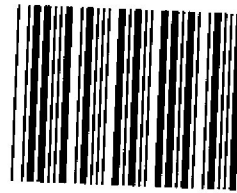


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Tempe, Arizona 85282



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CATHY 1 OF 1

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DAYBREAK VISTA II

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THIS DOCUMENT IS BEING RE-RECORDED FOR THE
PURPOSE OF MAKING VARIOUS CHANGES AS NOTED.

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ATTN: Walter Venberg
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Suite 300
Tempe, Arizona 85282

COVENANTS, CONDITIONS AND RESTRICTIONS FOR
DAYBREAK VISTA II

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property (the "Property") in the County of Maricopa, State of Arizona, which is more particularly described as:

SEE EXHIBIT "A"

WHEREAS, Declarant desires to form a non-profit corporation (hereinafter the "Association") to

1) Acquire, construct, operate manage and maintain the Common Areas;

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2) Establish, levy, collect and disburse assessments and other charges imposed hereunder; and

3) As agent and representative of Members of the Association and residents of Daybreak Vista II, administer and enforce all provisions hereof and enforce the use and other restrictions imposed on the Property.

NOW THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, stipulations, reservations, covenants and conditions, which are for the purpose of establishing a uniform plan for development, improvement, maintenance, and sales of the Property and to insure the protection and preservation of such uniform plan, protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Architectural Control Committee" shall mean and refer to the Architectural Control Committee provided for in Article IV hereof.

Section 2. "Areas of Association Responsibility" shall mean (a) all common areas; (b) all land and the improvements situated within the boundaries of a lot which the Association acknowledges in a recorded document as land which is to be improved, maintained, repaired and replaced by the Association; and (c) all real property and the improvements situated thereon within the properties located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance repair and replacement of such areas.

Section 3. "Association" shall mean and refer to ~~Daybreak Vista II~~ Homeowner's Association, an Arizona non-profit corporation, its successors and assigns. *Waterford*

Section 4. "Board" shall mean the Board of Directors of the Association. Unofficial Document

Section 5. "Bylaws" shall mean the Bylaws of the Association, as the same may from time to time be amended or supplemented.

Section 6. "Commencement Date" is hereby defined as the later of the date on which the Common Areas are deeded to the Association or the Improvements to the Common Areas are completed.

Section 7. "Common Areas" shall mean and refer to those certain areas designated on the plat as Tracts A through Tract C inclusive, the improvements and appurtenances and any other areas brought within the jurisdiction of the Association, as otherwise provided herein.

Section 8. "Declarant" shall mean and refer to Fidelity National Title Insurance Company, an Arizona corporation, as Trustee of Trust No. 9177, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 9. "Exterior Elevation" shall mean and refer to the exterior roof and wall surfaces and accessories thereto of the improvements constructed upon each Lot.

Section 10. "Front Yard" shall mean and refer to that portion of each Lot between the public street (and sidewalks) and the improvements thereon and/or walls or fences located on the Lot.

Section 11. "Lot" or "Lots" shall mean and refer to any plot of land shown upon any recorded subdivision map or plat of the Properties.

Section 12. "Member" shall mean a person who is a Member of the Association.

Section 13. "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 as a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation or a lessee. Owner shall include a purchaser under a contract for the conveyance of real property pursuant to A.R.S. S33-741 et seq. Owner shall not include a purchaser under a Purchase Contract and Receipt, Escrow Instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to A.R.S. S33-801 et seq., the trustor shall be deemed to be the owner. In the case of the Lots, the fee simple title of which is vested in a trustee pursuant to a subdivision trust agreement, the beneficiary of any such trust or its assigns who is in title possession of the trust property shall be deemed to be the owner.

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Section 14. "Project Documents" shall mean this Declaration, the Articles, the Bylaws and any rules adopted by the Board or the Architectural Control Committee.

Section 15. "Properties" shall mean and refer to that certain real property hereinbefore described, subject to the reservations set forth herein and/or in any subdivision maps or plats.

Section 16. "Property" shall mean the real property described on Exhibit "A" attached hereto and by this reference incorporated herewith.

ARTICLE II

RESERVATIONS, EXCEPTION AND DEDICATIONS

Section 1. Recorded Subdivision Plat of the Properties. The recorded subdivision plat of the Properties dedicated for use as such, subject to the limitations set forth therein, the streets and easements shown thereon, and further establish restrictions applicable to the Properties, including without limitation certain minimum and maximum set back requirements, and all dedications, limitations, restrictions and reservations shown on the recorded plat of the Subdivision and are incorporated herein and made a part hereof, as is more fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said Properties or any part thereof whether specifically referred to therein or not.

Section 2. Title Subject to Easements and Dedications. It is expressly agreed and understood that the title conveyed by Declarant to any of the Properties by contract, deed or other conveyance shall be subject to any easements affecting same for roadways or drainage, water, gas, storm sewer, electric lighting, purposes, and any dedications associated therewith. The Owners of the respective Lots shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property which shall be utilized for or service other Lots, but each owner shall have an easement in and to the aforesaid facilities as shall be necessary for use, maintenance and enjoyment of his Lot.

Section 3. Owners Easements of Enjoyment. Subject to the rights and easements granted to the Declarant in Section 6 of this Article II, every Member and any person residing with such Member shall have the 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:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area; provided, however, that any such dedication, conveyance, transfer or encumbrance will require the consent of not less than two-thirds of the Class A Members of the Association and the consent of the Class B Member;

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit such access to such portions of the Common Area, such as landscaped areas not intended for use by the Owners, lessees or guests;

(iii) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area if such Owner is more than 15 days delinquent in the