

Courtesy recording

Caridase Owens - RECORDER
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PIONEER TITLE AGENCY INC SR 12.88

3013222

87/12/1998 10:50A

When Recorded, Return To:

Bluegreen West Corporation
7373 N. Scottsdale Road, Suite D-217
Scottsdale, AZ 85253



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Amended and Restated Declaration of Covenants, Conditions, and Restrictions

Mogollon Ranch

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, BLUEGREEN WEST CORPORATION, a Delaware corporation (referred to herein as Declarant), is the owner of the following described subdivided real property, situated within the County of Coconino, State of Arizona:

Lots 1 through 83, inclusive, MOGOLLON RANCH Unit One, together with any easements serving same, according to the final plat of record in the Office of the Coconino County Recorder in Case 7 of Maps, pages 90, 90A, and 90B.

WHEREAS, Declarant has recorded a Declaration of Covenants, Conditions, and Restrictions for Mogollon Ranch (Declaration) as Instrument No. 3001590, of Official Records of the County of Coconino, State of Arizona.

WHEREAS, Declarant owns in excess of 66 1/3% of the Lots in the Mogollon Ranch Unit One and desires to amend and restate the Declaration pursuant to the provisions of Article 7, subparagraph D therein, Declarant hereby declares as follows:

WHEREAS, BLUEGREEN WEST CORPORATION will convey the said properties, subject to certain easements, covenants, conditions, and restrictions, reservations, liens, and charges as hereinafter set forth,

NOW THEREFORE, BLUEGREEN WEST CORPORATION hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property, and all of which are hereby declared to be for the benefit of all of the property described herein and the owners thereof, their heirs, successors, grantees, and assigns.

1. Purpose

The purpose of these covenants, conditions, and restrictions is to assure the use of the property for attractive residential purposes (as set forth herein) only, and securing to each Lot Owner the full benefit and enjoyment of his or her Lot and home in furtherance of a common plan.

2. Definitions

As used herein, the following terms have the following meanings:

A. The Architectural Control Committee means the committee provided for in Part 5 of this Declaration.

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B. The Association means Mogollon Ranch Property Owners Association as referred to in Part 3 of this Declaration.

C. *Bona Fide First Mortgage* means any Realty Mortgage or Deed of Trust made in good faith and for value and properly executed and recorded so as to create a lien on any Lot or Lots that is prior to the lien of any other Realty Mortgage or Deed of Trust.

D. *Building Envelope* means the area of the Lot remaining after excluding 35 feet inward from all side Lot lines, 75 feet inward from road right-of-ways, and 50 feet inward from back Lot lines. Exceptions to these set backs may be granted in the discretion of the Architectural Control Committee.

E. *Declaration* means this Declaration of Covenants, Conditions, and Restrictions for Mogollon Ranch.

F. The Lot or Lots means the Lots in the subdivision either individually or collectively, as the case may be.

G. *Mobile Home* means a moveable or portable unit for residential purposes constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence.

H. *Owner* shall mean and refer to the record Owner, whether one or more persons or entities, of fee or equitable or beneficial title to any Lot. Owner shall include the purchaser of a Lot under an executory contract for purchase. The foregoing definition does not include persons or entities who hold an interest in any Lot as security for the performance of an obligation.

I. The Plat means the plat of record referred to above, as may hereafter be amended.

J. The Property means the real property described above, or any part thereof.

K. The Wastewater System includes the wastewater treatment equipment, effluent disposal equipment and fields, effluent overflow vault, and related meters, valves, and piping.

L. The Wastewater System Inspections means inspection of an onsite wastewater system by a person or entity recognized by Coconino County Department of Health as qualified to inspect, test, and certify the operational compliance of the system with Coconino County standards.

M. The Well includes the water well, casing, equipment, equipment shed, pump, storage tanks, pressure storage tanks, related valves, and the water pipelines to the Lots to be served, and the easements upon which the Well and pipelines are located.

N. Well Maintenance includes monitoring, testing, normal maintenance and repairs, and replacement of the Wells.

3. Property Owners Association

A. There is hereby created the Mogollon Ranch Property Owners Association. The purpose of the Association is to: maintain the interior roadways including snow removal; provide for Well Maintenance; provide for Wastewater System Inspections; maintain the Forest Service easement roadways, of which the Association is the beneficiary, to the level required by such easement grant; provide insurance coverage for public liability in the amount of not less than \$1,000,000 for the Forest Service easement roadways; maintain entryways and landscaping, including replacements therefore; maintain any subdivision perimeter fences, (but not individual Lot Owner fences); maintain any tract of land deeded from the Declarant for common area use in perpetuity, if any; maintain any water storage facilities required by Coconino County for use in fire protection; maintain all emergency access and egress roadways; and act as the Architectural Control Committee in accordance with the provisions of Part 5 of this Declaration.

B. Each and every Lot Owner, in accepting a deed for any Lot, whether or not it shall be so expressed in such deed or contract, automatically becomes a member of the Association, and agrees to be bound by such reasonable rules and regulations as may, from time to time, be established by the Association. Membership shall be appurtenant and may not be separated from ownership of the Lot. The rights and obligations of an Owner and member in the Association shall not be assigned,

transferred, pledged, conveyed, or alienated in any way, except upon transfer of ownership of such Lot, whether by intestate succession, testamentary disposition, foreclosure of a mortgage, or such other legal processes as now in effect or as may be hereafter established pursuant to the laws of the State of Arizona. The Association shall be operated and conducted on a strictly cooperative and non-profit basis. Each Lot Owner as a member shall have such voting rights as set forth in this Declaration.

C. In furtherance of its purposes, which are generally as set forth above, the Association shall provide necessary and appropriate action for the maintenance, repair, replacement, and management of the all roadways, Forest Service easements, Wells, and other property and facilities referred to in Paragraph A above, and for the annual inspection of all operational Wastewater Systems. The Association shall have the right to enter upon a Lot, if reasonably necessary, in order to accomplish its purpose.

D. The Association shall have the power to borrow and encumber its assets and, in all respects, shall have the powers necessary to carry out its purposes, whether or not specifically set forth herein, including the power to enter into contracts with third parties to perform all or part of its functions, and to hire its own employees to do so.

E. Each Lot Owner is obligated to pay: (i) regular assessments for Wastewater System Inspections, Well Maintenance, normal road maintenance, inspection, repair, snow removal, and reserves for the all roads, property, and facilities referred to on Paragraph A above, along with Association insurance and operating costs and, (ii) special assessments for capital improvements with such assessments to be established by the Association. The regular and any special assessments, late payment, penalties, and charges, if any, together with interest (all as set by the Association), costs, and reasonable attorneys fees, shall be a lien on the Lot. Each Lot Owner shall be personally responsible for his or her share of assessments imposed by the Association. This personal obligation for delinquent assessments shall not pass to the Owner's successor in title, unless expressly assumed by such successor; however, the obligation to pay same shall be a continuing lien on the Lot, except for the provisions of Paragraph L below, relating to mortgages.

F. The Association shall, on an annual basis, make a determination as to the estimated costs of Wastewater System Inspections, Well Maintenance, and the repair, maintenance, and replacement of roads and easements, the entryway improvements, landscaping, the common areas, and perimeter fences, if any, including any reserves necessary for future capital expenditures and maintenance. Assessments shall be charged to each Owner on a uniform per Lot basis, except that the cost of annual Wastewater System Inspection shall be an additional assessment for those Lot owners who have an operational Wastewater System. The assessments may be collected on a monthly, quarterly, or annual basis, or any combination of same as determined by the Association.

G. Each Owner shall be responsible to pay the regular assessment commencing on the first day of the month following the date of recordation of the deed or purchase contract wherein the Owner acquired legal, beneficial, or equitable title to the Lot. The Declarant shall not be responsible for assessments on any Lot it owns. However, Declarant shall provide labor, material, or monies in sufficient amounts, not to exceed the amount of the normal Lot assessment for each Lot it owns, if necessary in Declarant's judgement to properly fulfill the Association's maintenance and repair responsibilities. Regular assessments shall be set by the Association on an annual calendar year basis. The initial regular assessment shall be Two Hundred Fifty Dollars (\$250) per year exclusive of a Wastewater System Inspection fee. The Lot Owner acquiring his or her interest from Declarant during the calendar year shall be obligated at closing for the pro rata portion of the annual assessment. The Association shall fix the amount of the regular assessment at least thirty (30) days prior to the end of the calendar year. Written notice of the assessment shall be sent to every Owner and the payment due date shall be established by the Association.

H. In addition to the regular assessment as set forth above, there will be a one time initial Special Assessment collected at the close of escrow of each Lot in the amount of \$100 for

Association reserves. The Association may set special assessments if the Association determines by two-third's ownership vote that such is necessary to meet the primary purposes of the Association.

I. All sums assessed by the Association chargeable to a Lot, but unpaid, shall constitute a lien on such Lot prior to all other liens excepting only ad valorem liens in favor of a governmental assessing unit or special assessment district. The Association lien may be foreclosed by the Association in a like manner as a foreclosure of a real property deed of trust. The Association shall have the power to bid on the delinquent Lot at a foreclosure sale, and acquire, hold, lease, encumber, and convey same. A suit to recover a money judgment for unpaid assessments and charges shall be maintainable by the Association without foreclosing or waiving the lien securing same.

J. The total number of votes in the Association shall be on the basis of one (1) vote per Lot, provided the Declarant shall have three (3) votes for each Lot it owns. The total number of Lots and therefore the total number of votes may be increased from time to time by expansion of the subdivision as evidenced by a Supplemental Declaration, incorporating this Declaration, executed and recorded by Declarant. Unless otherwise specifically provided herein, all Association matters shall be determined by a majority vote. If more than one party is the Owner of a Lot, there must be unanimous agreement among those who own an interest in the Lot as to how to cast that Lot's vote, otherwise, that vote shall not be counted.

K. The Association shall have the power to adopt Bylaws and to appoint its officers and directors, as well as promulgate reasonable regulations relating to the matters within its purpose.

L. Where the holder of a first mortgage of record obtains title to the Lot as a result of foreclosure, or deed in lieu of foreclosure, of said first mortgage, such acquirer of title, its successors, and assigns, shall not be liable for the unpaid Association assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. As used in this Declaration, the term "mortgage" shall include "deed of trust" and "mortgagee" shall include the "beneficiary" under a deed of trust. Such acquirer shall be responsible, as any Owner, for assessments accruing subsequent to the acquisition.

M. In the event the Association determines that any Lot Owner has not complied with the provisions of this Declaration, then the Association may, at its option, give written notice to the Owner of the complained of conditions. The Owner shall correct same or, if not readily correctable within fifteen (15) days after notice from the Association, the Owner shall submit corrective plans proposing a remedy to the complained of conditions within fifteen days after notice from the Association. The Association shall approve or disapprove any plans submitted by the Owner and set forth a reasonable time for correction of the complained of condition. In the event such condition is not corrected according to the approved plans, within the allotted time, the Association shall have the right to undertake to remedy such complained of condition or violation. The cost thereof shall be deemed to be an assessment to such Owner and enforceable by the Association as any other unpaid assessment. The Association is hereby granted the right of entry on the affected Lot to correct the complained of condition or violation.

4. Expansion

Declarant reserves the right and expressly intends to comparably develop adjacent land and incorporate said adjacent land within this Declaration by specific reference thereto. Any such expansion to be included within this Declaration shall be subject to the terms and conditions of this Declaration, but may include reasonable variances.

5. Architectural and Design Control

No Lot leveling, clearing, excavation, grading, or tree cutting may take place and no residence, outbuilding, fence, or wall, or other improvement or installation, shall be constructed, erected, placed, or altered on any Lot, until the plans and specifications therefore, showing the nature, kind, shape, materials,



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floor plans, and locations shall have been submitted to and approved by the Architectural Control Committee ("Committee") and a copy thereof is finally approved and lodged permanently with the Committee. The Committee shall have the right to refuse to approve any such plans or specifications which are not suitable or desirable in its opinion for aesthetic reasons, or not in accordance with the overall theme of Mogollon Ranch, or for any other reason, and in so passing upon such plans and specifications it shall have the right to take into consideration the suitability of the proposed building or other structure, and the material which is to be used, the site upon which it is proposed to be erected, the harmony with the surroundings, and the effect of the proposed structure on the outlook from adjacent or neighboring property. All plans must comply with and be approved by the Coconino County Building and Planning Department.

A. *Membership.* The Committee shall be initially composed of three (3) members appointed by Declarant, its successors and assigns. When seventy five percent (75%) of the Lots (including any additional phases incorporated into this Declaration) have been sold by the Declarant, then the function of the Committee shall be assigned to the Association. Prior to assignment to the Association, the Declarant shall appoint and remove the Committee members. The members of the Committee shall not be entitled to any compensation for services performed pursuant to this covenant, but shall be entitled to reimbursement for reasonable costs expended, as approved by the Association. The members of the Committee shall incur no liability from their acts or omissions.

B. *Procedure.* The Committee shall employ an architectural firm to review plans and a review fee of \$400 will be payable with each application for approval of development plans on a Lot. The Committee's approval or disapproval as required in this Declaration shall be in writing. Actions of the Committee shall be by the majority vote of the members of the Committee. All decisions of the Committee shall be final and no Lot Owner or other party shall have recourse against the Committee or its designated representatives, or its members, for its disapproval or refusal to approve. In the event the Committee or its designated representative fails to approve or disapprove within thirty (30) days after the plans and specifications have been submitted to it, the plans and specifications shall be deemed to have been approved.

6. **General Restrictions Applicable to all Lots**

A. *Land Use.* No building other than one single family dwelling residence and a private garage, a guest house, servants quarters, barn, stable, corral and other outbuildings as approved by the Architectural Control Committee, and as are in compliance with applicable zoning and building codes, shall be erected, maintained, placed, or permitted on any Lot. No improvements including any tree cutting or Lot clearing may commence without the prior approval of the Committee. A guest house may not be completed prior to the completion of the single family residential structure. Any guest house, which may include a kitchen, or servants quarters, shall be for the use of bona fide guests or servants, as the case may be, or the occupants of the main residence, or members of such occupants family, and shall not be rented or leased separate from the main residence.

No manufacturing or commercial enterprise, or enterprises of any kind for profit shall be maintained upon, in front of, or in connection with any Lot, nor shall any Lot be used for other than strictly single family residential use.

No residential Lot shall be resubdivided into smaller Lots than those Lots shown or delineated on the original recorded plat, but two or more Lots may be used as one building site.

Camping is not permitted on the property. However, with prior written approval of the Committee, Lot Owners and their guests, but not contractors and laborers, may use a portable camper or RV during the construction of an approved residence. The Committee may revoke the permission to camp under this paragraph if in its discretion the camping creates a nuisance or adverse effect on neighboring property.

B. *Completion Time.* Construction of a residence shall be completed no later than ten (10) months after the issuance of a building permit by the appropriate regulatory body.



C. *Minimum Sizes.* Any single family residential structure or approved improvement placed upon any Lot shall be constructed from new material or its equivalent. It may be approved by the Committee. Any residential structure, excluding a guest house, shall contain a minimum of 1,500 square feet of living area, exclusive of carport, garage, open porches, and patio.

D. *Location.* No improvements shall be erected or placed outside of the Building Envelope, without approval of the Architectural Control Committee, and no Wastewater System, barn, or corrals may be placed within 100 feet of a Well. All use restrictions contained in this Declaration are in addition to zoning and other land use regulations adopted by governmental authorities and the more restrictive must be followed. This provision is intended to maintain maximum separation between homes. Exceptions may be made by the Architectural Control Committee on narrow Lots and Lots with special topographical features.

E. *Mobile Homes.* Mobile homes shall not be permitted to be placed on any Lot, permanently or temporarily.

F. *Temporary Structures.* No structure of a temporary character, motor home, recreational vehicle, or travel trailer, regardless of its nature or form, shall be used as a residence at any time.

G. *Entryway and Landscaping.* The entryway, other landscaped common areas, perimeter subdivision fences (but not individual Lot Owner's fences), and the Lot owned by the Association shall be the sole responsibility of the Association to maintain, repair, and reconstruct as set forth in Part 3 of this Declaration.

H. *Signs.* No sign or billboard used as an advertising or promotional device, except those used in the sale of Lots in the subdivision by Declarant, shall be placed on any Lot or portion thereof; however, a neatly painted For Sale or For Rent sign not to exceed 2' x 2' in size may be placed on a Lot after the Declarant has sold all Lots including any Lots added by expansion of this declaration.

I. *Public Events.* No public events shall be held at the subdivision.

J. *Animals, Horses, and Gardens.* No animals, livestock, reptiles, poultry or other species of any kind, except horses (Animals), shall be kept within any Lot except for ordinary and usual domestic dogs, cats, fish, and birds which are kept as household pets. No Animals shall be kept for commercial purposes or in unreasonable numbers. Animals must be kept within an enclosure, or on a leash, or otherwise controlled by a responsible person. The Association shall have the right to prohibit the presence of any Animal which is found to be a nuisance to other Owners.

Horses shall be allowed to the extent allowed by zoning and only for the personal use and enjoyment of Lot Owners. All horses shall be kept so as to avoid creation of a hazard or nuisance to Owners or other Lots. All horses shall be confined within pipe fenced corrals of adequate height and strength. Horse corrals and barns shall at all times be kept clean, with all manure removed on a regular basis. No corrals or horses may be placed within 100 feet of a well.

No commercial gardening is permitted. Gardens larger than a total of 3,000 sq. ft. must obtain approval from the Architectural Control Committee.

K. *Garbage and Refuse Disposal.* No Lot shall be used or maintained as a dumping ground for rubbish or hazardous or toxic waste or materials. Trash, garbage, or other waste shall be kept in sanitary conditions either in a below ground level container or within an approved screened area and removed at least weekly. All equipment for the storage of such material shall be kept in a clean and sanitary condition. No outdoor burning of trash is permitted on any Lot. All owners are to maintain their Lot in accordance with the adopted fire prevention and fuel reduction plan, and shall encourage the concept of defensible space.

L. *Wastewater Systems.* All individual Wastewater Systems shall be constructed to Coconino County Health Department standards, shall not be installed within 100 feet of any Well, and shall not be installed without first obtaining the Health Department Sewage Disposal Permit. All Wastewater Systems shall be kept so as not to disturb surrounding neighbors and Property with offensive odors and sights, and located so as to minimize grading and disturbance to existing

vegetation. The Association shall provide for annual Wastewater System Inspections of each Wastewater System per Coconino County regulations. If inspection determines a Wastewater System is not operating in compliance with county regulations, the Lot Owner will be so notified and required to bring the system promptly into compliance. If, after the time provided in the notice, the condition is not corrected, the Association may enter the property to correct the problem at the Lot Owner's expense, or shut off the Well water supply until the system is brought into compliance.

M. *Protective Screening.* Any clotheslines, equipment, garbage containers, service areas, wood piles, storage tanks, and storage areas shall be kept screened by adequate planting, fencing, or by existing trees and shrubs so as to conceal them from view from neighboring Lots or streets. All proposed screening or fencing must be approved by the Architectural Control Committee.

N. *Parking and Storage.* Boats, boat trailers, camping trailers, campers, travel trailers, recreational vehicles, and sporting or camping equipment shall be screened from the view from neighboring Lots or streets, and shall be stored or parked within the building envelope unless otherwise approved by the Architectural Control Committee. On-street parking is prohibited.

O. *Antennas.* No antenna or satellite dish shall be installed in a manner that will disturb the surrounding neighbors or Property. The placement of any antenna except as provided below, must have the Architectural Control Committee approval before it is placed on the Lot. The Architectural Control Committee shall have the final decision on a dispute regarding a Lot Owner's antenna or satellite dish and what effect it has on the surrounding neighbors and whether it is a visual detriment to the Property. A normal TV antenna not higher than six (6) feet above the highest peak of the roof, and a ground mounted satellite dish installed within the building envelope and screened from view from the street, as referred to in paragraphs D and M above, shall be permitted by the Architectural Control Committee.

P. *Nuisances.* No Lot Owner shall place or maintain any animate or inanimate object upon any Lot so as to create a nuisance to the Owners of the neighboring Lots. The operation of vehicles or motors of any type without mufflers is prohibited. All terrain type vehicles, off road motorcycles, and snow mobiles shall be operated only within an Owner's Lot and are prohibited from interior roads, and access easement roads. Such off road vehicles may use the trail easement only to access the forest and only at speeds of less than 10 mph. No firearms may be discharged on any area of the Property.

Q. *Spark Arresters, Roof Materials, and Sprinkler Systems.* Fireplaces are required to have appropriate spark arrester equipment. All roofs shall be constructed of fire resistant material. Owners are encouraged to install sprinkler systems.

R. *Street Address.* All Lot Owners shall post address numbers on each residence at least four inches in height and such address numbers must be visible from the street.

S. *Driveways.* All driveways shall be at least 10 feet in driving surface width and any driveway exceeding 150 feet in length shall have a looped turn around to accommodate fire apparatus.

T. *Fire Management.* All Owners shall maintain their property in accordance with the adapted fire prevention and fuel reduction plan, and agree to implement the concept of defensible space.

7. Wells, Water Use, and Water Charges

A. *Undivided Interest in Wells.* The Owners of the Lots served by a Well shall own the Well as equal tenants in common so that each of the Lots is irrevocably coupled with a pro rata undivided interest in the Well that serves the Lots. No undivided interest in a Well shall be severed from the Lot to which it is irrevocably coupled. Any conveyance, encumbrance, lien, alienation, or devise of a Lot shall also convey, encumber, alienate, devise, or be a lien upon the undivided interest in the Well, whether it expressly provides so or not.

An Owner's rights in a Well are exercisable only through the Association, and all such rights

are assigned to the Association. An Owner may not perform any of the functions delegated to the Association, including but not limited to matters involving Well Maintenance or the delivery of water.

B. *Rights to Water.* Each Lot and its Owner shall be entitled to an equal share of the water delivered to and by the Well which serves that Lot, subject to all bylaws, rules, and regulations of the Association, and any applicable laws and governmental rules and regulations. The right of an Owner to water shall always be subject to and conditioned upon payment of the Association assessments and water use charges.

C. *Liability for Expense, Performance of Obligations.* The Association shall, through third party contractors, provide that each Well is maintained in good condition and repair at all times. Each Well shall be separately accounted for and maintained under separate but identical forms of contract, not to exceed one year in term, subject to renewal, with only those variations necessary in the contract form due to the number of Lots served by the Well. There shall be an individual billing from the company(s) providing Well Maintenance to the Association for each Well.

Each Lot Owner shall be liable, whether or not actually using water, for the payment of an equal share of the Well Maintenance cost of the Well which serves the Owner's Lot, in proportion to the total lots served by the Well. The Association shall have a right to create a reserve for each Well to defray future maintenance obligations. Such expense(s) shall be included in the annual regular Association assessment charged to each Lot Owner.

A Lot Owner in default of his assessments by more than thirty (30) days loses the right to water and all rights appurtenant to his ownership with respect to water delivery. Such rights shall not be reinstated until payment of such delinquent assessment, together with interest, has been made upon and accepted by the Association. The Association may, in an individual case, for good cause shown, enlarge the time period to cure a delinquency.

D. *Limitations on the Use of Water.* Water delivered by the Wells shall only be used as the Association may prescribe without discrimination, and further may be used by the Lot Owner only for domestic use involving the Owner's lot. No water shall be sold or used elsewhere or used for other than domestic use, which use is inclusive of non-commercial home gardens and watering of animals in accordance with this Declaration.

E. *Water Use Charges.* Each Owner shall be liable for his pro rata share of the electrical charges incurred to pump water to his Lot from the Well serving his Lot. Such charges shall be divided equally among those Lot Owners who have tied into the water system. Water use charges shall be billed quarterly by the Association.

8. General Provisions

A. *Real Covenants.* The covenants, conditions, and restrictions, reservations, and servitudes contained in this Declaration shall run with the land and shall be binding upon all persons owning, leasing, subleasing, or occupying any Lot or Lots after the date on which this instrument shall have been recorded in the Office of the County Recorder of Coconino County, State of Arizona. The covenants, conditions, and restrictions, reservations, and servitudes may be enforced by the Owner or lessee of any Lot, by the holder of a Bona Fide First Mortgage on any Lot, by the Association, any one or more of said persons acting jointly; provided, however, that any breach by reasons thereof shall not defeat or adversely affect the lien of a Bona Fide First Mortgage upon any Lot, but each and all said covenants, conditions, and restrictions, reservations, and servitudes may be enjoined, abated, or remedied by appropriate proceedings, notwithstanding the lien or existence of any such Bona Fide First Mortgage. All instruments of conveyance or assignment of any interest in all or any part of the Property shall refer to this instrument and shall be subject to the covenants, conditions, and restrictions, reservations, and servitudes herein contained as fully as though this instrument were therein set forth in full; provided, however, that the terms and conditions of this



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instrument shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not.

B. *Declarant's Exemption.* Nothing herein shall be construed as prohibiting Declarant from maintaining a sales office on any Lot it owns, or engaging in any activities which Declarant deems appropriate to its sales program, for so long as Declarant owns any Lots.

C. *Invalidation.* Invalidation of any of these covenants, conditions, and restrictions, reservations, and servitudes by judgment, court order, or otherwise shall in no way affect the validity of any of the other provisions of this Declaration, all of which shall remain in full force and effect.

D. *Amendments.* This Declaration may not be amended without Declarant's approval, while Declarant owns any Lots. This Declaration may be amended, subject to Declarant approval, during the period ending ten (10) years immediately following the date of the recording of this Declaration only by instrument executed by the Owners of at least seventy percent (70%) of the Lots, included or incorporated within this Declaration, and such amendment shall not be effective until the recording of such amendment instrument. Thereafter, this Declaration may be amended by instrument executed by the Owners of at least two-thirds (2/3) of the Lots, included or incorporated within this Declaration, and such amendment shall not be effective until the recording of such amendment instrument.

E. *Term.* The covenants, conditions, and restrictions, and servitudes of this Declaration, as the same may hereafter be amended in accordance with the terms hereof, shall remain in full force and effect for a term of twenty (20) years from and after the date of recording of this Declaration, from which time they shall be automatically renewed and extended for successive periods of ten (10) years each, unless terminated as of the end of such initial twenty (20) years or any successive ten (10) years within the six (6) month period immediately preceding the expiration of such initial period, or any renewal period, by an instrument of termination executed and acknowledged by the Owners of at least two-thirds (2/3) of the Lots, included or incorporated within this Declaration, and recorded in the Office of the Coconino County Recorder.

IN WITNESS WHEREOF, BLUEGREEN WEST CORPORATION, a Delaware corporation, has executed this Declaration of Covenants, Conditions, and Restrictions by the undersigned this 7th day of July, 1999.

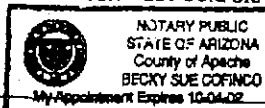
BLUEGREEN WEST CORPORATION
a Delaware corporation

By: Peter M. Gooding
Peter M. Gooding
Executive Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged before me this 7th day of JULY, 1999 by Peter M. Gooding, as Executive Vice President of BLUEGREEN WEST CORPORATION, a Delaware corporation.

Becky Sue Coffino
Notary Public



10/04/02
My Commission Expires

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instrument shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not.

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BLUEGREEN WEST CORPORATION
a Delaware corporation

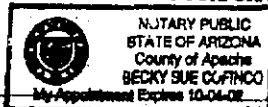
By: Peter M. Gooding

Peter M. Gooding
Executive Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged before me this 7th day of JULY, 1999 by Peter M. Gooding, as Executive Vice President of BLUEGREEN WEST CORPORATION, a Delaware corporation.

Becky Sue Cofano
Notary Public



10/04/02
My Commission Expires