

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Michael and Elizabeth Nikol, as owners, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Gila, State of Arizona, which is more particularly described as:

Lots 1 through 17 inclusive, and Tracts A through E, inclusive, KOHL'S TONTO CREEK RANCH PLAT "B", according to plat of record in the office of the County Recorder of Gila County, Arizona on map # 557 ("Subdivision" hereinafter).

NOW THEREFORE, Declarant hereby declares that all of the properties described above 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 run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS:

Section 1. "Association" shall mean and refer to KOHL'S TONTO CREEK RANCH PLAT "B", an Arizona corporation, formed or to be formed, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, or a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Tracts A, B, C, D, and E, KOHL'S TONTO CREEK RANCH PLAT "B", according to Plat of Record in the office of the County Recorder of Gila County, Arizona in Book of Maps, Page Map # 557

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Michael and Elizabeth Nikol, as owners, their successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, 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.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. 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.

Section 2. The Association shall have two classes of voting members:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total outstanding in the Class B membership, or
- (b) on January 1, 1990.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's 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's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments and Primary Duties of Association.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Included within, but not as a limitation upon the powers of the Association, the Association shall have the primary duty to perform the following maintenance:

- (a) Chemical weed treatment as necessary or proper to maintain landscaping within Common Areas.
- (b) Watering as necessary or proper to maintain said landscaping.
- (c) Periodic mowing and raking as necessary or proper to maintain said landscaping.
- (d) Operate, maintain and repair effluent lift station and disposal field within Tract E together with operation, maintenance and repair of the effluent collection main within Tract A.

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 Twenty-five Dollars (\$25.00) 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 (i) 5% above the maximum assessment for the previous year without a vote of the membership, or (ii) that percentage by which the Consumer Price Index (National) has increased during the most recent twelve month period (as of time of action by the Board of Directors) as to which said index has been published by the Department of Labor; whichever percentage is the greater.
- (b) 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 above the percent permitted by provisions of subparagraph (a) above by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the 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, 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 Section 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 30 days nor more than 60 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 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 basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of 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 6 percent per annum. 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 non-use 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 or any first deed of trust. 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 deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became 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 V
USE RESTRICTIONS

Section 1. The Properties shall be for residential use only and construction thereon is restricted to single family dwellings and no business uses or activities of any kind whatsoever shall be permitted or conducted upon said premises, except that during the course of development and initial sale of Lots, Declarant may maintain thereon model homes, sales office, and construction office for use in the development and sale of single family dwellings within the Sub-division.

Section 2. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

If any construction that may be required by this Declaration to be approved be commenced and completed before such approval is obtained, then such construction shall be deemed automatically approved thirty days after it is completed, provided that no suit to enjoin or otherwise prevent the completion of the construction nor suit to enjoin or otherwise prevent continuance of the existence or maintenance of the structure or improvement constructed on the lot nor action to recover damages caused or anticipated by such construction is commenced, that is, filed with a court of competent jurisdiction within County of Gila, State of Arizona, before date thirty days after date the construction is completed.

Section 3. New Construction. All improvements erected upon said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said premises.

Section 4. Size. The floor area of the dwelling, exclusive of porches, garages, carport and patios, shall be not less than 600 square feet unless otherwise approved by the Committee.

Section 5. Signs. No sign of any kind shall be displayed to the public view of any lot except one sign of not more than five (5) square feet, advertising the property for sale or rent, or as approved by the Association, or as placed by the builder or developer during the period of construction and sale of homes within the Subdivision.

Section 6. Sight Distance At Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways, shall be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 7. Antennas. Antennas for reception of television and radio signals of less than ten feet in height from highest point of roof of residence upon lot may be erected. No other antennas or device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any lot, whether attached to a building or structure or otherwise, without written approval of Association which Association shall consider in addition to normal architectural appearance considerations, whether use of device will be a nuisance and interfere with television and radio reception of owners of other lots.

Section 8. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on front yard or carport of any lot unless they are at location not Visible From Neighboring Property or street adjoining said lot.

Section 9. Trash Containers and Collection. No garbage or trash shall be placed or kept on any lot except in covered containers. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection, and, then, only the time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any lot.

Section 10. Abandoned or Inoperable Vehicles. No vehicle of any type which is abandoned or inoperable shall be stored or kept on any lot in such a manner as to be Visible From Neighboring Property or from any streets within the Subdivision.

Section 11. Motor Vehicle Repair. Except with approval of the Association, no motor vehicle, boat, or trailer shall be constructed, reconstructed or repaired, upon any lot or street in such a manner as will be Visible From Neighboring Property; provided, however, that the provisions of this Section shall not apply to repairs completed within two days from date commenced.

Section 12. "Visible From Neighboring Property". As utilized in this Article, "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six 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.

Section 13. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 14. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose and are kept in such manner as not to constitute a nuisance to the neighborhood.

Section 15. Easements. Easements, as indicated upon the recorded plat of the Subdivision is reserved for the installation and maintenance of public service utilities and other uses for public or quasi-public good. No buildings shall be placed upon such easements or interference be made with the free use of the same for the purposes intended.

Declarant further reserves the right to grant specific easements for utility and service purposes at any time prior to sale of lot or lots affected.

Section 16. Drainage. No owner acquiring title to a lot improved with a residential dwelling shall thereafter fill, block, or obstruct any drainage ways on the demised premises, nor shall owner cause or suffer to be erected on the demised premises, any building or obstruction which directly or indirectly obstructs the drain-

age as established by developer at time of initial construction except with consent of the Association, and owner agrees to make and forever to repair and maintain all such drainage ways on the lot premises, making good nevertheless, at his own expense, all damage which may be caused to the said drainage ways on the lot.

Section 17. Maintenance of Lawns and Plantings. Each Owner of a lot shall keep all shrubs, trees, grass and plantings of every kind on his lot, and any other area located between the boundary line of his property and the street or any other property on which such Owner's property abuts, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. During prolonged absence, such owner of a lot agrees he will arrange for the care of the property during such absence. Should any Owner fail to so maintain his lot, the Association may deliver written notice of need for maintenance and provide that correction is to occur within fifteen (15) days of said notice. In the event correction is not so made by Owner, the Association may cause said maintenance to be performed upon the lot, such maintenance to be limited to exterior of residence. The reasonable costs of such maintenance shall be a lien upon said lot upon the filing by the Association of affidavit in the Office of the County Recorder of Gila County, State of Arizona, stating action taken pursuant to this section and stating the amount due for such maintenance, to whom it was paid and by whom advanced, the date of payment and designating the lot to which the lien applies.

Section 18. Delegation of Association Duties to Architectural Committee.
The Association may by resolution delegate to its Architectural Committee duties and rights re Use Restrictions under this Article.

ARTICLE VI

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 any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first forty (40) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Deeds. Deeds of conveyance of all or any of the lots shall incorporate by reference all of the provisions contained in this document. However, whether or not recited in the deeds of conveyance, these restrictions shall be binding on every owner of every lot contained within the Subdivision.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 18 day of January, 1978.

MICHAEL AND ELIZABETH MIKOL

By Michael Mikol

By X Elizabeth Mikol

STATE OF ARIZONA
COUNTY OF Hila

The foregoing instrument was acknowledged before me this 18 day of January, 1978, by ELIZABETH MIKOL as owners, of Kohl's Tonto Creek Ranch Plat "B".

Andrew Dunning
Notary Public

My commission expires My Commission Expires Jan 27, 1979

STATE OF ARIZONA
COUNTY OF Maricopa

The foregoing instrument was acknowledged before me this 19 day of January, 1978, by Michael Mikol as owners, of Kohl's Tonto Creek Ranch Plat "B".

My Commission Expires October 14, 1978

16.00
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STATE OF ARIZONA, County of Gila, az
I do hereby certify that the within instrument was filed and recorded at request of Associated Engineers, Inc.

Date JAN. 24. 1978 Time 3:30 P. M. Booklet 441 Official Record Page # 966 - 976

WITNESSED my hand and official seal the day and year first above written.

Associated Engineers, Inc.
807 W 3rd Street
Phoenix, Az. 85004

MARY V. DE PAOLA County Recorder
by Cheryl Brazell