentence "[N]o Lot shall be used for hotel or other lodging or transient service or purpose except that a Lot may be used by Owner for the temporary housing of guests of the Owner" found in Section 5.1 of the Declaration shall be deleted and replaced with the following:**

No Lot shall be used for hotel or other lodging or transient service or purpose, said use being hereby defined as the entering into of a rental agreement or lease agreement by an Owner regarding a Lot of a term that is thirty (30) days or less. Only the entire Lot may be leased at any given time. The Owner shall notify the Association or the Association's management company of the name and contact information for adults occupying the Lot, the beginning and end dates of the tenancy, and the license plate numbers of the adult tenants' vehicles. An Owner may designate a third party to act as the Owner's agent with respect to all Association matters relating to the Lot being leased, except for voting in Association elections and serving on the board of directors. Any designation of a third party shall be in writing and provided to the management company. This provision will be enforced pursuant to Section 6.5 of the Declaration.

Except as expressly amended by this Amendment, the Declaration shall remain in full force and effect. In the event of any conflict or inconsistency between this Amendment and the Declaration, this Amendment shall prevail. All terms not defined in this Amendment shall have the same definition assigned to them in the Declaration.

**IN WITNESS WHEREOF**, the Pueblo Bonito Community Association, Inc., has executed this Amendment as of the day and year first above written.

**PUEBLO BONITO COMMUNITY ASSOCIATION, INC.**  
an Arizona Non-Profit Corporation

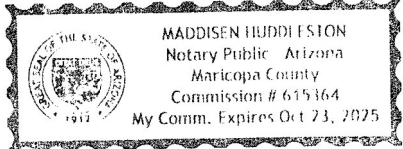
By:   
David Smith  
Its: President

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 20<sup>th</sup> day of January, 2023, by David Smith, the President of Pueblo Bonito Community Association, Inc., for an on behalf of the corporation.

  
Notary Public

My Commission Expires: 10/23/25





SECRETARY'S ATTESTATION

I, Susan Ciardullo, being the duly elected Secretary of Pueblo Bonito Community Association, Inc. hereby attests that the foregoing Amendment was assented to by a written instrument signed by not less than 75% of the Owners who own Lots within the Association.

By: Susan Ciardullo  
Susan Ciardullo  
Secretary, Pueblo Bonito Community Association, Inc.

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 20<sup>th</sup> day of January, 2023, by Susan Ciardullo, the Secretary of Pueblo Bonito Community Association, Inc., for an on behalf of the corporation.

Maddisen Huddleston  
Notary Public

My Commission Expires: 10/23/25

