

AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
PARK PLACE ASSOCIATION, INC.  
(PONDEROSA MESA)

This Declaration, made on the date hereinafter set forth, by TRANSAMERICA TITLE INSURANCE CO., a California corporation, as Trustee, and as bare legal title holders, the "Declarant", acting at the direction of KAISER AETNA, a California general partnership, the "Developer".

W I T N E S S E T H

WHEREAS, Declarant is the bare legal title holder of certain real property (the "Property") in the City of Mesa, County of Maricopa, State of Arizona, which is more particularly-described in Exhibit 1 attached hereto and by this reference incorporated herein;

WHEREAS, Declarant at the direction of Developer declared that the Property be held and conveyed subject to that certain Declaration of Covenants, Conditions and Restrictions dated March 20, 1974, (the "Association Declaration") and recorded in the office of the Recorder of Maricopa County, Arizona, at Docket 10564, pages 704-718; and

WHEREAS, all appropriate action has been taken to amend the Association Declaration and Declarant is acting pursuant to the direction of the Owners of ninety percent (90%) of the Lots as defined hereafter who have joined herein;

NOW, THEREFORE, Declarant hereby declares that the Association Declaration is amended, superseded and restated as follows and that all of the Property shall from and after the date hereof be held, sold, and conveyed subject to the following easements,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 Property and shall be binding on and for the benefit of all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors or assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean Park Place Association, Inc., an Arizona corporation, its successors and assigns.

Section 2. "Park Place" shall mean that development to be located in the City of Mesa, County of Maricopa, State of Arizona, as approved by the Mesa City Council under the tract name of PONDEROSA MESA. This development shall consist of one hundred twenty (120) acres, more or less, and shall conform to the general plan and land use intensity as approved by the City Council of the City of Mesa, Arizona. The final development shall contain approximately four hundred fifty-one (451) residential units, as set forth in the general plan and land use intensity as previously approved by the City Council of the City of Mesa, Arizona.

Section 3. "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 a part of the Property,

including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Property" shall mean and refer to that certain real property described in Exhibit 1, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

Section 5. "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 in Exhibit 2 attached hereto and by this reference incorporated herein.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property, with the exception of the Common Areas.

Section 7. "Declarant" shall mean and refer to Trans-america Title Company, as Trustee, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Developer" shall mean and refer to Kaiser Aetna, a California general partnership, or any other person or entity which is or may be subdividing and/or selling residential lots as a portion of Park Place or constructing residential dwellings for sale to individual buyers.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners 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 following provisions:

## ON 112101000

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use any recreational facilities situated upon the Common Area by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) 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 signed by two-thirds (2/3rds) of each class of Members (as defined hereafter) agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICE 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 (2) classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Developer and Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person owns any 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 (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be the Developer or 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 first occurs:

(a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or

(b) The 1st day of June, 1980.

Section 3. The Declarant shall be considered to be the Owner of that number of Lots against which this Declaration of Covenants, Conditions and Restrictions has been recorded less the number of Lots sold to individual purchasers.

Section 4. In the event the general plan of development is not pursued to completion and an affirmative statement of abandonment of any or all parts of the general plan previously approved by FHA/VA and the City of Mesa, is recorded in the Office of the County Recorder of Maricopa County, Arizona, then, in such event, the voting power of the Lots as set forth above shall be reduced by the number of Lots so abandoned.

Section 5. In the event that Developer shall make a "constructive abandonment" of the general plan of development, then, and in such event, the voting power of the Lots as set forth above shall be reduced by the number of Lots so constructively abandoned. For the purposes of this section, a "constructive abandonment" shall

be deemed to have occurred when Developer shall not have made any construction starts for a period of eighteen (18) months, or shall have made no substantial progress towards planning or preparation for continuation of the general plan of development. A constructive abandonment shall not occur if the lack of construction starts, planning or preparation shall be due to strikes, acts of God, war, riot, insurrection, or other acts which are beyond the control of the Developer.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant or Developer for each Lot owned within the Property, 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 the Association--(1) annual assessments or charges; and (2) special assessments for capital improvements, and (3) individual special assessments levied against individual Lot Owners to reimburse the Association for extra costs for maintenance and repairs caused by willful or negligent acts of the individual Owner not caused by ordinary wear and tear, 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 Lot or Lots owned by the Owner and shall be a continuing lien upon his Lot or Lots 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. In order to promote civic betterment and social improvements for the common good of this community, the assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the improvements and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment shall be SEVENTY-TWO DOLLARS (\$72.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot by Developer or Declarant to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot by Developer or Declarant to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3rds) 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 Assessment 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 or replacement of damaged or destroyed common elements, provided that any such assessment shall have the assent of two-thirds (2/3rds) 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 Sections 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (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 sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual assessments and special assessments for capital improvements 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 for each Lot shall commence as to such Lot 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 which certificate if properly executed shall be binding on 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 twelve percent (12) 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 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 or 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 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 V

#### MAINTENANCE OF COMMON AREA

The Common Area owned by the Association shall consist of landscaped lawns, walkways, recreation building, swimming

pool and all other Common Area and recreation facilities. The Association shall provide maintenance upon said Common Areas as required, such maintenance to include, but not be limited to, care of trees, shrubs, grass, walks, buildings, pools and other uses appurtenant to the Common Area. The Association shall be responsible for including in the monthly assessment an amount sufficient to pay the base assessment for water used on the Common Area, and for making the required periodic payments to the Salt River Valley Water Users' Association as billed to the Association by said Water Users' Association.

Common Area. In the event any part of the Common Area is damaged or destroyed by the wilful or negligent acts of an Owner or any members of his family, or any other person or persons for whose acts or omissions he would be liable under Arizona law, such Owner does hereby irrevocably authorize the Association to repair said damaged element and the Association shall so repair said damaged element in a good, workmanlike manner in substantial conformity with the original plans and specifications. The Owner shall then repay the Association the amount actually expended for such repairs.

Lien and Collection. Each Owner further agrees that the charges for repairs shall be delinquent if not paid within ten (10) days after completion of the work and, together with interest, costs and reasonable attorney's fees, shall be secured by a lien upon said Owner's Lot until fully paid. Said lien, in the same manner and to the same extent as the assessment lien, shall be subordinate to any first mortgage or deed of trust on the subject Lot. Said charges shall bear interest from the date of expenditure at the rate of six percent (6%) per annum. The amount of principal and interest owed by said Owner to the Association shall be a

debt, and together with the Association's costs and reasonable attorney's fees, shall be collectible by any lawful procedure allowed by the laws of the State of Arizona. Each Owner, by his acceptance of a deed to a lot, hereby expressly agrees to pay all such charges and vests in the Association or its agent the right and power to bring all actions against such Owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such Owner hereby expressly grants to the Association a power of sale in connection with said lien.

ARTICLE VI

USE RESTRICTIONS

The Common Area shall be used for appropriate recreational uses, including but not limited to, hiking, bicycles on designated bicycle paths, walking and other appropriate uses on the Common Area. The Common Area shall not be used for equestrian purposes, nor shall any motor driven vehicle be used upon the Common Area except in designated parking areas or as may be permitted by the Board of Directors of the Association.

ARTICLE VII

EASEMENTS

There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones, and electricity, a master television antenna system and a cable television system. Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines or other utilities may be installed or relocated thereon except as initially programmed and approved by the Developer of Park Place. This easement shall in no

way affect any other recorded easements thereon. Each portion of the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designated or constructed by the Developer. A valid easement for such encroachments and for the maintenance of same, so long as it stands, shall and does exist. Notwithstanding any provision herein to the contrary, any encroachment permitted herein shall not exceed one (1) foot.

#### ARTICLE VIII

##### 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/or charges now existing 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 provision which shall remain in full force and effect.

Section 3. Amendment.

(a) The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) 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 twenty (20) 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.

(b) Anything in this Section 3 to the contrary notwithstanding, the Developer reserves the right to amend all or part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration (FHA) and further amend, with the approval of the Federal Housing Administration, if then in existence, to the extent requested by any other Federal or State agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration. Any such amendment shall be affected by the recordation, by the Developer of a Certificate of Amendment duly signed by an authorized officer thereof acknowledged, specifying the Federal or State agency requesting the amendment, setting forth the amendatory language requested by such agency and verifying that FHA approval has been secured if the agency is then in existence. Recordation of such a Certificate shall be deemed conclusive proof of the agency's request for such an amendment, and such Certificate, when recorded, shall be binding upon the Property and all persons having an interest in the Property. Except as provided in this Section 3, the Developer shall not have any unilateral right to amend this Declaration.

Section 4. Annexation.

(a) Any additional residential property and Common Area may be annexed to the Property with the consent of two-thirds (2/3rds) of each class of members, except as provided in Article VIII 4(b) herein.

(b) Additional land within the area shown on the general plan of Park Place, as approved by the City Council, City of Mesa, Maricopa County, Arizona, as more fully

described in Exhibit 3 attached hereto and by this reference incorporated herein, may be annexed by Declarant or Developer or either of their successors in interest without the consent of Class A members at any time prior to March 11, 1981, provided that FHA and the VA determine that the annexation is in accordance with the general plan theretofore approved by them.

Section 5. Successors to Declarant. Any right reserved by Declarant herein is also hereby reserved to Declarant's successors or any entity designated by Declarant in writing. Such designation may be recorded in the office of the County Recorder of Maricopa County, Arizona.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Executed this 20 day of June, 1975.

TRANSAMERICA TITLE INSURANCE CO.,  
a California corporation

By Richard Brittain  
Its Trust Officer  
(Declarant)

APPROVED AS TO FORM:

KAISER AETNA, a  
California general partnership

By [Signature]  
Its [Signature]  
(Developer)