

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VENTANA CANYON LAKE ESTATES

This Declaration made on the date hereinafter set forth by Transamerica Title Insurance Company, a California corporation, as Trustee under Trust No.8288, hereinafter referred to as "Declarant."

WITNESSETH :

WHEREAS, Declarant is the owner of real property located in Ventana Canyon in Pima County, Arizona and described as follows:

Ventana Canyon Lake Estates, lots 1 through 47 and common area A and B (being a resubdivision of Block 2 in Ventana Canyon Estates, lots 1 through 63, blocks 1 and 2 and common area A recorded in Maps and Plats Book 37, Page 79 Pima County Arizona) as shown on the plat recorded in Book ____ of Maps and Plats at Page ____ in the records of the Pima County, Arizona Recorder (hereinafter "the Property"); and

WHEREAS, Declarant holds and will convey the Property subject to the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements, recorded in Book 7339 at Page 771, et seq., in the records of Pima County, Arizona ("Master CCRs") and Declarant hereby subjects the Property and each portion thereof to these additional protective covenants, conditions, restrictions, reservations, liens and, charges as hereinafter set forth (hereinafter "Declaration"); and

WHEREAS, Herder Construction Company, an Arizona corporation, is the developer of the Property;

NOW THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, liens and charges, all of which are for the purpose of enhancing the general plan in the Master CCRs and establishing the general scheme of development and use of the Property, including the plan and requirements for protections, maintenance, improvement, development of the Property, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property; this Declaration and every portion thereof shall run with the Property and shall be binding on all parties having or acquiring the right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof; this Declaration and the creating and governing documents of the Sub-Association are subordinate to the Master CCRs. In the event any portion of this Declaration is less restrictive than the Master CCRs, then the Master CCRs shall control and be given effect as if set forth herein in full.

ARTICLE I

Definitions

Section 1. “Adjoining dwelling units” shall mean the two dwelling units constructed on two separate contiguous lots and sharing a common wall as a part of the original construction of the units.

Section 2. “Architectural Committee” shall mean the committee designated as stated in Article X and shall not mean the Architectural Review Committee designated pursuant to the Master CCRs unless the context clearly so states.

Section 3. “Association” and “Master Association” shall mean “The Ventana Canyon Community Association,” a non-profit Arizona corporation formed pursuant to the Master CCRs.

Section 4: “Sub-Association” shall mean and refer to Ventana Canyon Lake Estates Homeowners Association, a non-profit Arizona corporation, its successors and assigns.

Section 5: “Property” and “Properties” shall mean and refer to that certain real property hereinabove described.

Section 6: “Common Area” and “Common Elements” shall be synonymous and shall mean all real property owned in fee title by the Sub-Association for the common use and enjoyment of the members of the Sub-Association and excluding all lots. The common elements shall include all parking areas, trees, sidewalks, equipment, walls, landscaping and streets located on common area, and sewer connections, lines and equipment (herein “private sewer”) located on common area, together with private sewer connections from common area to existing manhole #78 (as shown on subdivision improvement plans for the Property filed with Pima County) which manhole is located approximately fourteen (14) feet east of the southeast corner of the Property.

Section 7: “Lot” “unit” and “Dwelling Unit” shall be synonymous and shall mean and refer to separately designated and legally described freehold estate of any plot of land and the improvements thereon shown as a numbered lot on the recorded subdivision plat of the Property, and not otherwise conveyed to the Sub-Association or Association for common use.

Section 8: “Plat” shall mean the document recorded at Book ____ of Maps and Plats at Page ____ and the records of the Pima County, Arizona Recorder.

Section 9: “Roadway” shall mean those areas designated as roadways and streets on the plat.

Section 10: “Member” shall mean and refer to every person or entity who holds membership in the Sub-Association.

Section 11: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot, which is not designated as common area, and which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12: "Declarant" shall mean and refer to Transamerica Title Insurance Company, a California corporation, as Trustee under Trust No.8288, and its successors and assigns who acquire more than one undeveloped lot from Transamerica Title Insurance Company as Trustee under Trust No.8288, for the purpose of resale, as evidenced by a recorded "Notice of Appointment of Successor Declarant" executed by the existing Declarant and approved in writing by Estes Homes, an Arizona General Partnership.

Section 13: "Master Declaration" and "Master CCRs" shall mean that document entitled "Declaration of Establishment of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for the project known as Ventana Canyon and recorded in Book 7339 Page 771, et. seq. in the records of the Pima County, Arizona Recorder, and amendments thereto.

Section 14. "Declaration" shall mean this document and each and every portion thereof. This document shall be deemed a "Tract Declaration" for purposes of the Master CCRs.

Section 15: "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a dwelling unit or any part thereof is encumbered and the term "first mortgagee" means the holder of any mortgage under which the interest of any owner of a dwelling unit is encumbered and which mortgage has first and paramount priority, subject only to the lien of general or ad valorem taxes and assessments.

Section 16. "Development Period" shall mean the time period from the date of this Declaration until Declarant has sold every lot in the Property.

ARTICLE II

Homeowners Association

Section 1. Sub-Association. The affairs of the Sub-Association shall be conducted by the Ventana Canyon Lake Estates Homeowners Association, a non-profit organization. The affairs of the Association shall be governed by the Board of Directors. The officers and members of the Board of Directors shall not be liable to the Association or lot owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith.

Section 2. Right of Inspection. The first mortgagee of any lot in the Property shall have the right at reasonable times to inspect the books and records of the Association.

Section 3. Right to Notice. Each first mortgagee shall, upon notice to the Sub-Association, be entitled to a written notification from the Association of any default in the performance by the owner of a dwelling unit encumbered by the mortgage in favor of such mortgagee

of any obligation under this Declaration or under the Articles of Incorporation, By-Laws, Rules and Regulations of the Sub-Association which is not cured within sixty (60) days.

Section 4. Restrictions. Any provision contained in this Declaration to the contrary notwithstanding, unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned or held) and two-thirds (2/3) of the dwelling unit owners (other than the Declarant, his successors and assigns have given their prior written approval, the Association shall not be empowered or entitled to:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common areas or any common property owned by the Sub-Association, directly or indirectly (except that the Sub-Association shall have the right to grant easements for public utilities or for other public purposes consistent with the intended use of such common property);
- (b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a dwelling unit owner;
- (c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of the dwelling units, the exterior maintenance of dwelling units, the maintenance of common property party walks or common fences and driveways or the upkeep of landscaping and planting areas of the subdivision;
- (d) fail to maintain fire and extended coverage insurance on the common areas and common property on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value (based on current replacement costs);
- (e) use hazard insurance proceeds for losses to any common areas or common property for other than the repair, replacement or reconstruction of such common property.

Section 5. Management and Service Contracts. Any agreement for professional management of the Property, or any other contract providing for services of the Declarant shall not exceed three (3) years. Any such agreement shall provide, at a minimum, for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

Section 6. Separate Master Association. Membership in the Ventana Canyon Lake Estates Homeowners Association is separate from and in addition to membership in The Ventana Canyon Community Association ("Master Association" or "Association") which is separately required under the Master Declaration. The Ventana Canyon Lake Estates Homeowners Association is an "ancillary association" to the Master Association (as that term is used in the Master CCRs) and has been or will be formed in accord with the requirements of Article V, Section 5 of the Master CCRs.

ARTICLE III

Association Membership/Voting Rights

Section 1: Every owner of a lot shall be a member of the Sub-Association and such membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessments.

Section 2: The Sub-Association shall have two (2) classes of voting membership.

Class A: Class A members shall be all lot owners who do not hold the Class B membership, and each Class A member shall be entitled to one vote for each lot in which he holds the interest required for membership. When more than one person holds the interest required for membership, all such persons shall be members, but the vote for such lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to anyone lot.

Class B: The Class B members shall be the Declarant. The Class B member shall be entitled to three (3) votes for each lot in which it holds a fee interest. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever is first to occur:

- (a) One hundred twenty days following the first date when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B members; or
- (b) On December 31, 1989; or

ARTICLE IV

Property Rights

Section 1. Common Area. Common area shown on the plat shall be conveyed to the Sub-Association free and clear of all liens and encumbrances prior to the conveyance of the first lot to an owner. Common Area shall be held, owned, used and maintained as common area for the common benefit of all lot owners and subject to the Master CCRs and the following rights and obligations set forth below in Section 2:

Section 2. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area and such easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Sub-Association to limit the number of guests of members and owners;

(b) The right of the Sub-Association to establish rules and to regulate the use of any recreational or common facility situated upon the common area;

(c) The right of the Sub-Association, subject to the provision of Article II, Section 4, hereof, and in accordance with its Articles and By-Laws, to borrow money for the purpose of improving and maintaining the common area and facilities and in aid thereof to mortgage said property, and the rights of such mortgage in said properties shall be subordinate to the rights of the homeowners hereunder;

(d) The right of the Sub-Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his/her lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(e) The right of the Sub-Association, subject to the provisions of Article II, Section 4 hereof, to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purpose and on such conditions as may be agreed to by the owners. No such dedication or transfer shall be effective unless an instrument signed by owners entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than ten (10) nor more than fifty (50) days in advance.

(f) The terms and restrictions of the easement affecting the golfcourse easement shown on the plat and recorded at Docket 7216, Page 1042 in the records of the Pima County Arizona Recorder.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws and rules and regulations of the Association, his right of enjoyment to the common area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

Section 4. Common Area Taxes. The Association shall be responsible for payment of all ad valorem and any other taxes, charges or assessments imposed upon common area or common elements by any governmental authority.

ARTICLE V

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each lot owned within the property, hereby covenants, and the owner of each lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Sub-Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments,

together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property .at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Sub-Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the property and for the improvement and maintenance of the common area, common elements and obligations and rights of the Sub-Association created by this Declaration. The Board of Directors of the Sub-Association shall provide that Sub-Association dues, charges or assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the common areas and common elements, and private sewer owned by the Sub-Association that must be replaced on a periodic- basis. All such dues, charges and assessments imposed by the Sub-Association shall be paid on a periodic basis in regular installments rather than by special assessments.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be established by the Board of Directors and shall not exceed _____ (\$ _____) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(c) Notwithstanding anything to the contrary stated herein the provisions of this Declaration regarding payment of assessments shall not apply to the Declarant. In consideration of the foregoing, the Declarant agrees that if during the time period commencing upon the date hereof and ending on the date Declarant's Class B membership ceases, the total assessments collected are insufficient to meet the current operating expenses of the Sub-Association, the Declarant shall pay the deficiency. After Declarant's Class B membership ceases, Declarant shall not be required to pay a deficiency nor shall undeveloped lots owned by Declarant be subject to an assessment.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Sub-Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, and non-periodic repair or replacement of a capital improvement upon the common area, including fixtures and personal property

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

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly, quarterly, semi-annual or annual basis.

Section 7. Date of Commencement of Monthly Assessment. The monthly assessments provided for herein shall commence as to each lot on the first day of the month following the conveyance by the Declarant of a lot to an individual owner.

Section 8. Effect of Nonpayment if Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. Subject to the provisions of Article XI, Section 3, the Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the common area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

Party Walls

Section 1. General Rules of Law to Apply. Each wall which is (a) built as a part of the original construction of a dwelling unit upon a lot, and (b) placed on the dividing line between the lots, or (c) a common wall which is constructed as a part of adjoining dwelling units shall constitute a party wall, and shall be subject to the general rules of law

regarding party walls and liability for property damage due to negligence or willful acts or omissions, to the extent such general rules of law are not inconsistent with the provisions of this Article.

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

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

Section 4. Structural Integrity. Notwithstanding anything contained herein to the contrary there is hereby prohibited any act or omission which shall impair the structural integrity of any party wall or party fence unless the owners of any interest therein shall have first given prior consent by way of written agreement or easement.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an owner who by his negligent or willful act or omission causes the party wall to be exposed to the elements or damaged thereby shall bear the whole cost of furnishing repairs and necessary protection from such damage.

Section 6. Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, and unless all parties to the dispute waive this Section 7, the decision of the majority of the Board of Directors shall be final and binding on each owner. By acceptance of a deed to a lot each owner agrees to abide by the decision of the Board of Directors, which decision shall be final.

ARTICLE VII

Architectural Control

In addition to the Architectural Review Committee requirements stated in the Master CCRs, the following Architectural Control requirements are hereby established by and on behalf of the Sub-Association: No improvements, including, without limitations, dwelling unit, building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior addition to or change or alteration of any improvement on any lot or on Common Area be made or commenced until the detailed plans and specifications showing the nature, kind, shape, style, height, materials, color, and location of the same shall have been submitted to and approved in writing by the

Architectural Committee of the Sub-Association ("Sub- Association"). Prior to the completion of the development period, the Declarant or agent designated by Declarant shall act as the Architectural Committee. After termination of the development period, the Board of Directors of the Sub-Association shall appoint a Architectural Committee which shall be composed of three (3) or more representatives, one of whom shall be a member of the Board of Directors. The Architectural Committee shall have the exclusive right on behalf of the Sub-Association (and subject to the Master CCRs and rules promulgated by the Master Association Architectural Control Committee), and exercisable in its sole discretion, to promulgate, from time to time, written rules, regulations and restrictions concerning any construction, change or alteration to be made on or concerning any improvements on the property and to amend such rules, regulations or restrictions so promulgated, provided that in no event shall any waiver be effective unless in writing and signed by the chairman of the Architectural Committee and approved by the Board of Directors of the Sub-Association.

Any owner or potential purchaser of any lot shall, prior to submitting any plans and specifications to the Architectural Committee for approval, request in writing a copy of the current rules, regulations and restrictions promulgated by the Committee. In the event the Architectural Committee fails to approve or disapprove submitted plans and specifications within thirty (30) days after plans and specifications have been submitted, then the plans and specifications shall be deemed disapproved and no construction changes or alterations shall be permitted. The plans and specifications shall be submitted in duplicate with a payment of a One Hundred Dollar (\$100) fee which shall be a non-refundable fee to cover costs and fees for inspection. The review fee shall be made payable to the Sub-Association. Approval by the Architectural Committee shall not be considered an approval from the Architectural Review Committee as created pursuant to the Master CCRs, nor shall such approval exempt the applicant from compliance with the Architectural Review Committee and governmental codes, zoning and ordinances.

ARTICLE VIII

Exterior Maintenance

Section 1. Landscaping. The Sub-Association shall provide landscaping and landscaping maintenance on the common area. Landscaping of the lots outside of the dwelling unit and outside of enclosed patio, courtyard or entrance areas, shall be provided and maintained by the Sub-Association. Each lot owner shall be solely responsible for providing and maintaining landscaping within the individual walled patio areas, courtyard and entrance areas on the owner's lot or on property adjacent to the owner's lot which is designated as limited common area pursuant to Article X, Section 2. Such landscaping shall conform to landscaping requirements stated in this Declaration, in the Master CCRs, and shall be in accord with landscape criteria and requirements contained in Architectural Guidelines established by the Architectural Committee.

Section 2. Exterior Maintenance. The Sub-Association shall provide exterior structural maintenance upon each lot which is subject to assessment as follows: paint and repair of

walls, downspouts, exterior building surfaces, including roofs, concrete walks and other exterior improvements of original construction. Exterior maintenance shall not include glass surfaces, enclosed patio or entrance areas or garage doors. The Association shall be responsible for the control, maintenance, safety and liability of the private streets, roads and common area within the development.

Section 3. In the event that the Board of Directors determines that the need for maintenance or repair has been caused through the willful or negligent act of the owner, his family or guests, or invitees, the cost of such maintenance or repairs shall be added to and become part of the assessment to which such lot is subject.

Section 4. Each owner of each lot hereby grants to the Association an easement over, across and upon each lot for the purpose of performing the maintenance duties and rights described in this Article.

ARTICLE IX

Use Restrictions

Section 1. Each lot is hereby restricted to residential dwellings for single family residential use. All buildings or structures erected upon the property shall be of new construction and no buildings or structures shall be moved from other locations onto the property, and, without prior written approval of the Architectural Committee, no subsequent buildings or structures other than residence units joined together by party walls shall be built on any lot where the builder theretofore programmed and constructed a dwelling unit. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

Section 2. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for Declarant, its builder, successors or assigns who shall construct all or a portion of said townhouses to maintain during the period of construction and sale of said townhouses, upon such portion of the premises as such builder may choose, except those lots on which residences have been completed and the lots conveyed to individual owners, such facilities as in the sole opinion of said builder may be reasonably required, convenient or incidental to the construction and sale of said townhouses, including, but not limited to a business office, storage area, construction yards, signs, model units and sales offices.

Section 3. Dogs, cats and other household pets approved by the Rules and Regulations of the Association may be kept provided they are not kept, bred or maintained for commercial purposes. No other animals of any kind shall be raised, bred or kept on any lot. All dogs must be contained on a leash and not allowed to roam the common areas.

Section 4. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises unless approved in writing by the Architectural Review Committee of the Master Association. Nor shall the premises be

used in any way or for any purpose which may endanger the health or safety or unreasonably disturb the owner of any townhouse or resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the premises. Provided, further, however the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the builder, its agents and assigns during the construction and sale period, and of Ventana Canyon Homeowners Association, a nonprofit corporation incorporated or to be incorporated under the laws of the State of Arizona, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 5. All equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring townhouses and streets. All rubbish, trash, or garbage shall not be allowed to accumulate thereon. No clotheslines shall be maintained on the property.

Section 6. Except in the individual patio and entrance areas of a dwelling unit, no planting or gardening shall be done by an Owner, and no fences, hedges, walls or other improvements of any nature shall be erected or maintained upon said premises except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Architectural Committee.

Section 7. The common elements shall remain undivided, and shall at all times be owned by the Sub-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.

Section 8. No antennas, receiving or sending communication apparatus, radio towers or other improvements, except as incorporated in original construction of a unit, shall be placed on the roof of a unit. No exterior television antennas, radio towers, sending or receiving communications apparatus, evaporative coolers, solar units, heating and cooling units shall be placed, allowed or maintained upon any portion of the property without prior written approval of the Board of Directors or Architectural Committee. If approved, the apparatus shall be screened from view so that the apparatus shall not be visible from either the street or adjacent units. The screening material and design shall be approved by the Architectural Committee.

Section 9. Boats, campers, trucks, trailers, motor homes, recreational and other vehicles shall not be placed even temporarily upon the property unless stored within the enclosed garage of the owner's unit. The requirements of this section shall not include automobiles of the owner's guests or service people which do not remain on the premises overnight.

Section 10. In the event any use restriction or other covenant or requirement concerning use of a lot is contained in the Master CCRs and affects any lot in the Property and is more restrictive than that which is contained in this Declaration, the more restrictive restriction or covenant shall control.

Section 11. No owner shall interfere with or obstruct the drainage pattern over his lot from or to any other portion of the property, as that pattern may be established by Declarant.

ARTICLE X

Easements

Section 1. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones, and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for each public service utility company or municipality to erect and maintain the necessary lines and equipment, house sewer connections and other necessary equipment or lines on said property and to affix and maintain underground electrical, gas, television cable and/or telephone wires, circuits and conduits or house sewer connections, across and under the Property, including the roof and exterior walls of each unit. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said premises except as initially programmed and approved by the major builder of said premises or thereafter approved by the Association's Board of Directors. This easement shall in no way affect any other recorded easements on said premises.

Section 2. All patio or courtyard areas adjacent to an individual unit which is located on common area and enclosed or defined by a wall or other structure, by original construction, as apart of or attached to such individual unit shall be and is hereby declared to be a limited common area. Each limited common area adjacent to or attached to a unit as described above is hereby reserved for the exclusive use of the owner of such unit; therefore, there is hereby created a permanent and irrevocable easement to and for the benefit of the owner of each such unit a permanent and irrevocable easement over and upon the limited common area adjacent or attached to such unit for the exclusive use, maintenance and control of the limited common area attached to or a part of his or her unit. The easement granted shall be subject to the right of the Association to enter upon limited common area for performance of any right or obligation described or referred to in this Declaration. The owner of any unit including the above easement for limited common area as stated in this section shall maintain and landscape such limited common area as required by Article VIII.

Section 3. Each lot and dwelling unit (whether attached or unattached) and the Common Area, limited common area and common elements shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder, including without limitation, easements for encroachments by roofs, eaves, walls, protrusions and exterior improvements attached to a unit as originally constructed. A valid easement for said encroachments and for the maintenance, repair and replacement of same shall and does exist. In the event a dwelling unit or common element is partially or totally destroyed, and then rebuilt, the owners of all lots agree that encroachments for parts of adjacent dwelling units or

common elements due to construction as provided above in this subsection shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 4. The rights and duties of the owners with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities shall be governed by the following:

(a) Easements. Wherever sanitary sewer or water connections or electricity, gas, telephone or other similar lines or pipes are installed within any lot, which connections, lines or pipes or any portion thereof, lie in or upon lot owned by other than the Owner of the lot served by said connections, lines or pipes, the Owners of any lot served by said connections, lines or pipes shall have the right, and are hereby granted an easement to the full extent necessary therefore, at reasonable hours and after reasonable notice, to enter upon the lot within or upon which said connections, lines or pipes, or portion thereof, lie, to repair, replace and generally maintain said connections, lines and pipes, as and when the same may be necessary, but any such Owner entering another's lot shall restore that lot and improvements thereon disturbed by such work.

(b) Common Connections, Lines or Pipes. Wherever sanitary sewer or water connections, or electricity, gas or telephone lines or pipes, or similar lines or pipes are installed within any lot, which connections serve more than one lot, the Owner of each lot served by said connections, lines and pipes, shall be entitled to the full use and enjoyment of such portions of said connections, lines and pipes, as service his lot.

(c) Arbitration. In the event of a dispute between Owners which relates to the repair or rebuilding of said connections, lines or pipes, or with respect to the sharing of the cost thereof, then the decision of the Board of Directors shall be final and binding on each owner. By acceptance of a deed to a lot each owners agrees to abide by the decision of the Board of Directors, which decision shall be final.

ARTICLE XI

General Provisions

Section 1. Enforcement. The Association or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Revocation and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

This Declaration shall not be revoked unless fifty-one percent (51%) of all dwelling unit owners and two-thirds (2/3) of all first mortgagees consent and agree to such revocation by written instruments duly recorded. This Declaration shall not be amended, except as otherwise herein provided, unless fifty-one percent (51%) of the dwelling unit owners and all first mortgagees consent and agree to such amendment by written instruments duly recorded. Any amendment to this Declaration may also be evidenced by a recorded certificate of the Secretary of the Association certifying that, at a meeting of the owners duly called fifty-one percent (51%) of the dwelling unit owners consented to such amendment, and that all first mortgagees have given written consent to such amendment, and that copies of such written consents are in the corporate records of the Association.

Notwithstanding the foregoing amendment procedure, Declarant expressly reserves the right to amend this Declaration, subject to the consent of two-thirds (2/3) of all mortgagees, at any time prior to the expiration of Declarant's Class B membership.

Section 4. First Mortgagees' Rights. First mortgagees are hereby granted the right to jointly or singly pay taxes or other charges which are in default and which may have become a charge against any common areas or other common property owned by the Association, and such first mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common areas or common property and any first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Nothing in this Declaration shall in any manner be deemed to give a dwelling unit owner, or any other party, priority over any rights of a first mortgagee of a dwelling unit pursuant to the terms of such first mortgagee's mortgage in the case of a distribution to a dwelling unit owner of insurance proceeds or condemnation awards for losses to or a taking of common areas or other common property owned by the Association.

Section 5. Interpretation. So long as the Federal Home Loan Mortgage Corporation shall be the holder of any first mortgage, this Declaration shall be interpreted in conformity with all rules, regulations and requirements of the Federal Home Loan Mortgage Corporation applicable to conventional mortgages, in effect as of the day of this Declaration, or as hereafter amended, and any provision hereof which is inconsistent therewith shall be deemed to be modified to conform thereto. If there is any conflict among or between this Declaration, the Articles of Incorporation of the Association, the By-Laws of the Association, or the Rules and Regulations of the Association, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to such Articles of Incorporation, then to such By-Laws, and then such Rules and Regulations.

Section 6. Tract Declaration and Annexation to Ventana Canyon Community Association. In accordance with the Master CCR's Article II, Section 1, Declarant, as owner of the Property, hereby submits the Property to the terms and conditions of the Master CCR's and this Declaration is hereby designated as a Tract Declaration for Ventana Canyon Lake Estates. Declarant acknowledges and declares that each owner of any property in Ventana Canyon Lake Estates is also subject to the Master CCR's recorded at Book 7339 at Page 771 et. seq. in the records of the Pima County Arizona Recorder. In the event of conflict between this Declaration and the Master CCR's, the Master CCR's shall prevail.

ARTICLE XII

Insurance Requirements

Section 1. Comprehensive General Liability and Property Insurance. Comprehensive general liability and property damage insurance covering all common areas and all other areas under the jurisdiction or control of the Association shall be purchased by the Association and shall be maintained in full force and effect at all times. Such insurance policy or policies shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a dwelling unit owner because of negligent acts of the Association or of other dwelling unit owners. The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use as Ventana Canyon Lake Estates. Coverage shall be for at least One Million Dollars (\$1,000,000) per occurrence of personal injury and/or property damage.

Section 2. Fire Hazard Insurance. Fire and other hazard insurance covering the entire subdivision, including all common areas, shall be purchased by the Association and shall thereafter be maintained in full force and effect at all times. Such policy or policies shall consist, at a minimum, or a multi-peril type policy covering the entire subdivision, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona, on a replacement cost basis, in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

If the subdivision is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, flood insurance shall be maintained in the amount of the aggregate of all outstanding principal balances of mortgage loans encumbering dwelling units located within the subdivision, or the maximum limit of coverage available under the National Flood Insurance Act of 1968 as amended, whichever is less.

Each such policy must contain or have attached thereto, a standard mortgagee clause which provides that all proceeds paid thereunder shall be paid to the Association for the use and benefit of all mortgagees under mortgages encumbering any dwelling units, as their interest may appear, and such policy or policies must further provide that the

insurance carrier shall notify each first mortgagee named, at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy. Such policy or policies shall further provide that the interest of each mortgagee holding a mortgage on any dwelling unit in insurance proceeds shall not be invalidated by any action, neglect or inaction of the Board of Directors of the Association, owners of dwelling units or their tenant or agents. Such policy or policies shall further provide for waiver by the insurer of any policy provisions which would render the mortgagee clause invalid by reason of the failure of such mortgagee to notify the insurer of any hazardous use or vacancy in any dwelling unit and any policy requirement that the mortgagee pay the premium thereon.

Section 3. Other Insurance. The Association shall purchase and maintain in force fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is, in no event, less than 1 1/2 times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

Section 4. Minimum Financial Rating Carrier. Each hazard insurance policy obtained by the Association pursuant to the foregoing shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class IV or better. Hazard insurance policies shall also be acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided that such insurance carrier has a general policy holder's rating of at least A. Each such carrier shall be specifically licensed or authorized by law to transact insurance business in the State of Arizona.

Policy shall be unacceptable where:

- (1) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against a dwelling unit owner or the Federal Home Loan Mortgage Corporation, or the Federal Home Loan Mortgage Corporation's designee; or
- (2) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or
- (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Federal Home Loan Mortgage Corporation or any dwelling unit owner from collecting insurance proceeds.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 24 day of August 1984.

APPROVED:

ESTES HOMES, an Arizona general partnership

By: _____

VENTANA CANYON COMMUNITY ASSOCIATION, an Arizona non-profit corporation

By: _____

Director on behalf of the Board of Directors

*TRANSAMERICA TITLE INSURANCE COMPANY, A California corporation, as Trustee under Trust No. 8288

By: _____

Assistant Secretary

*Pima Land Title Agency, Inc. an Arizona Corporation as agent for Transamerica Title Insurance Corporation, A California corporation as Trustee under Trust No. 8288