

Rec'd From Mike Gindberg 11/20/89

INDEXED & MICROFILMED

When recorded, return to:
FENNEMORE CRAIG
6991 E. Camelback Road, Suite A-201
Scottsdale, AZ 85251-2466
Attn: GTC



INSTRUMENT # 8925518
OFFICIAL RECORDS OF
YAVAPAI COUNTY
PATSY C. JENNEY
REQUEST OF:
FENNEMORE CRAIG
DATE: 07/13/89 TIME: 10:35
FEE: 5.00
BOOK 2165 PAGE 150 PAGES: 005

ACCESS AND ARBITRATION AGREEMENT

This access and arbitration agreement (the "Agreement") is made and entered into as of the 12 day of June, 1989, by and between the Mission Hills Homeowners Association, an Arizona non-profit corporation ("Homeowners"), and the Mission Hills Property Owners Association, an Arizona non-profit corporation ("Property Owners").

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RECITALS

A. Homeowners was incorporated to act as an association of condominium unit owners for real property in Prescott, Arizona, pursuant to that certain Declaration Establishing Mission Hills Condominium and Declaration of Covenants, Conditions and Restrictions (the "Declaration") recorded in the official records of Yavapai County, Arizona, on December 11, 1987, as Instrument No. 87-49001, in Book 1998 at page 887 and thereafter pursuant to that certain Amended and Restated Declaration Establishing Mission Hills Condominium and Declaration of Covenants, Conditions and Restrictions (the "Amended Declaration") recorded in the official records of Yavapai County, Arizona, on March 23, 1988, as Instrument No. 88-10124, in Book 2027 at page 836. The Declaration and the Amended Declaration may hereinafter be referred to collectively as the "Condominium Declaration." The condominium established by the Condominium Declaration will hereinafter be referred to as the Mission Hills Condominium.

B. Pursuant to the Condominium Declaration, Homeowners has been delegated the responsibility for protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Mission Hills Condominium, the assessment and payment of common expenses and other matters provided for in the Condominium Declaration and the Condominium Act of the State of Arizona.

C. Property Owners was incorporated to act as an association of lot owners for real property in Prescott, Arizona, pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Mission Hills Subdivision (the "Subdivision Declaration") recorded in the official records of Yavapai County, Arizona, on 10-14-89, 1989, as Instrument No. 89-21721, in Book 2157 at page 100-204. The residential subdivision described in and controlled by the Subdivision Declaration will hereinafter be referred to as the Mission Hills Subdivision.

D. Pursuant to the Subdivision Declaration, Property Owners has been delegated the responsibility for protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Mission Hills Subdivision, assessment and payment of common expenses, and ownership of Common Areas described in the Subdivision Declaration.

E. The Common Elements of the Mission Hills Condominium, as defined in the Condominium Declaration, include private roads (the "Private Roads") in Phases I and II of the condominium as depicted upon the plat of the condominium entitled "Replat Mission Hills Condominiums" recorded February 10, 1988, in the official records of Yavapai County, Arizona, in Book 26 at page 81.

F. The real property constituting the Mission Hills Subdivision and the real property constituting the Mission Hills Condominium were both owned entirely by the same entity before the Condominium Declaration and the Subdivision Declaration were recorded and were to be developed as one coordinated project. Consequently, access to the Mission Hills Subdivision from the nearest public road or highway is across the Private Roads of the Mission Hills Condominium. Similarly, the Condominium Declaration for the Mission Hills Condominium and the Subdivision Declaration for the Mission Hills Subdivision, as they were originally recorded by the developer of both projects, were essentially identical in order to cause the two projects to be as compatible as possible aesthetically, operationally, and in all other material respects.

G. Homeowners and Property Owners believe that it is in their best interests and in the best interests of their members to clarify the easement rights and maintenance responsibilities of Property Owners and its members with respect to the Private Roads. Homeowners and Property Owners also believe that establishment of a binding dispute resolution mechanism applicable to both associations and their members is desirable for the protection of property values, the enhancement of harmony, and the promotion of a common plan of development for the two properties and associations.

AGREEMENTS

Now, therefore, the undersigned parties hereby agree as follows:

Easement.

1. Homeowners hereby declares and confirms a perpetual easement (the "Easement") for ingress and egress over the Private Roads in favor of Property Owners and the Mission Hills Subdivision including, but not limited to, the members of Property Owners, their guests, invitees, employees and agents, the employees and agents of Property Owners, and vehicles providing governmental services to such individuals and property including, but not limited to, fire and police protection, refuse collection and emergency medical services.

2. As long as the Private Roads remain private, Homeowners shall be solely responsible for the maintenance, repair and replacement of the Private Roads as necessary or appropriate to keep them in good condition and repair but the costs of such maintenance, repair and replacement shall be divided between Homeowners and Property Owners so that the share of such costs allocated to Homeowners equals a fraction in which the numerator is the number of condominium units in the Mission Hills Condominium and the denominator is the total computed by adding the number of units in the Mission Hills Condominium and the number of lots in the Mission Hills Subdivision. The balance of such expenses shall be allocated to Property Owners.

3. Sums owed by Property Owners pursuant to this Agreement shall be due within 15 days following delivery by Homeowners to Property Owners of a request for payment and an explanation setting forth in reasonable detail the nature of the costs being reimbursed. Notwithstanding the foregoing, if exceptional expenses relating to the Private Roads are incurred because of the negligent, willful or intentional misuse of the Private Roads by Property Owners or anyone else using the Private Roads pursuant to this Easement, such expenses shall be borne by Property Owners and Homeowners shall have no obligation to seek damages or reimbursement from the individual(s) directly responsible for such additional expenses.

4. Any sums dues hereunder which are not paid when due shall bear interest from the due date until paid at the greater of (i) 18% per annum or (ii) the prime rate of interest announced by The Valley National Bank of Arizona plus 2% adjusted as and whenever said prime rate is adjusted.

Dispute Resolution.

5. Homeowners and Property Owners hereby establish a dispute resolution committee (the "Committee") consisting of not fewer than two nor more than six members, with half of the members coming from each association. The Committee shall initially consist of the following named individuals:

| NAME | ADDRESS |
|------------------------|---------------------------------------|
| <u>STUART L. RIDER</u> | <u>1000 ANSWORTH DR. PRESCOTT AZ.</u> |
| <u>HARLAN GRELHAUS</u> | <u>1000 ANSWORTH DR. PRESCOTT AZ.</u> |

6. Each association may select its representatives on the Committee as it deems appropriate in its sole discretion, and each Committee member shall serve at the pleasure of the association selecting him. Subject to the foregoing limitations, the size of the Committee may be expanded or contracted from time to time as the Committee members may decide by majority vote.

7. Homeowners and Property Owners hereby agree that the Committee shall have the power to enter binding decisions by majority vote on matters referred to the Committee which are within the Committee's responsibilities hereunder. Any decision by the Committee made pursuant to this Agreement shall be enforceable in the Superior Court of Arizona as though it were a binding decision in arbitration. In the event any dispute referred to the Committee cannot be determined by the Committee by majority vote, the matter may thereafter be referred by any Committee member to a neutral arbitrator selected by the presiding judge of the Superior Court in Yavapai County, with the costs of any such proceeding be borne by the association against which the arbitration award is entered unless otherwise expressly provided by the arbitrator.

8. The Committee shall be authorized to consider and determine any complaint by Homeowners or by Property Owners on its own behalf or on behalf of its members concerning the operation, administration, management, maintenance and repair of the Mission Hills Condominium and the Mission Hills Subdivision including, but not limited to, enforcement of the Condominium Declaration and the Subdivision Declaration, compliance with applicable requirements of governmental authorities, proposed additions to, deletions from or changes to the Condominium Declaration, the Subdivision Declaration, or the

Articles, Bylaws and rules and regulations of Homeowners and Property Owners, application of design, architectural and other aesthetic considerations, and the operation, maintenance and repair of the Private Roads.

9. Homeowners and Property Owners agree to pay the costs incurred by the Committee in the exercise of its authority hereunder including, but not limited to, administrative expenses and the fees of experts, advisors or consultants utilized by the Committee including reasonable attorneys' fees. The expenses of the Committee shall be divided equally between Homeowners and Property Owners unless the Committee directs otherwise by a majority vote in connection with its handling of any particular dispute or set of disputes.

General.

10. This Agreement shall run with and be appurtenant to the land and every part thereof and shall inure to the benefit of Property Owners and every owner of a Lot or other real property interest in the Mission Hills Subdivision and to the benefit of Homeowners and every owner of a Unit or other real property in the Mission Hills Condominium, as their interests may appear, and their heirs, personal representatives, successors and assigns.

11. In the event that any person entitled to the benefits of this Agreement brings a suit, action or arbitration proceeding for a default or to enforce or to declare his rights hereunder, the prevailing party in any such suit, action or arbitration proceeding shall be entitled to recover its costs and reasonable attorneys' fees.

Mission Hills Homeowners Association,
an Arizona non-profit corporation

By Ernest L. Lohr
Its pres -

Mission Hills Property Owners Association,
an Arizona non-profit corporation

By Ernest L. Lohr
Its pres -

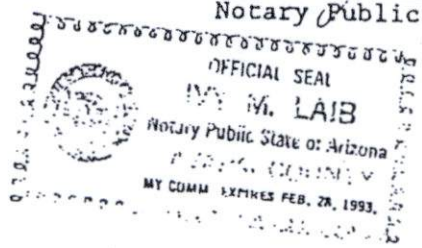
BOOK 2165 PAGE 153

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 12th day of June, 1989, by Stuart L. Rider, the President of the Mission Hills Homeowners Association, an Arizona non-profit corporation, on behalf thereof.

Ivy M. Laib
Notary Public

My commission expires:
Feb. 25, 1993

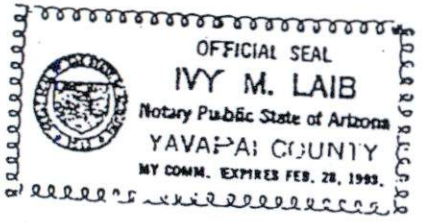


STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 12th day of June, 1989, by Stuart L. Rider, the President of the Mission Hills Property Owners Association, an Arizona non-profit corporation, on behalf thereof.

Ivy M. Laib
Notary Public

My commission expires:
Feb. 28, 1993



BOOK 2165 PAGE 154