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FOUNTAIN OF THE SUN

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (PRELIMINARY)

A. INTENT

This declaration made this 20th day of January, 1971, by TRANSAMERICA TITLE INSURANCE COMPANY OF ARIZONA as Trustee under Trust No. 9152

WITNESSETH:

Said Trustee holds legal title to, and Arizona Resort Communities is the trust beneficiary and the developer of certain lands located in Maricopa County, Arizona, more fully described in Section B and desires to establish a general plan for the improvement and development of its property and to subject the property to the restrictions, covenants, reservations, easements, liens and charges hereinafter set forth, each and all of which is to the benefit said property and the owners thereof and shall apply and bind their successors in interest and any other owner thereof;

Now, therefore, Transamerica Title Insurance Company of Arizona hereby declares the real property described and referred to in Section B is and shall be held, transferred, sold and conveyed subject to conditions, restrictions, covenants, reservations, easements, liens and charges hereinafter set forth, all of which shall be deemed to run with the described land.

B. DEFINITIONS

"THE PROPERTY" shall mean and refer to all such existing properties and additions thereto, and are subject to this declaration or any supplemental declaration and are more particularly described as:

FOUNTAIN OF THE SUN - PARCEL NO. 1  
according to the plat of record in  
Book of Maps, page

"ASSOCIATION" shall mean the Fountain of the Sun Association, a nonprofit association to be comprised of Developer (so long as Developer chooses to remain a member) and the owners of lots within the Property and other property adjacent or nearby developed pursuant to a common plan, which Association will enforce the covenants, conditions and restrictions hereby declared and maintain and administer certain common areas and facilities upon or near the Property for the benefit of its members.

"COMMON AREA" or "COMMON ELEMENTS" shall mean all areas within the Property (and nearby property developed pursuant to a common plan) owned and maintained by the Association for the common use and enjoyment of the members of the Association.

Parcel 1

"LOT" or "UNIT" shall mean and refer to lots as shown upon the latest applicable recorded subdivision map of the Property.

"LIVING UNIT" shall mean and refer to any portion of buildings or mobile homes situated upon the property designed and intended for use and occupancy as a residence by a single family.

"MULTI FAMILY STRUCTURES" shall mean and refer to any building containing two or more living units under one roof.

"STRUCTURE" shall mean any building, improvement, structure, fixture, fence or other enclosure not otherwise specifically described.

"DEVELOPER" shall mean Arizona Resort Communities Company.

"OWNER" shall mean and refer to any purchaser under agreement of sale or owner of record, whether one or more persons or entities, of the fee simple title to any lot situated upon the Property, but not withstanding an applicable provision of a mortgage, shall not mean or refer to a mortgagee until such mortgagee has acquired title through foreclosure or any proceeding in lieu of foreclosure.

"MEMBER" shall mean and refer to all those owners who are members of the Association.

**C. GENERAL PURPOSES**

Whereas the Developer desires to ensure the appropriate improvement of the Property and to create a community with parks, open spaces and common facilities for the general benefit of said community, and to prevent inharmonious development of said property, thereby enhancing the values of investments made by purchasers of the lots therein, hereby subjects the real property to the covenants, conditions, restrictions, reservations, easements, liens and charges hereinafter set forth.

**D. GENERAL COVENANTS - PROHIBITED AND PERMITTED USES**

**1. Subdivision of Lots**

No lot or lots shall be resubdivided, or any resubdivided portion of a lot sold or leased, except so as to combine the ownership resubdivided portions of one lot with other adjoining lots. Any ownership of single holding by any person comprising parts of two adjoining lots or the whole of one lot and parts of one or more adjoining lots shall, for the purposes of this Declaration of Conditions and Restrictions (except as hereinafter specifically provided), be deemed to constitute a single lot.

**2. Approval of Plans and Location of Structures**

The Developer has deemed it desirable for the efficient preservation of values and amenities in said community to create

an agency to which should be delegated and assigned the right and power to maintain and administer the Common Area and facilities thereon and enforce the covenants, conditions, restrictions, reservations, easements, liens and charges herein provided for. The Developer will organize the Association for the purpose of exercising such right and power. However, such rights and powers shall first be, and they are hereby vested in the Developer, who shall in turn transfer such rights and powers to the Association at such time as in the sole judgment of the Developer the said Association is ready therefor. Upon such transfer, all such rights and powers shall be fully vested in, and exercised by, the Association. (All subsequent references to "Developer or the Association" shall be deemed to refer to the party then vested with such rights and powers.) No mobile home nor structure shall be placed upon any lot until such mobile home or structure (and the location thereof on the lot) has been approved by Developer or the Association (as appropriate). Said Developer or Association shall have access to, and the right to inspect, the Property and/or materials at any reasonable time during the process of construction. Mobile homes shall be approved in writing as to condition and appearance by the Developer or the Association. The issuance of approval shall be within the sole discretion of the Developer or the Association. The Developer or the Association may from time to time promulgate rules, regulations and standards with respect to procedures for obtaining approval of mobile homes and structures proposed to be placed on lots and criteria to be employed in granting or denying such approval.

### 3. Garage and Carports

No garage or accessory buildings shall be used as living quarters.

### 4. Temporary Structures

No temporary residence, dwelling or garage (other than an approved mobile home) shall be placed or erected on any lot. No residence shall be occupied in any manner while in the course of construction or prior to its being fully completed without the written approval of the Developer or his successor.

### 5. New Construction

All buildings or structures (other than mobile homes) erected on the property shall be of new construction and shall not have been moved from other locations onto said premises.

### 6. Animals

No cattle, sheep, poultry, hogs or any other livestock shall be kept or maintained on any lot. This paragraph shall not be construed as a prohibition against or in any way interfering with the keeping of ordinary domestic pet animals.

7. Name Signs

No signs, advertisements or billboards of any kind shall be erected, placed or maintained on any lot other than a name and address sign, reasonable signs relative to the sale or rental of lots as may be approved by Developer or the Association.

8. Antennas

No antennas shall be installed or maintained if other suitable means of amplification are available. No lightposts, pole or tower of any kind which exceed the height of eight (8) feet shall be erected or maintained at any time.

9. Tanks

No elevated tanks of any kind shall be erected, placed or permitted on any lots. Any tanks, including tanks for the storage of fuel, must be buried or attractively screened to conceal it from neighboring tracts, roads or streets.

10. Vehicles

Private passenger automobiles and pickup trucks, including pickup campers, may be parked overnight on the Property in driveways only. Trucks larger than pickup class and vehicles other than described above shall not be kept on any lot or street except in areas designated therefor by the Association. No motor vehicle or part thereof which is under repair, not in operating condition or unregistered shall be placed or permitted to remain on the street or streets or any portion of any lot or lots unless it is within a closed garage or structure. No boats, boat railways, shall be constructed, kept or maintained upon any lot.

11. Commercial Use

All lots and structures thereon shall be used for private residence purposes only, and no buildings or structure of any nature adapted primarily for business purposes shall be erected or maintained on any residential lot and no business of any nature shall be conducted on any lot. Nothing herein shall be deemed to prohibit the leasing of any mobile home or residential structure for residential purposes.

12. Underground Facilities

No cesspool or well may be dug or run laterally without prior written approval of Developer or the Association. No lot shall be used for the purpose of boring, mining, exploring for or removing oil or other hydro carbons, minerals, gravel or earth.

13. Outdoor Burning

No outdoor burning of trash or other debris, shall be permitted. This shall not prohibit the use of normal residential barbecue or other similar outside grill.

**14. Sanitation**

Garbage and refuse facilities and any other artificial projections from the ground shall be walled in and camouflaged in such a manner as to conceal them from the view of the neighborhood lots and streets. All rubbish, trash and garbage shall be in approved containers regularly removed from the premises and shall not be allowed to accumulate thereon.

**15. Obstructions and Interferences**

No structure, shrubbery or other vegetation shall be permitted to exist on any lot the height or location of which shall be deemed by the Developer or the Association to constitute either a traffic hazard, to be unattractive in appearance or unreasonably detrimental to the adjoining property. As an aid to freer movement of vehicles at the near street, intersections and in order to protect the safety of children, pedestrians and the operators of vehicles and/or property, the Developer or the Association may impose limitation on the height of fences, walls, gateways, ornamental structures, hedge, shrubbery and other fixtures, construction and planting on corner lots in all districts where front yards are required. Such barriers to clear unobstructed vision at corners of intersections and streets shall be limited to a height of not over two (2) feet above the established elevation of the nearest street line for a distance of at least 15 feet along both front and side lines measured from the point of intersection of said intersecting lot lines.

**16. Nuisance**

No noxious or offensive activity may be carried on upon any lot nor shall anything be done therein which may be or may become an annoyance or detriment to other property owners.

**17. Easements**

There is hereby created a blanket easement for the installation, repairing, and maintaining of all utilities including but not limited to water, sewers, gas, telephone and electricity and a master television system upon all lots on the Property, and for such other purposes as may be for the benefit of the development or any part thereof. Existing natural drainage may not be changed or altered without the approval of the Developer or the Association. No plant or structure (except suitable ground cover), walls and fences of any type may be constructed, placed or permitted to remain on areas subject to easements as shown on recorded plats.

**18. Ingress and Egress**

Rights of ingress and egress to, and the right of entry upon, any part of the Property are reserved to the Developer and the Association for the purpose of installing improvements for the benefit of the Property or of investigating possible or actual violations of these covenants and correcting such violations.

19. Single Family Dwellings

Single family dwellings (excluding mobile homes and any enclosures thereof) placed on any lot shall have a minimum area of one thousand square feet exclusive of carports, breezeways, garages, open patios and porches. The maximum height of any single family dwelling shall be two stories above grade.

20. Setbacks

All setbacks and side yards shall conform to the zoning requirements of Maricopa County.

21. Mobile Homes

In addition and supplemental to the uniform general restrictions, the following covenants, liens and provisions shall apply to and govern the erection, maintenance and placement of mobile homes on lots.

A. Not more than one mobile home residence or trailer may be placed on any one lot.

B. All lots specified as cabana type lots shall have either a single family dwelling structure or a cabana-ramada building constructed over a mobile home. The design of said cabana-ramada will be provided by the Developer or the Association. (Typical designs and costs will be available at all times). No cabana or ramada may be used for living quarters unless a part of a mobile home.

C. A cabana-ramada must be placed over all mobile homes on cabana type lots within eight months after placement of the mobile home on the lot.

D. All mobile homes shall have skirts from the mobile home base to the ground on all sides.

22. Enforcement of Covenants

Should it become necessary at any time that the Developer or the Association incur any expense or employ counsel to enforce any of the provisions, conditions, restrictions or covenants herein contained, all costs incurred for the enforcement of such provisions, conditions, restrictions or covenants herein contained (including a reasonable fee for enforcement), shall be borne by the offending party, provided notice in writing of such violation has been reasonably given. The Developer, the Association and any Member shall be a proper party plaintiff in any action to enforce any provision of this Declaration, and any violation of any provision hereof may be enjoined or specifically enforced. Developer or the Association shall also be entitled to remove any structure, mobile home or property, or trim or remove any vegetation, maintained or kept on any lot in violation of the provisions of this Declaration and to charge the owner of such lot for the cost of such removal or trimming. Such charge shall be secured by a lien of the type, and enforceable in the manner, provided in Section 26 of this Declaration.

23. Duration of Covenants

Those easements, covenants, conditions and restrictions run with the land and shall be binding on all parties and all persons claiming under them until the year 2000 at which time said covenants, easements, conditions and restrictions shall automatically be extended for successive periods of twenty-five (25) years each.

24. Waiver of Covenants

The Developer and/or the Association reserve the right to waive in writing any or all of the covenants. These are severable and the invalidation of one shall not invalidate any other restrictive covenant herein, and each covenant shall be independent to such extent that the waiver of any one or more of those restrictive covenants by the Association, or Developer as aforementioned shall in no way be construed as a waiver of any other restrictive covenants.

25. Association Membership

Membership in the Association shall be comprised of owners of lots, there being one membership for each lot as platted of record, and a fractional membership for a fraction of such lot. Such lotowner shall be entitled to the rights and privileges of membership of the Association, and shall comply with its duly promulgated rules and regulations.

26. Association Assessments

Each lot shall be assessable by the Association as provided in the bylaws thereof, and any such assessment shall constitute, from the date of such assessment, a lien on each such lot to secure the payment of the assessment. For purposes of this section, any portion of any lot which shall have been combined into common ownership with an adjacent lot shall bear that proportion of the assessment imposed upon each lot as such portion of lot shall bear to the original platted lot from which it is derived. In the event that any assessment imposed by the Association shall not be paid on or before the due date thereof, the Association shall have the right to foreclose such lien by judicial foreclosure in the manner proscribed by Arizona law for the foreclosure of liens on real property other than mortgage liens. In the event of any action to foreclose such lien, the lien shall be deemed to secure, in addition to all Association assessments then due and unpaid, all costs and expenses (including reasonable attorneys' fees) incurred in preparation for or in connection with such foreclosure, together with interest on the unpaid assessment or assessments from the due date thereof until paid.

27. Delegation of Developer or Association

Developer or the Association shall have the right to appoint agents or committees or both to act on behalf of Developer or the Association for the purpose of exercising any right, power or duty given to or imposed upon it by this declaration.

28. Purposes for Assessments

Assessments made under the authority of this Declaration shall be for the sole purpose of raising funds required for the maintenance, repair and improvements of common areas, streets, alleys and recreation facilities available to all members of the Association as well as costs of administration of the Association and such other costs as the Association may from time to time incur for the benefit of its membership.

29. Consent by Purchase or Lease

The execution of any agreement to purchase or lease any lots or the acceptance of a deed or lease to any lot shall, without further affirmative act or assent by such purchaser or recipient, cause such recipient or purchaser and his rights in the subject lot to be subject to the bylaws and the duly promulgated rules and regulations of the Association and to the provisions of this Declaration, and shall constitute such purchaser's or recipient's agreement to be bound by, and perform in accordance with the provisions of this Declaration.

F. PRIVATE ROADS AND OTHER TRACT USES

There is hereby established and dedicated for the following persons and uses easements upon, over and across those areas shown on the plat of record of FOUNTAIN OF THE SUN - PARCEL NO. 1 as Tracts A, B, C, D, E, F, G, I, J, K, L, M, N and P:

1. For ingress and egress to and from all lots adjacent to such Tracts by the owners of such adjacent lots, all invitees of such owners, Developer and Developer's agents, employees and delegates, the Association and its agents, employees and delegates;
2. For delivery of mail and all goods and services requested by such adjacent lot owners;
3. For the installation and maintenance of any and all public utilities facilities in a manner reasonably consistent with the other uses of said Tracts recited herein;
4. For landscaping and recreation purposes to the extent consistent with the preservation of streetways for ingress and egress not less than twelve feet in width;
5. For the construction, repair and maintenance of any improvement or facility upon such Tracts in furtherance of the foregoing purposes and uses.

Nothing herein set forth shall be deemed or construed to constitute said Tracts, or any part thereof, as public streets or public roads.

WITNESSETH THAT the TRANSAMERICA LIFE INSURANCE COMPANY OF ARIZONA, as Trustee has caused its corporate seal to be hereunto affixed and its corporate seal to be attested by the undersigned officer, the same duly authorized this 26th day of July, 1973.

TRANSAMERICA LIFE INSURANCE COMPANY OF ARIZONA,  
as Trustee

*[Signature]*  
Trustee

STATE OF ARIZONA

County of Maricopa

Before me this 26th day of July, 1973, personally appeared *Benny Gonzales*, who acknowledged himself to be a Trustee of the TRANSAMERICA LIFE INSURANCE COMPANY OF ARIZONA and that he is such officer, being a duly authorized officer of the said company, and that he is duly authorized to sign the name of the Corporation as Trustee of the above described property.

*[Signature]*  
Notary Public

My commission will expire 7/1/73  
Notary Public