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Phoenix, Arizona 85004

9/14/84

PROP RSTR (PR)

FIRST AMERICAN TITLE

BURCH & CRACCHIOLO, P.A.
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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CASA DEL CIELO

THIS DECLARATION made this 14th day of September, 1984, by FIRST AMERICAN TITLE INSURANCE COMPANY OF ARIZONA, an Arizona corporation, as owner, pursuant to trust number 7301, hereinafter referred to as Declarant, is as follows:

WITNESSETH:

WHEREAS, Declarant is now the owner of all of the real property described as:

Lots 5, 7, 8 and 10 through 30, inclusive, and Tract B of Casa del Cielo, a Planned Area Development in the City of Scottsdale, Arizona, according to the plat recorded on the 10th day of July, 1984, at Book 269 of Maps, page 39 thereof, Maricopa County Recorder, a copy of which is attached hereto and by this reference incorporated herein as Exhibit A (hereinafter the "Covered Property" or "Initial Covered Property").

RECORDED IN OFFICIAL RECORDS
OF MARICOPA COUNTY, ARIZONA

SEP 14 1984 -3 45

BILL HENRY, COUNTY RECORDER

FILE 9358 PGS 92 D.E.

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WHEREAS, Declarant is now the owner of Lots 1 through 4, inclusive, 6, 9, and 31 through 150, inclusive, and Tracts A, C and D of Casa del Cielo, a planned area development in the City of Scottsdale, Arizona, according to the plat recorded on the 10th day of July, 1984, in Book 269 of Maps, page 39 thereof, Maricopa County Recorder, hereinafter the "Annexation Property";

WHEREAS, Declarant intends to and does hereby establish for its own benefit, for the benefit of Developer, as defined herein, and for the mutual benefit of all future owners or occupants of said Covered Property as said Covered Property is now and may subsequently be constituted, and each part thereof, certain easements and rights in, over and upon said Covered Property, and certain mutually beneficial covenants, conditions, restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant intends that the owners, mortgagees, occupants and all other persons hereafter acquiring any interest in said Covered Property or any part thereof, shall at all times enjoy the benefits of, and shall hold, sell and convey their interests subject to the rights, easements, covenants, conditions, restrictions, and obligations hereinafter set forth, all of which are hereby declared to be in furtherance of a general plan to promote and protect the cooperative aspect of such development and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Covered Property;

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NOW, THEREFORE, Declarant as owner of the real property described in Exhibit A hereto and for the purposes above set forth, and in compliance with the terms of the Scottsdale Ranch Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements recorded on August 10, 1981, at Docket 15439, pages 826-916, records of Maricopa County Recorder, and the Tract Declaration, Scottsdale Ranch Parcel 14 recorded on December 29, 1983, at 83 523532, records of Maricopa County Recorder, hereby declares that all of the Covered Property as defined herein and each part thereof, as may hereafter be annexed as provided herein, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall constitute equitable servitudes on the "Property" (as hereinafter defined) and which shall run with said Property and be binding on and inure to the benefit of all parties having any right, title or interest therein, or any part thereof, their heirs, successors and assigns.

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Article 1. DEFINITIONS

As used herein, unless otherwise specified or unless the context otherwise requires:

"Accessory Use" shall mean a use naturally and normally incidental to, subordinate to, and devoted exclusively to the permitted main use of a Lot.

"Additional Maintenance Areas" shall mean those portions of a Lot, if any, which, pursuant to future action of the Association, are maintained by the Association.

"Annexation Property" shall mean Phases Two, Three, Four and Five of Casa del Cielo, as set forth in the Article titled "Integrated Nature of the Covered Property," which phases may be annexed to or become a part of the Covered Property.

"Articles" shall mean the Articles of Incorporation of Casa del Cielo Homeowners' Association which are, or shall be, filed with the Corporation Commission of the State of Arizona, as said Articles are amended from time to time.

"Association" shall mean Casa del Cielo Homeowners' Association, Inc., an Arizona nonprofit corporation.

"Board" shall mean the Board of Directors of the Association.

"Building" means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or chattels and located on a Lot and forming a part of such Lot.

"Bylaws" shall mean the Bylaws of the Association as such Bylaws may be amended from time to time.

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"Common Area" shall mean Tract B as described in Exhibit A and may in the future include Tracts A, C and D of the Annexation Property, which may be granted from time to time to the Association, including but not limited to pool, jacuzzi, cabana, perimeter landscaping, drainage easements, medians, entry wall structures, and other areas or structures constructed thereon.

"Covered Property" shall mean Lots 5, 7, 8, 10 through 30, inclusive, and Tract B of Casa del Cielo and only such additional property within Casa del Cielo as is brought within the Covered Property and specifically made subject to this Declaration pursuant to the Article of this Declaration titled "Integrated Nature of the Covered Property."

"Declarant" shall mean First American Title Insurance Company of Arizona, an Arizona corporation, as owner, pursuant to trust no. 7301.

"Declaration" shall mean this instrument by which the Property is established as a planned area development, as this Declaration may from time to time be amended.

"Developer" shall mean Meister Development Company of Arizona, an Arizona corporation, and any successor or assign, if such successor or assign should acquire any portion of the Property from the Declarant for the purpose of development and is designated by Meister Development Company of Arizona as the Developer for the purpose hereof by a duly recorded written instrument; provided, however Scottsdale Ranch, an Arizona general partnership shall become the Developer if it succeeds to the ownership of all or any part of the Covered Property or the Annexation Property pursuant to the Article hereof titled "General Provisions," Section titled "Successors of Developer," subsection titled "Rights of Scottsdale Ranch Partnership," and if Scottsdale Ranch makes the election described in said subsection.

" Dwelling " shall mean any building or portion thereof which is used as a private residence or sleeping place of one or more human beings, but not including clubhouses or recreational buildings intended and designed primarily for recreational use.

"Front Yard Landscaping" shall mean that portion of each Lot between the street and the front wall of the dwelling structure, including the garden wall returns, exclusive of the structure, appurtenances thereto, the driveway and sidewalk. On those yards with required side or rear yard setbacks or other landscaping easements, as shown on the recorded plat, Front Yard Landscaping shall also refer to such side and rear yard areas, all of which shall be maintained by the Association pursuant to the Article hereof titled "Casa del Cielo Homeowners' Association, Inc.," Section titled "Duties of the Association."

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"Improvement(s)" shall mean buildings, garages, car-ports, streets, roads, driveways, walkways, parking areas, fences, walls, porches, hedges, plantings, planters, planted trees and shrubs, swimming pools, spas, and all other structures or landscaping improvements of every kind, nature or description.

"Initial Covered Property" shall mean Lots 5, 7, 8, 10 through 30, inclusive, and Tract B of Casa del Cielo, which is made subject to this Declaration.

"Joint Use Driveway(s)" shall mean those private driveways located on portions of Lots, which serve two or more Lots within this Project. The Joint Use Driveways are shown and described in Exhibits B and G attached hereto and made a part hereof. That portion of the Joint Use Driveway located on a Lot and shown without crosshatching on Exhibit G shall be for the exclusive use and shall be maintained at the sole expense of the Owner of said Lot.

"Lien" shall mean both voluntary and involuntary liens.

"Lot" shall mean each parcel of real property in the Property as shown with a separate and distinct number on a final subdivision map, which has been duly recorded or filed in the Office of the County Recorder of Maricopa County, Arizona, exclusive of the Common Area.

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"Manager" shall mean that person or entity employed from time to time by the Board to manage the affairs of the Association.

"Member" shall mean every person or entity who holds membership in the Association.

"Membership" shall mean that every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment, except as provided for Developer in the Article titled "Casa del Cielo Homeowners' Association, Inc.," Section titled "Membership."

"Mortgage" shall mean and refer to all instruments establishing a security interest, including deeds of trust.

"Mortgagee" shall mean the beneficiary of a recorded deed of trust or the holder of a recorded mortgage.

"Owner" shall mean the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Lot, but excluding those having an interest merely as security for the performance of an obligation.

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"Rules" shall mean any rules adopted by the Board, and any architectural standards, landscaping standards, and procedures for applying for approval, as determined by the Architectural Control Committee on an ad hoc basis or which, in the discretion of the Architectural Control Committee, may be adopted and published to the Owners.

"Scottsdale Ranch Documents" shall mean the Scottsdale Ranch Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements recorded August 10, 1981, in Docket 15439, pages 826 through 916, inclusive, Maricopa County Recorder, and the Tract Declaration Scottsdale Ranch Parcel 14 as recorded on December 29, 1983, at 83 523532, Maricopa County Recorder, as such documents may be amended pursuant to the provisions thereof.

"Use and Drainage Easement" shall mean an area on one Lot, as shown by a crosshatching (rear) or dotting (front) on the recorded final plat, which is for the benefit of the adjacent Lot, with the benefited Lot indicated by the direction of an arrow on the final plat. The benefited Lot shall accept and shall not impede the flow of drainage coming from the burdened Lot to the benefited Lot. Exhibit C hereto is a schedule of Lots burdened by Rear Use and Drainage Easements, Exhibit D is a schedule of Lots benefited by Rear Use and Drainage Easements, Exhibit E is a schedule of Lots burdened by Front Use and Drainage Easements, and Exhibit F is a schedule of Lots benefited by Front Use and Drainage Easements. Said schedules are for convenience only, and do not create the easements.

"Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Article 2. CASA DEL CIELO HOMEOWNERS' ASSOCIATION, INC.

2.1 ORGANIZATION: The Association is a nonprofit Arizona corporation, which corporation shall be the governing body for all of the Owners for the maintenance, repair, replacement, administration and operation of the Common Area and all other property it is required or permitted to maintain pursuant to this Declaration, and shall have the duties and powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

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2.2 MEMBERSHIP:

2.2.1 Qualifications: Each Owner of a Lot, except Declarant, but excluding persons or entities who hold an interest merely as security for the performance of an obligation, shall automatically, upon becoming an Owner, become a Member of the Association and shall remain a Member until such Owner ceases to own a Lot. The Developer shall be a Member as long as any Lot in the Covered Property and Annexation Property has not been conveyed to an Owner, and Developer has not voluntarily relinquished Membership by written notice to the Association and the Veterans Administration.

2.2.2 Membership Rights and Duties: Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws and the Association Rules as said documents may be amended from time to time.

2.2.3 Transfer of Membership: The Association Membership of each Owner (and Developer) shall be appurtenant to the Lot giving rise to such Membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said Lot, and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to ^{Unofficial Document} transfer the Membership in the Association appurtenant thereto to the new Owner thereof.

2.3 VOTING:

2.3.1 Number of Votes: The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, except Declarant, and shall be entitled to one vote for each Lot owned. When more than one person is the Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Developer and shall be entitled to three (3) votes for each Lot in the Covered Property and Annexation Property which has not been conveyed to an original Owner. Class B Membership shall cease and be converted to Class A Membership on the happening of the earliest of the following events:

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(i) Within One Hundred Twenty (120) days after the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership; or

(ii) Seven (7) years from the date of the first recording of the Declaration with the Maricopa County Recorder; or

(iii) The Developer advises the Association and the Veterans Administration that it is relinquishing all Class B votes.

2.3.2 Commencement of Voting Rights: Voting rights for all of the Property shall commence upon the first conveyance of a Lot by Declarant to an Owner.

2.3.3 Joint Owners' Disputes: The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that the joint Owners are unable to agree among themselves as to how their one vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one (1) vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

2.3.4 Election and R^{Unofficial Document} of Board of Directors - Cumulative Voting Features: Every Owner entitled to vote at any election of the Board may cumulate his vote and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which his Lot(s) are entitled. The entire Board or any individual Director may be removed from office with or without cause by vote of the majority of the voting power of the Members, provided, however, unless the entire Board is removed, an individual Director shall not be removed prior to the expiration of his term of office if the number of votes against the resolution for his removal or not consenting in writing to such removal would be sufficient to elect the Director if voted cumulatively at an election at which the same number of votes were cast and the entire number of Directors authorized at the time of the most recent election of the Director were then being elected. If any or all of the Directors are so removed, new Directors may be elected at the same meeting. Each Director must be a Member of the Association or a representative of Developer designated by Developer.

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