

# Unofficial Document

When recorded, mail to:  
 Gayle McCue, Builder Services  
 Arizona Title Insurance and Trust Co.  
 111 W. Monroe  
 Phoenix, Arizona 85003

DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS

PROP RSTR (PR)

This Declaration, made on the date hereinafter set forth by  
 Finley Construction Corporation of Arizona, Owner, hereinafter referred to  
 as "Declarant",

WHEREAS, Declarant is the owner of all the following described  
 property situated within the State of Arizona, County of Maricopa, described  
 as follows:

Lots One through Twenty-one, inclusive, and  
 Tracts A through E of QUINTA VERDE, as recorded  
 in Book 205, Page 36 of Maps in the  
 office of the County Recorder of Maricopa County,  
 Arizona.

WHEREAS, Declarant will convey the said properties, subject  
 to certain protective covenants, conditions, restrictions, reservations,  
 liens and charges as hereinafter set forth.

Declarant hereby declares that all of the properties described  
 above shall be held, sold and conveyed subject to the following covenants,  
 conditions, charges, liens, restrictions, easements and reservations  
 (hereinafter collectively called "restrictions"), all of which are for the  
 purpose of enhancing the property values. These restrictions shall run  
 with the real property and shall be binding on all parties having or  
 acquiring any right, title or interest in the described properties. This  
 declaration hereby establishes a plan for the individual ownership  
 of real property estates, consisting of a lot and the improvements contained  
 thereon, and the ownership by a non-profit association comprised of all  
 owners of patio houses of all the remaining property, both real and personal,  
 of which is hereinafter defined and referred to as the common elements.

ARTICLE IDefinitions

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Section 1. "Association" shall mean and refer to QUINTA VERDE PATIOHOUSE CORPORATION, its successors and assigns.

Section 2. "Properties" or "Premises" shall mean and refer to that certain real property hereinbefore described.

Section 3. "Common Area" and "Common Elements" shall be synonymous and mean all property owned by the Association for the common use and enjoyment of the members of the Association, including, but not limited to, all of the above referred to premises except the land specifically designated as a "Lot" or "Unit" on the above referred to plat of record and all recorded replats thereof. However, that part of each lot which lies adjacent to Tract A and is located between the boundary of said Tract A and the exterior face of the privacy wall erected at a varying distance of from 8 to 12 feet from the front line of the lot, while owned by the individual lot owner, will be subject to entry by the Association for purposes set forth more fully under Article VII ("Exterior Maintenance") hereafter. The common elements shall also include all trees, pavements, streets, planters, entry gates, pipes, wires, conduits and other public utility lines.

Section 4. "Lot", "Unit" and "Patiohouse" shall be synonymous and shall mean and refer to a separately designated and legally described freehold estate consisting of any plot of land and the improvements thereon shown upon any recorded subdivision map of the properties with the exception of the common area.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record holder of legal title to the fee interest in any lot, regardless of whether such holder actually resides on any part of the premises, and regardless of whether such holder has sold the lot under a contract of sale.

Section 7. "Declarant" shall mean and refer to FINLEY CONSTRUCTION CORPORATION, an Arizona corporation, its successors and assigns if such

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successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

ARTICLE II

Membership

Membership in the Association, except for membership of the incorporators, the Declarant and the first Board of Directors, shall be limited to owners of patiohouses constructed or planned to be constructed on the property described above. An owner of a patiohouse shall automatically, upon becoming an owner of a patiohouse, 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.

A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of such patiohouse and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer <sup>Unofficial Document</sup> shall be void and will not be reflected upon the books and records of the Association. In the event the owner of any patiohouse should fail or refuse to transfer the membership registered in his name to the purchaser of such patiohouse, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership for the purchaser and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

The owner of each patiohouse shall be entitled to one membership in the Association, and there shall be no more than one membership for each

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patiohouse, 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 and amended.

### ARTICLE III

#### Voting Rights

Section 1. Voting rights shall be determined by ownership.

Each owner shall have one vote for each lot owned except for the Declarant who will have three votes for each lot in which it holds the interest.

Section 2. In the event any patiohouse unit 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 in the performance of any of the terms of this Declaration for a period of 15 days, said unit owner's right to vote as a member of the QUINTA VERDE PATIOHOUSE CORPORATION shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

### ARTICLE IV

#### Property Rights Unofficial Document

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the common elements for ingress and egress and such easement shall be appurtenant to and shall pass with the title to each and every patiohouse. It is expressly acknowledged and agreed by all parties concerned that this Article is for the mutual benefit of all owners of the patiohouses of QUINTA VERDE PATIOHOUSE CORPORATION, and is necessary for the protection of said owners. It is understood and agreed that the rights of use and enjoyment of the common elements may be exercised by any person legally in possession of a patiohouse in a manner not in violation of the provisions hereof, but nothing herein shall be deemed to alter or amend the definition of "owner" under Article I, Section Six

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hereof, or to affect the provisions of Article II hereof with respect to membership or to affect the provisions of Article III hereof with respect to voting rights. Such right and easement of enjoyment shall be subject to reasonable rules and regulations as from time to time are promulgated by the Board of Directors, and which may include, but shall not be limited to:

- (a) The right of the Association, in accordance with its Articles and By-Laws, to borrow money (but only after 21 patiohouses have been constructed upon the premises and sold by the major builder) for the purpose of improving the common areas and facilities and in aid thereof, to mortgage said property (the common areas). The rights of such mortgages in said properties shall be subordinate to the rights of the homeowners hereunder;
- and (b) The right of the Association to dedicate or transfer all or any part of the common areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. Unofficial Document No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds of the votes has been recorded agreeing to same.

Section 2. Delegation of Use. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the common areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Areas. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple

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title to the common elements to the Association prior to the conveyance of the first lot by the major developer.

ARTICLE V

Covenant for Maintenance Assessments

Section 1. Maintenance. It is anticipated that residential dwelling units will be constructed on various parcels within the patiohouse project's property and that the ownership of individual units shall be evidenced by a deed of a lot together with the improvements thereon constituting a "patiohouse". Maintenance, upkeep and repairs of individual unit patiohouses shall be the sole responsibility of the individual owners thereof and not in any manner the responsibility of the Board of Directors. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the common elements, including, but not limited to, parking areas and walks and green areas, shall be taken by the Board of Directors or by its duly delegated representative. The powers, rights and duties of the Association and the Board of Directors shall be as contained in this Declaration, and as may be adopted in its Articles of Incorporation and Bylaws not inconsistent herewith.

The Association, or its <sup>Unofficial Document</sup> duly delegated representative, shall maintain and otherwise manage all property up to the exterior fence lines, including, but not limited to the landscaping, parking areas and streets, and shall maintain and otherwise manage and be responsible for the rubbish removal of all areas within the above described property. The Board of Directors shall use a responsible high standard of care in providing for the repair, management and maintenance of said property, so that said patiohouse project will provide a high pride of ownership. All maintenance and repair of the individual patiohouse units shall be the sole obligation and expense of the individual unit owners.

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Section 2. Creation of the Lien and Personal Obligation of

Assessments. The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, 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 such interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due, but such personal obligation and liability of the "owner" shall not be deemed to limit or discharge the charge on the land and continuing lien upon the property against which the assessment is made.

Section 3. Purpose of Assessments. The assessments levied by the

Association shall be used exclusively for the purpose of promoting health, safety and welfare of the residents <sup>Unofficial Document</sup> in the properties and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the common areas, and of the patiohouses situated upon the properties.

(a) Such patiohouse unit's pro rata share of the actual cost to the Association of all taxes, repair, construction, replacement and maintenance of the common elements, landscaping, and pathways within the street rights-of-way in the subdivision, and other facilities and activities, including, but not limited to, mowing grass, caring for the

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grounds, sprinkler system, exterior entry fence, and other charges required by this Declaration of Covenants, Conditions and Restrictions; (b) Such patiohouse unit's pro rata share of such sum as the Board of Directors of the Association shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein, including hazard insurance premiums as hereinafter provided, and a liability insurance premium for a liability insurance policy in the face amount of not less than \$300,000.00 which policy, in addition to public liability shall cover repair and construction work to all of the assets and property owned by or to be maintained by the Association. The disposition of liability insurance proceeds shall be made upon majority vote of the Board of Directors but in all events shall be used to and for the purpose of the Association. (c) Such patiohouse unit's pro-rata share of such additional sum as the Board of Directors of the Association shall determine <sup>Unofficial Document</sup> to be necessary to meet the primary purposes of the Association; (d) Each patiohouse unit's pro-rata share shall be 1/21, the denominator in the fraction "1/21" shall, wherever it appears in this Declaration, be changed to reflect the correct number of patiohouses. The amount to be pro-rated among the members of the Association pursuant to sub-paragraphs (a), (b) and (c) and (d) above shall be established annually by the Board of Directors. Said amount shall be established after the Board of Directors has met with



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the management corporation, as hereinafter provided, and has examined the annual report to be prepared by said management corporation, and the annual audit prepared by a certified public accountant.

At the time of the first conveyance of each patiohouse unit and from time to time thereafter, the builder or the Board of Directors or the designated representative shall notify the owner or owners of each patiohouse unit as to the amount of the estimated annual assessment and shall each month collect for each patiohouse unit one-twelfth (1/12) of said patiohouse unit's proportional share of said annual assessment.

Each individual lot owner shall be responsible for the above-said pro-rata share of the annual and any special assessments applicable to the lot purchased immediately upon recordation of the deed conveying title to the said individual owner. The assessments Unofficial Document for the first year of ownership shall be prorated from the close of escrow.

Until the end of the first fiscal year immediately following conveyance of the first lot to an owner, the maximum annual assessment shall be \$300.00 per lot. From and after the end of said first fiscal year, the maximum annual assessment may be increased by 2/3 vote of the Board of Directors.

Section 4. 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 5. Effect of Nonpayment of Assessments and Remedies of the Association. Each patiohouse owner, for himself, his heirs, successors, grantees and assigns, covenants that with respect to charges so determined during the period that he is an owner, he will remit these charges directly to the management corporation, or to such other party or parties as directed by the Association's Board of Directors.

Any assessments which are not paid when due shall be delinquent. Each patiohouse owner further agrees that these charges, if not paid within

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twenty days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and shall become a lien upon said owner's lot and patiohouse and shall continue to be such lien until fully paid. This lien shall be subordinate to the lien of

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any first mortgage.

Each such owner expressly vests in the QUINTA VERDE PATIOHOUSE CORPORATION, or its agents, the rights and powers to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage of real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other patiohouse owners. The Association, acting on behalf of the unit owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In the event any person, corporation, or association authorized to enforce the provisions of this Declaration employs an attorney or attorneys to enforce said lien or the collection of any amounts due pursuant to this Declaration, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the owner, owners and parties against whom the action is brought shall pay all attorney's fees and costs thereby incurred by said enforcing party in the event said enforcing party prevails in any such action.

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No owner of a patiohouse may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of his patiohouse.

#### ARTICLE VI

#### Party Walls

The rights and duties of the owners of patiohouses within this

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patiohouse project with respect to party walls shall be governed by the following:

(a) Each wall, including patio walls, which is constructed as part of the original construction of the patiohouse structure, any part of which is placed on a dividing line between separate patiohouse 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.

(b) 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 owner of the full use and enjoyment of such wall, then the first of such owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost <sup>Unofficial Document</sup> to the adjoining owner.

(c) 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 and in that 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.

(d) Notwithstanding any other provisions of this article, an owner who by his negligent or wilful act causes any party wall to be exposed to the elements shall bear the whole cost

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of furnishing the necessary protection against such elements.

(e) 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.

(f) 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 two arbitrators cannot agree as to the selection of the third arbitrator within five 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 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.

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(g) Those covenants shall be binding upon the heirs and assigns of any owners.

#### ARTICLE VII

##### Architectural Control

No improvement, whether a building, fence, wall or other structure

shall be commenced, erected or maintained on any lot until the ~~13276~~ **13276** specifications for the same showing all construction details, including the nature, shape, height, materials, location and approximate cost thereof shall have been submitted to and approved in writing by QUINTA VERDE PATIOHOUSE CORPORATION, an Arizona corporation, its successors and assigns. Said Company shall have the right to deny approval of any plans or specifications which are not, in its opinion, suitable or desirable for aesthetic or any other reasons, and shall have the right to take into consideration the harmony and conformity of the building with the surrounding buildings and the suitability of the same with the surrounding area and the effect of such structure or building as seen from adjacent or neighboring properties. All subsequent exterior additions, or replacements, alterations, repairing or improving of any building, fence, wall or other structure, also shall be subject to the prior approval of QUINTA VERDE PATIOHOUSE CORPORATION, its successors or assigns. In the event QUINTA VERDE PATIOHOUSE CORPORATION, its successors or assigns fails to approve or disapprove such plans and specifications within 30 days after submission thereof, approval will not be required and this Article will be deemed to have been fully complied with.

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#### ARTICLE VIII

##### Exterior Maintenance

The Association, its representatives, successors and assigns, shall at all times retain the right to clean, repair, install, reconstruct or otherwise maintain the private irrigation facilities crossing Tracts A and C and Lots 13 and 18, as shown on the plat of QUINTA VERDE, and the drainage channels located on Lots 8 and 9, QUINTA VERDE, as the said drainage channels are shown on the approved drainage plans filed with the City Engineer of the City of Phoenix, Arizona. The Association, its representatives, successors and assigns, shall also at all times retain

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the right to allow access to the abovesaid irrigation facilities on Tracts A and C and Lots 13 and 18 to parties other than its own members, their agents and/or employees, who may have an interest in the said facilities for the purpose of repair and general maintenance, as abovesaid.

The Association, its representatives, successors and assigns, shall repair and generally maintain the pedestrian sidewalks located within the pedestrian and Public Utility easements lying adjacent to Tracts A and C and across Lots 1 thru 9 and 16 thru 21, as said easements are shown on the plat of QUINTA VERDE. The Association shall also retain the right to allow the said pedestrian sidewalks to be used by parties other than its own members, their guests, agents and/or employees.

The Association, its representatives, successors and assigns, shall at all times retain the right to install and maintain its choice of landscaping, lighting and appurtenances to landscaping and lighting upon that portion of all lots adjacent to Tract A which lies between the boundary of said Tract A and the exterior face of the privacy wall erected at a distance which will vary from 8 to 12 feet from the front line of the individual lots.

The Association, its representatives, successors and assigns, in addition to the specific rights stated above, shall generally maintain and otherwise manage all property outside of the said individual privacy walls including but not limited to landscaping, parking areas, streets and any and all common elements shown on the plat of QUINTA VERDE. The Association shall also maintain and otherwise manage and be responsible for the rubbish removal for all of the above-described property. The Board of Directors shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property, so that said patiohouse project will reflect

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a high pride of ownership. All maintenance and repair of the individual patiohouse units shall be the sole obligation and expense of the individual unit owners, except to the extent the exterior maintenance and repair is provided by the Association.

In the event that the need for maintenance or repair is caused through the wilful or negligent act of the owner, his family, guests or invitees, the costs of such maintenance or repair shall be added to and become a part of the assessment to which such lot is subject.

#### ARTICLE IX

##### Use Restrictions

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Section 1. Each lot in the premises shall be known as, and limited as use to a single family patiohouse lot, and construction thereon shall be limited to a patiohouse no more than one story in height. All buildings or structures erected upon said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said premises. No subsequent buildings or structures other than patiohouses, being residence units joined together by party walls, shall be built on any lot where the builder theretofore programmed and constructed a patiohouse. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding 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 said patiohouses to maintain during the period of construction and sale of said patiohouses, upon such portion of the premises a temporary office convenient or incidental to the construction and sale of said patiohouses.

Section 3. No noxious or offensive activity may be carried on or permitted on any lot, nor shall anything be done thereon which may be



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or become an annoyance or nuisance to the neighborhood ; nor shall any part of the premises be used for business, professional, commercial, religious or institutional purposes. Provided, however, the foregoing restrictions shall not apply to the business activities or the construction and maintenance of buildings by the builder, its agents and assigns during the construction and sale period, and/or the Association in furtherance of its powers and purposes as herein set forth.

Section 4. No animals, fish or birds of any kind shall be raised, bred or kept on the premises, except that commonly accepted household pets may be kept, provided that such pets are not kept, bred or maintained for any commercial purposes.

Section 5. All clothes lines, equipment, service yards, wood piles or storage piles shall be kept screened by adequate planting or fencing as to conceal them from view of neighboring patiohouses and streets. An electric garbage disposal unit shall be installed in each patiohouse. Each lot shall have a sufficient number of garbage containers located adjacent to the front lot line and driveway. To the extent feasible, all rubbish, trash or garbage shall be kept in such containers, and not allowed to accumulate on the premises; any rubbish, garbage or trash not capable of being kept in said containers shall be kept in other appropriate containers and screened from view of neighboring patiohouses and streets until the date of pickup by a trash collection service. No rubbish, trash or garbage shall be burned on the premises. Incinerators of every kind shall be prohibited.

Section 6. Gas, electric, power, telephone, water, sewer, cable television and other utility or service lines (used for the general benefit of the lot owners) and other utility or service lines of every kind or character (whether now or hereafter invented or used) shall be placed and kept

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underground up to the walls of the buildings on the premises (except to the extent, if any, such underground placement may be prohibited by law or, by the nature of the service to be rendered, such underground placement prevents the lines from being functional). This restriction shall apply to the service and utility lines for each and every lot and the common areas, as well as to the distribution lines located in the streets or elsewhere in the subdivision. However, the foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers, where required.

Section 7. All radio, television and other antennas of every kind or nature shall be placed and maintained upon the premises (or the improvements located thereon) so that no portion thereof shall be visible from the outside of the patiohouse or common area or other neighboring property or the streets.

Section 8. No sign (other than a name and address sign, not exceeding 9" x 30" in size) of any nature, shall be permitted on any lot; provided, however, that one sign of not more than five square feet may be temporarily erected or placed on a lot for the purpose of advertising the property for sale or rent; and provided further, that during the construction and sale of buildings, the builder may erect such signs as are approved, and provided further, that this restriction shall not apply to the activities of the Association in furtherance of its powers and purposes herein set forth.

Section 9. No portion of a patiohouse lot but for the entire lot, together with the improvements thereon, may be rented, and then only to a single family.

Section 10. Except as provided in Article I, Section Three, none of the lots shall be resubdivided into smaller lots or conveyed or encumbered in less than the full original dimensions as shown on the plat of this

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subdivision. Nothing herein shall prevent the dedication or conveyance of or granting of easements over portions of lots for public utilities or other public or quasi-public purposes, in which event the remaining portion of any such lot shall, for the purpose of these restrictions, be considered as a whole lot.

Section 11. The common elements 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 elements.

#### ARTICLE X

##### Rights and Duties of

##### First Mortgagee and Major Builder

Notwithstanding and prevailing over any other provisions of this Declaration, of the Association's Articles of Incorporation or Bylaws, or any rules, regulations or management agreements, the following provisions shall apply to and benefit each holder of a first mortgage upon a patiohouse unit (called the first mortgagee) and the major builder:

(a) The first mortgage<sup>Unofficial Document</sup> not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, rule, Association Articles of Incorporation of Bylaws or Management Agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money except as hereinafter proved.

(b) During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the first mortgagee (or any receiver appointed in such action) may,

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but need not, exercise any or all of the rights and privileges of the owner of the mortgaged patiohouse, including, but not limited to the right to vote as a member of the Association to the exclusion of the owner's exercise of such rights and privileges.

(c) At such time as the first mortgagee shall become record owner of a lot and patiohouse, said first mortgagee shall be subject to all of the terms and conditions of these Covenants, Conditions and Restrictions, including, but not limited to, the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any other.

(d) The first mortgagee, or any other party acquiring title to a mortgaged patiohouse unit through foreclosure suit or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged patiohouse unit free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures <sup>Unofficial Document</sup> the payment of any assessment for charges accrued prior to the final conclusion any such foreclosure suit or equivalent proceedings, including the expiration date of any period of redemption, except as follows: Any such unpaid assessment against the patiohouse unit foreclosed against may be treated as an expense common to all of the patiohouse units, and which the remaining unforeclosed upon patiohouse units, and which pro rata assessment may be enforced as a lien against each patiohouse unit in the manner provided for other assessments authorized in this Declaration. Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of

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the defaulting owner of the respective patiohouse unit to the Association, and the Board of Directors shall use reasonable efforts to collect the same from the owner even after he is no longer a member of the Association. There shall be a lien upon the interests of the first mortgagee or other party which acquired title to a mortgaged unit by foreclosure suit or by equivalent procedures for all assessments authorized by this Declaration which accrue and are assessed after the date the acquirer has acquired title to the unit free and clear of any right of redemption.

#### ARTICLE XII

##### General Provisions

Section 1. Binding Effect and Enforcement. The covenants, conditions, charges, liens, reservations, easements, and restrictions contained herein shall run with the land and shall be binding upon all persons purchasing, owning, leasing, subleasing or occupying or otherwise having any interest in any patiohouse on said property, their heirs, executors, administrators, successors, grantees and assigns. Unofficial Document the date on which this instrument has been recorded, these restrictions may be enforced by any one or more of the following: (a) 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; (b) The major builder (as long as it has an interest in any part of the premises); (c) the owner of any lot.

Section 2. Waiver of Abandonment. The waiver of, or failure to enforce, any breach or violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of such restrictions, or a waiver of the right to enforce any subsequent breach or violation of such restrictions. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach

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or violation.

Section 3. Association. The Association shall be incorporated by the major builder prior to the sale of any lot covered hereby. The form of said Association and rights thereof shall require prior written approval of Declarant.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 13 day of November, 1978.

FINLEY CONSTRUCTION CORPORATION

BY: Michael C. Finley  
Vice President

STATE OF ARIZONA )  
                          ) ss.  
County of Maricopa )

On this, the 13 day of NOVEMBER, 1978, before me, the undersigned Notary Public, personally appeared Michael C. Finley, who acknowledged himself to be Vice-President of FINLEY CONSTRUCTION CORPORATION, an Arizona corporation, and that he, as such officer, being authorized so to do, executed the within instrument for the purposes therein contained, by signing the name of said corporation, as President, by himself as such officer.

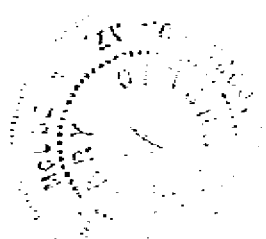
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WITNESS my hand and official seal.

My commission expires:

9-8-80

Wayne E. McEue  
Notary Public



STATE OF ARIZONA }  
County of Maricopa } ss.

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

ARIZONA TITLE

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in District 13276

City of 1260-1276

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

B. H. Stary

County Recorder  
By B. H. Stary  
Deputy Recorder

1400