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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

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THIS DECLARATION made on this 13th day of December, 1976, by W. J. SMALL and HAZEL M. SMALL as owners, and THE BRIARWOOD CORPORATION, an Arizona Corporation, as Lessees under that certain lease dated December 13, 1976 which was recorded at the office of the County Recorder of Maricopa County, Arizona, on December 22, 1976 Docket 11998, pages 293-341 hereinafter referred to as "DECLARANT";

W I T N E S S E T H:

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

BRIARWOOD III - A SUB-DIVISION

according to the plat thereof of record in the office of the County Recorder of Maricopa County, Arizona in Book 187 of Maps, page 20 thereof; and

WHEREAS, Declarant has subdivided the premises, by means of one or more subdivisions, into 47 single family residential lots and, in addition to such lots, to use a part of the premises for streets and waterways and other common purposes; and

WHEREAS, Declarant will convey the premises subject to certain protective covenants, conditions, easements, restrictions, reservations, liens and charges as hereinafter set forth:

3 NOW, THEREFORE, Declarant hereby declares that the premises shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the premises, 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, and, with respect to certain provisions hereof, for the benefit of Lincscott Hotel Corporation, an Arizona corporation (hereinafter referred to as "Lincscott"), the Hilton Casitas Council of Co-owners, and the Hilton Casitas Owners as defined in Article I, Section 8 hereof, their respective heirs, personal representatives, successors, grantees and assigns. These easements, covenants, restrictions and conditions shall run with the premises and shall be binding on all parties having or acquiring any right, title or interest in the premises or any part thereof. This Declaration hereby establishes a general plan for the individual ownership of real property estates, consisting of a lot and the residences and improvements contained thereon, and the ownership by a non-profit association of all of the remaining property, both real and personal, which is hereinafter defined and referred to as the "common area" of "common elements". Every conveyance of any of such residences, or premises, or any part thereof, shall be and is subject to these easements, covenants, conditions and restrictions, as follows:

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DEFINITIONS

Section 1. "Association" shall mean and refer to The Briarwood III Homeowners Association, Inc., a non-profit Arizona corporation, its successors and assigns.

Section 2. "Properties" or "premises" 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 3. "Common area" and "common elements" shall by synonomous and shall mean all property leased by the Association for the common use and enjoyment of the members of the Association, including, but not limited to, all of the premises except the land designated as a "lot", "unit" or "residence", and except streets dedicated to the public and accepted by a governmental agency. The common elements shall also include all recreational facilities, community facilities, if any, trees, pavements, streets, pipes, wires, conduits and other public utility lines.

Section 4. "Lot", "Unit" and "residence" shall be synonomous and shall mean and refer to a separately designated and legally described freehold estate consisting of any plot of land and the improvements thereon shown upon any recorded subdivision map of the premises, with the exception of the common area.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable (or legal title if equitable title has merged) of any lot which is part of the premises.

Section 7. "Declarant" shall mean and refer to The Briarwood Corporation, an Arizona corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from Declarant for the purpose of development.

Section 8. "The Hilton Casitas" shall mean that certain condominium development known as Hilton Casitas, according to the Plat thereof recorded in Book 149 of Maps, page 50, records of Maricopa County, Arizona. The "Hilton Casitas Owners" shall mean and include each and every record owner of any Casita as defined in Sections 1.2 and 1.8 of the Declaration of Horizontal Property Regime for Hilton Casitas dated May 18, 1972 and recorded in Docket 9448, pages 790 to 846 inclusive, records of Maricopa County, Arizona. "The Hilton Casitas Council of Co-owners" shall mean the council of Co-owners described in the aforesaid Declaration.

ARTICLE II

MEMBERSHIP IN THE ASSOCIATION

Section 1. - Membership. Membership in the Association

shall be limited to owners of residences constructed or planned to be constructed on the premises or on any duly annexed property (except for Declarant, which shall be a member as provided in Article III Hereinbelow). An owner of a residence shall automatically, upon becoming the owner of a residence, become a member of the Association, and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Ownership of a residence shall be the sole qualification and criteria for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Section 2 - Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a residence and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the owner of any residence should fail or refuse to transfer the membership registered in his name to the purchaser of such residence, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

Section 3 - Additional Provisions. The record owner of each residence shall be entitled to one membership in the Association, for himself and his family residing in the residence, which membership shall be subject to all of the provisions of this Declaration and the Association's Articles of Incorporation, By-Laws, and any Management Agreement, as now in effect or as duly adopted and amended.

ARTICLE III

VOTING RIGHTS

Section 1 - Classes of Voting Membership. The association shall have two classes of voting membership.

Class A. Class A members shall be all those owners as defined in Section 6 of Article I. A Class A member shall be entitled to one vote for each lot owned by such member.

Class B. The Class B member shall be Declarant. The Class B member shall be entitled to four (4) votes for each lot in which Declarant holds the interest required for membership by Article III.

Section 2 - Suspension of Voting Rights. In the event any owner shall be in arrears in the payment of any amounts due under any of the provisions of this Declaration for a period of

fifteen (15) days, or shall be in default in the performance of any of the terms of this Declaration for a period of fifteen (15) days, such owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought current and all default remedied.

ARTICLE IV

BOARD OF DIRECTORS

Section 1 - Management. The control and management of the affairs of the Association shall be vested in a Board of Directors of three (3) directors elected by members of the Association, and each director shall serve until his successor shall be duly elected and qualified.

Section 2 - Terms. With respect to the first Board of Directors of the Association, one director shall be elected for a term of one (1) year, one director for a term of two (2) years, and one director for a term of three (3) years. Thereafter, each director elected at annual meeting of the members of the Association shall be elected for a term of three (3) years.

Section 3 - Vacancies. Any vacancy in the office of a director elected by the members of the Association shall be filled by vote of the majority of the directors present at a properly called meeting of the Board of Directors, and the director elected to fill such a vacancy shall complete the term of office of the director so replaced.

ARTICLE V

PROPERTY RIGHTS

Section 1 - Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the common elements, and such easement shall be appurtenant to and shall pass with the title to each and every lot. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all owners of the lots and is necessary for the protection of such owners. Such right and easement of enjoyment shall be subject to reasonable rules and regulations as from time to time are promulgated by the Board of Directors of the Association, and which may include, but shall not be limited to:

- (a) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common areas and facilities and, in aid thereof, to mortgage such property, with the rights of such mortgage in such property to be subordinate

to the rights of the owners hereunder; and

(b) The right of the Association to dedicate or transfer all or any part of the common areas to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by the Board of Directors of the Association, except for Tract B,

Section 2 - Delegation of Enjoyment. Any member may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the common areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3 - Conveyance of Common Elements. Declarant hereby covenants for itself, its heirs and assigns, that it will convey its leasehold interest to the common elements to the Association.

ARTICLE VI

ASSESSMENTS

Section 1 - Creation of Lien and Personal Obligations of Assessments. Declarant, for each lot owned within the premises, hereby covenants, and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, 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 fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, 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 such interest, costs and reasonable attorneys' 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, but such personal obligation and liability of the owner shall not be deemed to limit or discharge the charge on the land and the continuing lien upon the lot against which such assessment is made. No owner shall escape liability for the assessments which fell due while he was the owner by non-use of the properties or transfer or abandonment of his lot. The personal obligation shall not pass to an owner's successor in title unless it is expressly assumed by such successor or unless prior to such transfer of title, as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed in writing with the County Recorder or other appropriate governmental agency.

Section 2 - Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the general benefit, recreation, health, safety and welfare of the owners of the properties. Such purposes shall

include but not be limited to, and the Association's rights and powers shall include (in addition to the rights and powers set forth elsewhere in this Declaration and in the Association's Articles of Incorporation and By-Laws) the improvement, construction, repair, maintenance and management of the common areas and the improvements and facilities devoted to this purpose and related to the use and enjoyment of the common areas and of the residences situated on the properties.

Section 3 - Establishment and Basis of Annual Assessments. Declarant, and the owner of each lot, for themselves, their heirs, executors, administrators, successors and assigns, covenant and agree that each lot shall be subject to an annual assessment in an amount to be determined by the Association. The annual assessment to be prorated among the members of the Association shall be established annually by the Board of Directors of the Association. Such annual assessment shall be established after the Board of Directors has met with the person, persons, corporation or entity managing the development of the premises for the Association, hereinafter referred to as the "Management", and has examined the annual report to be prepared by the Management and the annual audit prepared by a certified public accountant.

Section 4 - Annual Report. An annual report shall be prepared by the Management or by such other party as the Board of Directors shall order. The exact date for the annual report shall be determined by the Board of Directors. The Board of Directors shall meet with the Management or other party preparing the annual report within forty (40) days following the preparation of same to discuss and set the annual assessment for the current year.

Section 5 - Commencement of Assessments. At the time of the conveyance or occupancy (whichever occurs first) of each residence and from time to time thereafter the Association's Board of Directors or the designated representative thereof shall notify the owner or owners of each residence as to the amount of the estimated annual assessment and shall each month collect for each residence one-twelfth (1/12) of such residence's proportional share of such annual assessment. The assessments on a residence will commence at the time of the first conveyance or first occupancy of a residence, whichever occurs first, or in any event, shall commence as to all residences on the first day of the month following the conveyance of the common areas to the Association.

Section 6 - Maximum Annual Assessment. Until the end of the first fiscal year immediately following the conveyance of the first lot to an owner, the maximum annual assessment per lot shall be Six Hundred Dollars and 00/100--(600.00).

Section 7 - Increase Pursuant to Consumers Price Index. From and after the end of the first fiscal year following the conveyance of the first lot to an owner, the maximum annual assessment referred to in Section 6 hereof may be increased by the Board of Directors of the Association from year to year in direct

proportion to the increase, if any, of the Consumer Price Index, United States Department of Labor, Bureau of Labor Statistics - United States City Average for Urban Wage Earners and Clerical Workers - All Items (1967 Base =100). The amount of the increase for each year shall be computed by multiplying the maximum annual assessment referred to in Section 6 hereof by the ratio which is equal to (a) the Index number for the most recent month for which such Index was published over (b) the existing Index number of 173.3 for the month of October, 1976.

Section 8 - Increase Pursuant to Vote. The maximum annual assessment referred to in Section 6 hereof may, at any time after the end of the first fiscal year, be increased for the next succeeding two (2) years above that established by the Consumer Price Index formula referred to in Section 7 hereof, and at the end of each such period of two (2) years, for each succeeding period of two (2) years, by the affirmative vote of at least two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose, at which a quorum is present. A quorum shall be determined in accordance with the provisions of Section 10 below.

Section 9 - Special Assessments. In addition to any other assessments authorized by this Declaration, the Association's Board of Directors shall have the right to levy in any assessment year a special assessment, applicable to that year only, for the purpose of providing for the construction of additional recreational and other common facilities, unexpected repairs, or the alteration, replacement, demolition or removal of existing recreational and other common facilities, from time to time, as in its discretion appears to be in the best interests of the Association. Any such alteration, demolition, removal, construction, improvements or additions, increasing the owners' annual assessment over the then maximum limitation, shall be authorized by an affirmative vote of at least two-thirds (2/3) of the Board of Directors at a duly called meeting at which a quorum is present, and ratified and approved by the affirmative vote of at least two-thirds (2/3) of the members present at a duly called meeting at which a quorum is present.

Section 10 - Quorum. For the purposes of Sections 8 and 9 of this Article VI, the presence at a duly called meeting 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 forthcoming at any meeting, another meeting may be called by sending written notice to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting, and the required quorum at any such 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 11 - 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. Each lot's prorated share of any assessments shall be 1/47 of the total amount of such assessment. In the event the actual number of lots is

not 47, the denominator in the fraction "1/47" shall, wherever it appears in the Declaration, be changed to reflect the correct number of lots.

Section 12 - Effect of Nonpayment of Assessments.

Each owner, for himself, his heirs, executors, administrators, successors and assigns, covenants and agrees that any assessments not paid when due shall be deemed delinquent, shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and that the owner shall be liable for the assessment and interest thereon together with all costs incurred by the Association in collecting the same, including reasonable attorneys' fees. The assessment lien provided for in Section 1 hereof shall secure the amount of such interest, costs and attorneys' fees.

Section 13 - Remedies for Enforcement. The Association,

as the agent and representative of the owners, shall have the right to enforce the provisions of this Declaration. If the owner of any lot fails to pay an assessment when due, the Association may enforce the payment of the assessment, or enforce the lien against the lot, by taking either or both of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law against the owner personally obligated to pay the assessment;

(b) Foreclose the assessment lien against the lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the lot may be redeemed after foreclosure sale as provided by law. The Association, acting on behalf of the owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Anything hereinabove to the contrary notwithstanding, the remedies above set forth for the Association are not exclusive, and the Association may take any and all other remedies available to it at law or in equity.

Section 14 - Subordination of Assessment Lien. The

assessment lien shall be junior and subordinate to the lien of any first realty mortgage against a lot, and foreclosure of the assessment lien shall not affect or impair the lien of any such first realty mortgage. The foreclosure of a first realty mortgage against a lot or acceptance of a deed in lieu of foreclosure shall not affect or impair the assessment lien. Any first mortgage foreclosure purchaser, or grantee taking by deed in lieu of foreclosure of any first realty mortgage, shall take the lot free of the assessment lien for all charges that have accrued up to the date of issuance of a sheriff's deed or deed given in lieu of foreclosure, but shall take subject to the assessment

lien for all assessments and charges accruing subsequent to the issuance of a sheriff's deed or deed given in lieu of foreclosure.

Section 15 - Exempt Property. The following property, and owners thereof, shall be exempt from the assessment provided for in this Declaration.

(a) All property dedicated to or owned by the State of Arizona, Maricopa County, or any political subdivision thereof, for as long as such state, county or political subdivision is the owner thereof;

(b) All property owned by a charitable or non-profit organization exempted from payment of real property taxes by the laws of the State of Arizona, for as long as such entity is the owner thereof; and

(c) The common areas.

No owner of a residence may exempt himself from liability for his contribution toward the assessments by waiver of the use or enjoyment of any of the common elements or by the abandonment of his residence.

The Hilton Casitas, The Hilton Casitas Council of Co-owners, the Hilton Casitas Owners and Lincscott shall be exempt from any assessment provided for in this Declaration.

ARTICLE VII

PARTY WALLS

The rights and duties of the owners of lots within the premises with respect to party walls shall be governed by the following:

Section 1 - Definition. Each wall, including a patio wall, which is constructed as part of the original construction of the residential multi-family structure, any part of which is placed on the dividing line between separate lots, shall constitute a party wall. With respect to any such wall, each of the adjoining owners shall assume the burdens and be entitled to the benefits of these restrictive covenants, and to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

Section 2 - Damage by Adjoining Owner. In the event any such party wall is damaged or destroyed through the act of one adjoining owner, or any of his guests, tenants, licensees, agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining owner of the full use and enjoyment of such wall, then the first of such owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the adjoining owner.

Section 3 - Damage by Other Cause. In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

Section 4 - Negligent Exposure to Elements. Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes any party wall to be exposed to the element shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5 - Contribution Appurtenant to Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6 - Alterations. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to or rebuild his residence in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining owner.

Section 7 - Arbitration. In the event of a dispute between owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted by the Association, then the matter shall be submitted to three arbitrators, one chosen by each of the owners and the third by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

Section 8 - Binding Effect. The covenants and agreements contained in this Article shall be binding upon the heirs, executors, administrators, successors and assigns of the owners, but no person shall be liable for any act or omission respecting the covenants herein contained except such as took place while such person was an owner.

ARTICLE VIII

ARCHITECTURAL CONTROL

No exterior additions, or alterations to any building, nor changes in fences, hedges, walls and other structures shall be commenced, erected or maintained until the plans and specification and approximate cost of same shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the property by an architectural committee composed of the Board of Directors of the Association, or by a representative designated by the Board of Directors. The members of such committee shall not be entitled

to compensation for services performed pursuant to this Article. In the event such Board, or its designated representative, fails to approve or disapprove such design and location within thirty (30) days after such 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.

ARTICLE IX

ASSOCIATION'S MAINTENANCE

The Association, or its duly delegated representative, shall maintain and otherwise manage all property up to the exterior building lines and patio enclosures, and such additional maintenance as the Board of Directors shall from time to time determine to be in the best interest of the Association and the owners. The Board of Directors shall use a reasonably high standard of care in providing for the repair, management and maintenance of such property, so that the premises will reflect a high pride of ownership. All maintenance and repair of the individual residence shall be the sole obligation and expense of the individual owner, except to the extent the exterior maintenance and repair is provided by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the common elements including, but not limited to, recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representative. The powers, rights and duties of the Association and Board of Directors shall be as contained in this Declaration, and as may be adopted in its Articles of Incorporation and By-Laws not inconsistent herewith. In the event that the need for maintenance or repair is caused through the willful or negligent act of an owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE X

OWNERS' MAINTENANCE

Each owner shall be responsible for the upkeep and maintenance of his residence, patio and all other areas, features or parts of his residence and property not otherwise maintained by the Association. All fixtures and equipment installed within a residence, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a residence, shall be maintained and kept in repair by the owner thereof. Termite control shall be the responsibility of the owner. An owner shall do no act nor any work that will impair the structural soundness or integrity of the multi-family building or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other residences or their owners.

ARTICLE XI

DAMAGE OR DESTRUCTION OF PROPERTY

Section 1 - Damage to Common Elements. In the event any common element, carport or storage facility is damaged or destroyed by an owner or any of his guests, tenants, licensees, agents or members of his family, such owner does hereby irrevocable authorize the Association to repair such damage in a good workmanlike manner in conformance with the original plans and specifications thereof. The owner shall then repay the Association in the amount actually expended for such repairs.

Section 2 - Damage to Residences. In the event any residence is damaged or destroyed by an owner or any of his guests, tenants, licensee, agents or members of his family, such owner shall, within thirty (30) days from the date of the occurrence of the damage or destruction, repair and rebuild the exterior of such residence and any damage to adjacent residences or property in a good workmanlike manner in conformance with the original plans and specifications used in the construction of such residences. In the event such owner refuses or fails to so repair and rebuild any and all such damage within such thirty (30) day period, the Association by and through its Board of Directors, is hereby irrevocable authorized by such owner to repair and rebuild any such residence and/or adjacent property in a good workmanlike manner in conformance with the original plans and specifications of the residences. The owner shall then repay the Association in the amount actually expended for such repairs.

Section 3 - Lien; Enforcement. Each residence owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon such owner's lot and residence and shall continue to be such lien until fully paid, with such charges to bear interest from the date of delinquency at the rate of ten percent (10%) per annum. The amount of principal and interest owed by such owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona. Each such owner, by his acceptance of a deed to a lot and residence, hereby expressly vests in the Association or its agents 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, and such owner hereby expressly grants to the Association a power of sale in connection with such lien.

Section 4 - Insurance. Nothing contained in this Article XI shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

Section 5 - Arbitration. In the event of a dispute between an owner and the Board of Directors of the Association with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then upon written request of the owner addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association or its Board of Directors. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by the Board of Directors, one chosen by the owner, and these two arbitrators shall then choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then the third arbitrator shall be chosen by any Judge of the Superior Court of Maricopa County, Arizona. A determination by any two of the three arbitrators shall be binding upon the owner and the Association, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then such other party shall have the right and power to choose both arbitrators.

ARTICLE XII

INSURANCE

Section 1 - Casualty Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the buildings, including all residences, unless the owners thereof have supplied proof of adequate insurance coverage to the Board of Directors' complete satisfaction, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard. Such insurance may include coverage against vandalism.

Section 2 - Liability Insurance. The Association's Board of Directors, or its duly authorized agent, also shall have the authority to and shall obtain a broad form of public liability insurance in such amounts as the Association determines necessary covering all common elements and all acts, omissions to act and negligence of the Association, its employees and agents.

Section 3 - Insurance Premiums. Premiums for all such insurance, except on the individual residences, shall be common expenses and included as part of the assessments under Article VI hereof. All such insurance coverage obtained by the Association's Board of Directors shall be written in the name of the Board of Directors as trustee for each of the residence owners. Insurance on individual residences obtained by such residence owners may be written in the name of the individual owners. Premiums for insurance obtained by the Board of Directors on such individual residences shall not be part of the common expense, but shall be an expense of the specific residence or residences so covered and debt owed by the owner, and shall be collectible by any lawful procedure permitted by the laws of the State of Arizona. In addition, if such debt owed by an owner is not paid within twenty (20) days after notice of such debt, such amount shall automatically become a lien upon such owner's lot and

residence and shall continue to be such lien until fully paid. This lien shall be subordinate to the lien of any first mortgagee and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments.

Section 4 - Other Insurance. In addition to the aforesaid insurance required to be carried by the owners and/or the Association, any owner may, if he wishes, at his own expense, insure his own residence for his own benefit and carry any and all other insurance he deems advisable. It shall be the individual responsibility of each owner at his own expense to provide, as he sees fit, homeowners liability insurance, theft and other insurance covering personal property damage and loss.

Section 5 - Repair by Association. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association's Board of Directors, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with an agreement by such bank or institution that such funds may be withdrawn only by a signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall contract with any licensed contractor, who shall be required to provide a full performance and payment bond, for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all residential owners of the damaged building to make up any deficiency for repair or rebuilding of the common elements not a physical part of a residential unit. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and owners as their interest may then appear. Such payments shall be made to all such owners and their mortgagees in proportion to their percentage interests.

Section 6 - Repair by Owners. In the event of damage or destruction by fire or other casualty to any residence, carport, storage area or other property covered by insurance written in the name of an individual owner, such owner shall, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of the carport and storage area and the exterior of the residence in a good workmanlike manner in conformance with the original plans and specifications of such residence. In the event such owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the residence and carport and storage area within thirty (30) days, the Association, by and through its Board of Directors, is hereby irrevocably authorized by such owner to repair and rebuild any such residence and/or carport and/or storage area in a good workmanlike manner in conformance with the original plans and specifications of the residences. The owner shall then repay the Association in the amount actually expended for such repairs.

ARTICLE XIII

USE RESTRICTIONS

Section 1 - Residential Use; Construction. The premises are hereby restricted to residential dwellings for residential use. All buildings or structures erected upon the premises shall be of new construction and no buildings or structures

shall be moved from other locations onto the premises. No subsequent building or structures other than residences shall be built on any lot where the builder theretofore programmed or constructed a residence. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

Section 2 - Builder's Facilities. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the builder of a major portion of the residences to maintain during the period of construction and sale of such residences, upon lots numbered 118 through 123 inclusive, on the Plat of Briarwood III as hereinabove described and not elsewhere upon the premises, such facilities as in the sole opinion of such builder may be reasonable required, convenient or incidental to the construction and sale of such residences, including, but without limitation, a business office, storage area, construction yards, signs model units and sales office.

Section 3 - Animals. 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 purposes.

Section 4 - Signs. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any residence or any resident thereof, or any of the Hilton Casitas owners. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the premises. The foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the builder, its agents and assigns, in furtherance of its powers and purposes as herein set forth, provided, however, the builder, its agents and assigns, shall erect no signs or billboards in such a manner as to obstruct or impair the view from the Hilton Casitas.

Section 5 - Unsightly Items. All clotheslines, equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring residences and streets. All rubbish, trash or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

Section 6 - Gardening. Except in the individual patio areas, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained, upon the lots except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or its designated representative.

Section 7 - Vehicles. No trucks, buses, trailers, boats, mobile homes or vehicles other than passenger automobiles shall be permitted on the lots other than in the course of making deliveries. This restriction shall not apply to authorized public and/or emergency vehicles, to equipment used during the course of construction or to boats, trailers or campers stored or parked wholly within garages designed for passenger vehicles.

Section 8 - Protection of the Hilton Casitas. All construction upon the premises shall be conducted in such a way as not to adversely affect the Hilton Casitas Owners. No structures higher than single-story residences shall be constructed

or maintained upon the lots numbered 106 through 134 on the Plat. No street or area lights shall be constructed or permitted upon the premises in excess of the minimum height permitted by ordinance, or shall be placed, constructed or maintained in such a way as to reflect into the Hilton Casitas. No street or area lights whatsoever shall be placed or permitted within Tract B. No structures, objects or landscaping of any kind shall be constructed or permitted to remain upon the premises which obstruct the view of Camelback Mountain from the Hilton Casitas. The height and design of the roofline of any structure constructed, reconstructed or remodeled upon lots numbered 106 and 128 on the Plat or any mechanical apparatus, antennae, or other objects on the roofs thereof, shall be fully and not unattractively screened.

Section 9 - Tract B Use; Buffer Zone. Tract B shown on the Plat shall be devoted and used as a landscaped and beautified area, and for no other purposes, except that all or part of Tract B may be used as a designated water retention area. Landscaping shall be placed and maintained on Tract B in such a manner as to screen the premises from the view of the Hilton Casitas and to preclude the use of Tract B as a playground, recreation area, or for other similar purposes. No structures or objects of any kind including without limitation picnic tables, playground equipment, benches, above-ground utility poles or other apparatus or storage sheds or enclosures other than natural landscaping and accompanying accouterments shall be permitted upon Tract B. A row of trees, of size and spacing adequate to screen any structures as may from time to time exist upon the lot numbered 128 on the Plat from the view of the Hilton Casitas, shall be placed and maintained adjacent to the north boundary of lot 128. The Association shall maintain the landscaping of Tract B in accordance with the provisions hereof including without limitation all necessary watering, fertilizing, trimming, mowing, replacing of dead or diseased plants, removal of fallen limbs and branches, and the like. The Association shall make assessments in accordance with the provisions of Article 6 hereof in such amounts as are necessary to maintain Tract B in accordance with the provisions of this section. In the event the Association fails to perform any acts required to be performed by it hereunder after thirty (30) days' written notice specifying the nature of such acts from Lincscott or the Hilton Casitas Owners or any of them, Lincscott or any Hilton Casitas Owner may perform or secure performance of such acts and collect the reasonable expenses incurred therefor from the Association.

Tract B shall be situated as shown on the Plat adjacent to the north boundary of the premises and shall have a minimum width of fifty feet, except that the width of Tract B shall be no less than forty-one (41) feet adjacent to the north boundary of the lot numbered 128 on the Plat, and twenty-five (25) feet adjacent to the northernmost point on the cul-de-sac at the east end of Citrus Way. Until such time as a permanent roadway is in existence from Scottsdale Road to the permanent entrance into Claremont Street as shown on the Plat, Citrus Way shall encroach no more than sixteen (16) feet into Tract B from the center line of 73rd Street to the west boundary of the premises. From and after the completion of such permanent roadway, Tract B shall be deemed to include all the property designated as Citrus Way on the Plat lying to the west of the west boundary of 73rd Street, and the provisions hereof applicable to Tract B shall be applicable thereto.

The property designated Citrus Way on the Plat shall be used as a roadway and for no other purpose (except such part of Citrus Way as may be later included in Tract B), and shall have a minimum width of Thirty (30) feet. Any residential units constructed or existing on the lots numbered 129 through 134 inclusive on the Plat shall face northward, and a front yard having a minimum depth of sixteen (16) feet shall be provided for and no structures

of any kind shall be constructed or permitted to remain within said front yard. No structures of any kind shall be constructed or permitted within the northerly five (5) feet of the lots numbered 106 and 128 on the Plat. All provisions of this Section also are applicable to the parcel designated Tract C on the Plat as if Tract C were a part of Tract B.

Section 10 - Common Elements. The common elements shall remain undivided, and, after the conveyance thereof to the Association, shall at all times be owned by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the common elements.

Section 11 - Antennas. Without prior written approval and the authorization of the Association's Board of Directors, no unusual exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements or structures to be located upon the premises, other than an antenna as commonly used in the community.

ARTICLE XIV

EASEMENTS

Section 1 - Utility Easement. There is hereby created a blanket easement upon, across, over and under the premises for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on the property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the residences. Notwithstanding anything to the contrary, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the premises except as initially programmed and approved by the major builder of the premises or as thereafter approved by such builder or the Association's Board of Directors. This easement shall in no way affect any other recorded easements on the premises.

Section 2 - Encroachments. Each residence and the common elements shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. A valid easement for such encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure is partially or totally destroyed, and then rebuilt, the owners agree that minor encroachments of parts of the adjacent residences or common elements due to construction shall be permitted and that a valid easement for such encroachments and the maintenance thereof shall exist.

ARTICLE XV

RIGHTS AND DUTIES OF FIRST MORTGAGEE

Notwithstanding anything to the contrary, and prevailing over any other provisions of this Declaration, of the Association's Articles of Incorporation or By-Laws, or any rules, regulations of management agreements, the following provisions shall apply to and benefit each holder of a first mortgage upon a residence:

(a) The first mortgagee shall not in any case of manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, rule, Association's Articles of Incorporation or By-Laws, or any management agreement, except for those matters which are enforceable by injunctive or other equitable actions, and except as hereinafter provided.

(b) During the pendency of any proceeding to foreclose a first mortgage, including any period of redemption, the first mortgagee (or any receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the owner of the mortgaged residence, including but not limited to the right to vote as a member of the Association to the exclusion of the owner's exercise of such rights and privileges.

(c) At such time as the first mortgagee shall become record owner of a lot and residence, such first mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any owner.

(d) The first mortgagee, or any other party acquiring title to a mortgaged residence unit through foreclosure suit or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged residence free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption. Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting owner of the respective residence to the Association, and the Board of Directors shall use reasonable efforts to collect the same from the owner even after he is no longer a member of the Association. There shall be a lien upon the interest of the first mortgagee or other party which acquires title to a mortgaged residence by foreclosure suit or by equivalent procedures for all assessments authorized by this Declaration which accrue and are assessed after the date the acquirer has acquired title to the residence free and clear of any right of redemption.

ARTICLE XVI

ADDITIONAL PREMISES

Section 1 - Requirements. From time to time the size of the premises may be increased, in the manner provided in Section 2 of this Article, by recording with the County Recorder of Maricopa County, Arizona, a supplement to this Declaration (hereinafter called "Supplemental Declaration"). The Supplemental Declaration shall be signed by the Board of Directors of the Association and the owner of record of additional land to be included within the premises and subjected to the covenants terms and conditions set forth in this Declaration. Each such Supplemental Declaration shall:

- (a) describe the land to be included as a part of the premises;
- (b) state that such land and the improvements thereon are expressly subjected to all of the covenants, terms and conditions set forth in this Declaration; and
- (c) state that the owner of such land, for and on behalf of his heirs, executors, administrators, successors and assigns, agrees that he shall be personally liable for the assessments imposed hereunder and shall be personally bound by all covenants, terms and conditions set forth in this Declaration.

Section 2 - Procedure. The owner of the land to be added to the premises shall present a petition to the Association's Board of Directors describing his land and requesting that his land be added to the premises and subjected to this Declaration. The Board of Directors shall act upon the petition within thirty (30) days after receipt thereof. If the Board of Directors decides to add the land described in the petition to the premises, the Board of Directors shall adopt a resolution to that effect, and as soon thereafter as may be practical, the Board of Directors shall prepare the necessary Supplemental Declaration. If the Board of Directors denies the request in the petition, the Board of Directors shall so notify the owner, and thereafter no further action by the Board of Directors shall be necessary. If the Board of Directors fails to render its decision within such thirty (30) day period, the petition automatically shall be deemed to have been rejected and the request therein denied.

ARTICLE XVII

REGRADING

Section 1 - Regrading. No regrading of lots or common areas shall be allowed without the written approval of the City engineer.

ARTICLE XVIII

GENERAL PROVISIONS

Section 1 - Binding Effect. The covenants, restrictions, reservations and conditions contained herein shall run

with the land and shall be binding upon all persons purchasing, leasing, subleasing or occupying any residence on the property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this Declaration has been recorded, these covenants, restrictions, reservations and conditions may be enforced by the Association or its Board of Directors, which shall have the right and duty to enforce the same and expend Association moneys in pursuance thereof, and also may be enforced by the owner of any residence or any one or more of such parties. Any breach of these covenants, restrictions, reservations and conditions shall be binding upon and effective against any owner of the premises, other than one whose title thereto is acquired by foreclosure of a mortgage and the sheriff's sale or any procedure or proceeding in lieu of foreclosure thereof. Any purchaser who acquires title, except through foreclosure of a mortgage and a sheriff's sale, shall take title to the premises subject to the lien hereof for all such charges pursuant to Articles VI and XI that have accrued hereof for all said charges that shall accrue subsequent to the date such purchaser takes title, and provided also that the breach of any of such covenants, restrictions, reservations and conditions may be enjoined, abated or relieved by appropriate proceedings, notwithstanding the lien or existence of any such mortgage. The personal obligation to pay the annual and special assessments as provided in Article VI of this Declaration shall not pass to a successor in title unless the obligation is expressly assumed by the successor in title or unless, prior to such transfer of title as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed in writing with the County Recorder or other appropriate governmental agency.

Section 2 - Reference to Declaration. All instruments of conveyance of any interest of all or any part of the residences shall contain reference to this Declaration and shall be subject to the covenants, conditions, reservations and restriction herein as fully as though the terms and conditions of this Declaration were therein set forth in full; provided, however, that the terms and conditions of this Declaration shall be binding upon all persons affected by this Declaration hereby whether or not express reference is made to this Declaration.

Section 3 - Enforcement. These covenants, conditions, reservations and restrictions may be enforced by the Association through its Board of Directors, the Declarant, and any owner of any lot within the properties. The provisions of Article V, Section 1(b), Article VI, Section 15, Article 13, Sections, 2, 4, 8 and 9, may be enforced by Lincscott, The Hilton Casitas Council of Co-owners, the Hilton Casitas Owners, or any of them. Violation of any one or more of the restrictions may be restrained or enforced by any court of competent jurisdiction and/or damages may be awarded against any such violator. Nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. In the event any such person employs an attorney or attorneys to enforce compliance with or specific performance of the terms and conditions of this Declaration, and prevails in such action, the owner or owners against whom the action is brought shall pay all attorneys' fees and costs incurred in connection with such action.

Section 4 - Equal Treatment of Owners. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any owner or owners in favor of the other owners.

Section 5 - Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs, sections or articles hereof shall not affect the remaining portions of this Declaration, or any part hereof, all of which are inserted conditionally on their being held valid in law. In the event that one or more of the phrases, sentences, clauses, paragraphs, sections or articles contained herein should be invalid or should operate to render this Declaration invalid, this Declaration shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections, article or articles had not been inserted. In the event that any provision of this Declaration appears to be violative of the Rule against Perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving incorporator of the Association, or twenty-one (21) years after the death of the last survivor of all of such incorporator's children or grandchildren who shall be living at the time this instrument is executed, whichever is the later.

Section 6 - Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 7 - Topical Headings. The marginal or topical headings of the articles and sections contained in this Declaration are for the convenience only and do not define, limit or construe the contents of such articles and sections of this Declaration.

Section 8 - Term; Amendment. These covenants, restrictions, reservations and conditions shall remain in full force and effect for a period of twenty (20) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked or amended by an instrument in writing, executed and acknowledged by the then owners of not less than three-fourths (3/4) of the residences, which instrument shall be recorded in the office of the Recorder for the County of Maricopa, State of Arizona, within ninety (90) days prior to the expiration of the initial effective period hereof or any ten (10) year extension. Following the expiration of the period of twenty (20) years from the date hereof, these covenants, conditions and restrictions may be amended at any time by an instrument signed by the then owners of not less than seventy-five percent (75%) of the residences. These covenants, conditions and restrictions may be amended during the first twenty (20) year period by an instrument signed by the then owners of not less than ninety percent (90%) of the residences. Notwithstanding the foregoing, no revocation, amendment, or election not to renew affecting the provisions of any Section hereof enforceable by Lincscott, the Hilton Casitas Council of Co-owners, and/or the Hilton Casitas Owners, shall be effective unless consented to in writing by Lincscott and the Hilton Casitas Council of Co-owners.

Section 9 - Rules and Regulations. The Association shall have the right to adopt rules and regulations, and amend, cancel, and adopt new rules and regulations, from time to time with respect to all aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, or the Articles of Incorporation or By-Laws of the Association.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first above written.

THE BRIARWOOD CORPORATION

By Robert Malouf
Robert Malouf, President

W. J. Small
W. J. Small

Richard Malouf
Richard Malouf, Vice-President

Hazel M. Small
Hazel M. Small

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this, the 15th day of December, 1976, before me the undersigned Notary Public, personally appeared W. J. SMALL and HAZEL M. SMALL, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires:

May 16, 1978

Robert H. Blackwell
Notary Public

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this, the 13th day of December, 1976, before me the undersigned Notary Public, personally appeared ROBERT MALOUF and RICHARD MALOUF, who acknowledged themselves to be the PRESIDENT and VICE-PRESIDENT of THE BRIARWOOD CORPORATION, an Arizona corporation, and that they as such officers and being authorized so to do executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires:

October 2, 1977

Martha E. Cappelli
Notary Public

DEC 24 1976 - 5 00

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss

I hereby certify that the within instrument was filed and recorded at request of
Minnesota Title Company

DEC 24 1976 5 00
in Docket 12003
on page 27-68

Witness my hand and official seal the day and year aforesaid.

Tom Freestone

County Recorder

By W. J. Small
Deputy Recorder