

When recorded return to:
General Homes-Arizona, Inc.
1400 E. Southern, Suite 600
Tempe, Arizona 85282
Attn: Alan Marks

RECORDED IN OFFICIAL RECORDS
OF MARICOPA COUNTY, ARIZONA
MAR 3 '87-4 22
KEITH POLETIS, County Recorder
FEE // 20 PGS 6 R.D.

DECLARATION OF SIDE YARD EASEMENT

87 128294

This Declaration is made as of the 17th day of February, 1987, by GENERAL HOMES-ARIZONA, INC., a Delaware corporation ("Declarant").

RECITALS

A. Declarant is the owner of that parcel of real property situated in Maricopa County, Arizona, more particularly described on Exhibit "A" hereto (the "Parcel").

B. Declarant intends to develop the Parcel by constructing and marketing single family residences on the lots of the Parcel (as defined in the plat for Stoner Creek first recorded in the official records of Maricopa County and as amended from time to time).

C. On one or more of the lots, in order to accommodate certain designs and other considerations, Declarant may construct a residence which shall have one wall which is a Side Yard Wall. A "Side Yard wall" is a wall which (1) has no windows, doors or other openings, and (2) is located approximately parallel to and not more than five feet from a lot line which separates the lot upon which the wall is located from an adjacent lot. Any lot on which a Side Yard Wall is located shall hereinafter be referred to as a "Side Yard Lot".

D. The effect of the construction design intended for any Side Yard Lots will be to create a strip of side yard on each Side Yard Lot extending from the front to the rear of the Side Yard Lot bounded on one side by a line extending along the side of the Side Yard Wall from the front to the rear lot lines of the Side Yard Lot and on the other side by the lot line from which the residence is offset (the "Offset Side Yard"). For illustrative purposes, a typical Offset Side Yard configuration is depicted on Exhibit "B" hereto.

E. Because of the size and configuration of an Offset Side Yard as well as the configuration and character of the improvements (including residences) to be built on Side Yard Lots (including without limitation walls, fences and the means of ingress and egress), optimum use and enjoyment of each Side Yard Lot owner's residence will be enhanced by the establishment of an easement upon each Offset Side Yard for the benefit of the lot immediately adjacent to such Offset Side Yard (the "Adjacent Lot").

F. Declarant desires to submit and subject all Side Yard Lots in the Parcel, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter

LOTS #
1-231
→

located thereon, and all easements, rights appurtenances and privileges belonging or in any way pertaining thereto, to the covenants, conditions and restrictions herein set forth.

G. Declarant desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Parcel, or any part thereof, certain easements and rights in, over and upon the Parcel and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof.

H. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Parcel shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which shall run with the land and be binding upon the Parcel and all parties having or acquiring any right, title or interest in or to the Parcel, or any part thereof, and shall inure to the benefit of each owner thereof, and all of which are declared to be in furtherance of a plan to promote and protect the Parcel and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Parcel.

DECLARATION

NOW, THEREFORE, Declarant, for the purposes above set forth, declares as follows:

1. Subject to the terms and conditions hereinafter set forth, the owner of each Adjacent Lot shall have an exclusive easement for the possession, use and enjoyment of the entire Offset Side Yard to which such owner's Adjacent Lot abuts, which easement shall extend solely to the Offset Side Yard and not to the walls or any other portion of the residence on the Side Yard Lot containing such Offset Side Yard.

2. The easement hereby established shall be appurtenant to and inseparable from ownership of an Adjacent Lot and shall run with the land and be binding upon each Offset Side Yard, and any owners thereof, in perpetuity.

3. The owners of any Adjacent Lot may make such use of the Offset Side Yard as is permitted by applicable laws, ordinances, rules, regulations, requirements of governmental authorities having jurisdiction, any recorded covenants, conditions and restrictions respecting the Parcel, and any rules or regulations of any property owners' association applicable to the Parcel, including without limitation the construction of above and below ground improvements, provided that no improvements or other property of any type not owned by the owner of the Offset Side Yard may be caused, allowed or suffered to come into contact

with or otherwise interfere with the Side Yard Wall or any other portion of the residence owned by the owner of the Offset Side Yard without said owner's prior consent.

4. The owner of any Offset Side Yard shall retain a right of ingress and egress and a right to the use of such Offset Side Yard for purposes of operation, maintenance or repair of such owner's residence and any equipment or other improvements attached or related thereto and for necessary surface drainage; provided, however, that such retained rights (other than drainage) may be exercised only upon reasonable prior notice to the owner of the Adjacent Lot, at reasonable hours, and in a reasonable manner, with due regard for avoiding unnecessary interference with the easement rights herein granted.

5. The owner of an Adjacent Lot and the owner of the adjacent Offset Side Yard shall each indemnify and hold the other harmless from and against any claims, demands, costs, losses, damages and liabilities of whatever nature arising from the exercise by the indemnitor of any rights granted or expressly retained hereunder, excepting only matters caused in whole or in part by the gross negligence or willful, wanton or intentional misconduct of the indemnitee.

6. All obligations of the owner of an Offset Side Yard with respect to the use, maintenance and repair of such Offset Side Yard (and any improvements thereto or thereon) shall be assumed by the owner of the Adjacent Lot who shall, moreover, indemnify and hold harmless the Offset Side Yard owner from and against any claims, demands, costs, losses, damages and liabilities of whatever nature arising from the failure of such Adjacent Lot owner to satisfy such obligations when and as required.

7. The owner of an Offset Side Yard shall have no obligation whatever to care for, protect or insure the Offset Side Yard or improvements thereto or thereon except to refrain from causing damage thereto through negligent, willful, wanton or intentional misconduct.

8. The owner of an Offset Side Yard shall be responsible for the real property taxes or assessments applicable to his entire Side Yard Lot without allocation or proration respecting the Offset Side Yard and any improvements thereto or thereon made by the owner of the Adjacent Lot consistent with the provisions hereof.

9. In the event any action or proceeding is brought to enforce the provisions hereof, the prevailing party in such action or proceeding shall be entitled to recover such party's costs, including reasonable attorneys' fees, incurred in connection with such action or proceeding.

87 128294

10. The provisions hereof shall be binding upon and shall inure to the benefit of the owners of Offset Side Yards and Adjacent Lots, their heirs, devisees, personal representatives, successors and assigns.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the date first appearing above.

DECLARANT:

GENERAL HOMES-ARIZONA, INC.,
a Delaware corporation

By Patricia L. Shedd
Patricia L. Shedd
Vice President

STATE OF ARIZONA)
County of Maricopa) ss.

The foregoing instrument was acknowledged before me this 23rd day of February, 1987 by Patricia L. Shedd, Vice President of General Homes-Arizona, Inc., a Delaware corporation, for and on behalf of the corporation.

Roseann M. Goulard
Notary Public

My Commission Expires:

7-9-88



87 128294

EXHIBIT A

Lots 1 through 231, inclusive of Stonecreek according to Book 300 of Maps,
Page 41 records of Maricopa County, Arizona.

EXHIBIT "B"
TYPICAL OFFSET SIDE YARD

87 128294

