

**DOBSON RANCH COMMON AREA
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth, by TRANSAMERICA TITLE COMPANY, an Arizona corporation, as Trustee, and as bare legal title holder, acting at the direction of AMERICAN CONTINENTAL HOMES, INC., an Ohio corporation, said Trustee hereinafter referred to as “Declarant”.

WITNESSETH:

WHEREAS, Declarant is the bare legal title holder of certain property in the City of Mesa, County of Maricopa, State of Arizona, which is more particularly described as:

Tracts A, B, C and E of Los Altos, a subdivision of the DOBSON RANCH, as it appears in the Books and Records of the County Recorder of Maricopa County, Arizona, Book 167 of Maps, Page 27.

NOW, THEREFORE, Declarant, at the direction of AMERICAN CONTINENTAL HOMES, INC., an Ohio corporation, developer of the above described properties, hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on and for the benefit of all parties having or acquiring any right, title or interest in the described properties or any part thereof, their heirs, successors or assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. “Association” shall mean and refer to THE DOBSON ASSOCIATION, INC., an Arizona Corporation, its successors and assigns.

Section 2. “Dobson Ranch” shall mean and refer to that development to be located in the City of Mesa, County of Maricopa, State of Arizona, as approved by the Mesa City Council. This development shall consist of Two Thousand (2,000) acres, more or less, and shall conform to the general plan and land use intensity as approved by the City Council of the City of Mesa, Arizona. The final development shall contain approximately Six Thousand (6,000) residential units, as set forth in the general plan and land use intensity as previously approved by the City Council of the City of Mesa, Arizona.

Section 3. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot, including any condominium unit, which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. “Properties” shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association, as provided in Article IX, Section 4 herein.

Section 5. “Common Area” shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Tracts A, B, C and E of Los Altos, a subdivision of the DOBSON RANCH, as it appears in the Books and Records of the County Recorder of Maricopa County, Arizona, Book 167 of Maps, Page 27.

Section 6. “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, which plot of land is sold and used for residential purposes and uses, or shall mean and refer to any condominium unit.

Section 7. “Declarant” shall mean and refer to TRANSAMERICA TITLE COMPANY, as Trustee, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. “Developer” shall mean and refer to any person or entity which is or may be subdividing and/or selling residential lots as a portion of Dobson Ranch, or constructing residential dwellings for sale to individual buyers.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners’ Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such

dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of owners agreeing to such dedication or transfer has been recorded.

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

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The Association shall have four (4) classes of voting membership:

Class A. Class A members shall be all owners, with the exception of the Developer and Declarant, of lots upon which are constructed a single family detached home, and shall be entitled to one vote for each site owned. When more than one person owns any site, all such persons shall be members. The vote for such site shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any site.

Class B. The Class B member shall be all owners, with the exception of the Developer and Declarant, of all townhouse lots and shall be entitled to one vote for each townhouse lot owned. When more that one person owns any townhouse lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any townhouse lot.

Class C. Class C members shall be all owners, with the exception of the Developer and

Declarant, of condominium units and shall be entitled to one vote for each condominium unit owned. When more than one person holds an interest in any condominium unit, all such persons shall be members. The vote for any such condominium unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any condominium unit.

Class D. The Class D member shall be the Developer or the Declarant and shall be entitled to three (3) votes for each lot or condominium unit owned. The Class D membership shall cease and be converted to Class A, Class B or Class C membership, whichever is appropriate, on the happening of either of the following events, whichever first occurs:

- (a) When the total votes outstanding in the Class A, Class B and Class C memberships equal the total votes outstanding in the Class D membership, or
- (b) The 1st day of June 1980.

Section 3. For the purposes of this Article only, and in order to pursue the development plan as set forth in the general plan of development as previously approved by the City of Mesa, FHA and VA, the Declarant shall be considered to be the owner of Six Thousand (6,000) lots, less the number of residential units or lots sold to individual purchasers.

Section 4. In the event the general plan of development is not pursued to completion and an affirmative statement of abandonment of any or all parts of the general plan previously approved by FHA/VA and the City of Mesa as recorded in the office of the County Recorder of Maricopa County, Arizona then, in such event the voting power of the Six Thousand (6,000) lots as set forth above shall be reduced by the number of lots so abandoned.

Section 5. In the event that Developer shall make a “constructive abandonment” of the general plan of development, then, and in such event, the voting power of the Six Thousand (6,000) lots as set forth above shall be reduced by the number of lots so constructively abandoned. For the purposes of this section, a “constructive abandonment” shall be deemed to have occurred when Developer shall not have made any construction starts for a period of one (1) year, or shall have made no substantial progress towards planning or preparation for continuation of the general plan of development. A constructive abandonment shall not occur if the lack of construction starts, planning or preparation shall be due to strikes, acts of God, war, riot, insurrection, or other acts which are beyond the control of the Developer.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney’s fees, shall be a charge on the lot or lots owned by the member of the Association and shall be a continuing lien upon his lot or lots against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney’s fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. In order to promote civic betterment and social improvements for the common good of this community, the assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of this development and for the improvements and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be one hundred eight dollars (\$108.00) per lot or condominium unit.

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

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of member who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or replacement of damaged or destroyed common elements, provided that any such assessment shall have the assent of

two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis, provided, however, that Developer may pay a scaled down rate which shall be not less than twenty-five percent (25%) of the fixed uniform rate for lots which are developed but unsold and unoccupied.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the

Association setting forth whether the assessments on a specified lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area of abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage, and be subordinated to the lien of assessments imposed by the covenants, conditions and restrictions relating to any lot or unit which is sold in a townhouse development or a condominium development with separate common area and a homeowners association. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

**ARTICLE V
USE OF WATER RIGHTS**

Section 1. Declarant is the owner of certain rights to water appropriated and appurtenant to the land hereinabove described. Declarant has the right to require the Salt River Valley Water Users' Association to deliver said water to the high point along the border of each quarter section within said land. Declarant has appointed, and does hereby appoint, the DOBSON ASSOCIATION, INC., an Arizona corporation, as and to be its agent for the

purpose of accepting delivery of all water to which Declarant is entitled, or any portion thereof, at a point to be designated by the DOBSON ASSOCIATION, INC., for use on land owned by said DOBSON ASSOCIATION, INC. This appointment of DOBSON ASSOCIATION, INC. as agent is made pursuant to an agreement between Declarant and the Salt River Valley Water Users' Association, among others, and may be completely or partially revoked by Declarant, or its successor or successors in accordance with the provisions of said agreement. In no event is this appointment to be deemed an assignment of Declarant's water rights, Declarant retaining the rights to all waters hereinbefore appropriated to beneficial use on Declarant's lands.

Section 2. Declarant is the owner of certain lands within the above described property which will be conveyed to the Association as the Common Area herein referred to. Water rights appurtenant to said land to be conveyed to said Association will then be owned by the Association, and the Association will be required to make such payments to such agencies and entities as are or may become due in order to protect and preserve said water appropriation. Included in such required payments shall be payment of the base assessment for such water by the Association, and payment of a single membership in the cost of maintaining the structures in which said water is to be transported, stored and used, as determined by the Board of Directors of the DOBSON ASSOCIATION, INC., and other expenses necessary in the upkeep and maintenance of said common areas.

**ARTICLE VI
MAINTENANCE OF COMMON AREAS**

The common areas owned by the Association shall be divided into a lake area used for water recreational purposes, and dry land common area appurtenant and adjacent to said lake. The Association shall provide maintenance upon such common areas as required, such maintenance to include, but not be limited to,

care of trees, shrubs, grass, walks, picnic facilities, dock areas, and other dry land uses appurtenant to said lake, as well as maintenance upon said lake area, including maintenance of the lake bed, walls, sides, and retarding of growth of water weeds, algae, and other water growth. The Association shall be responsible for including in the monthly assessment an amount sufficient to pay the base assessment for water used in said lake system, and for making the required periodic payments to the Salt River Valley Water Users' Association as billed to the Association by said Water Users' Association.

ARTICLE VII USE RESTRICTIONS

Said premises are hereby restricted to use related to water recreational activities, including boating in sail boats, row boats, canoes, paddle boats, and boats propelled by electric motor of 3 horsepower or less. Under no circumstances will propulsion be permitted by internal combustion engines of any size or horsepower rating. The above enumeration of types of boats which may be used on said premises is restrictive, and no use will be permitted which is not included therein. Swimming may be permitted in the Common Areas in designated areas, as determined by the Board of Directors of the DOBSON ASSOCIATION, INC. The dry land Common Areas next to and appurtenant to the lake area shall be used for appropriate dry land recreational uses, including but not limited to swimming, hiking, bicycles on designated bicycle paths, the launching of water vessels in designated areas, and other appropriate dry land uses appurtenant to said lake. The Common Areas appurtenant to said lake owned by the Association shall not be used for equestrian purposes, nor shall any motor driven vehicle be used upon Common Areas except in designated parking areas or as may be permitted by the Board of Directors of the Association. The foregoing restrictions shall not be deemed to be applicable to any Municipal policing authority or any security force employed by the Association for the purpose of protection of the public interest.

ARTICLE VIII EASEMENTS

There is hereby created a blanket easement upon, across, over and under the common area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, a master television antenna system and a cable television system. The City of Mesa, a municipal corporation, is hereby granted an easement to transport water owned by the City of Mesa across the Common Areas to be owned by the Association to land owned by the City of Mesa and to be used for recreational facilities. The City of Mesa will grant an easement to the Association across lands owned by the City for the purpose of transporting water, the rights of which are appurtenant to the property owned by the Declarant or its successors in title. By virtue of this easement it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary facilities and other necessary equipment on said property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on said premises except as initially programmed and approved by the Developer of that development known as DOBSON RANCH. This easement shall in no way affect any other recorded easements on said premises.

Each common element shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. Notwithstanding any provision herein to the contrary, any encroachment permitted herein shall not exceed one (1) foot.

For each lot which abuts said lake common area, there is also created an easement for the purpose of construction of a dock over the lake

common areas owned by the Association, said dock to be cantilevered and to extend no more than six (6) feet into said common area. The plans for said dock shall be submitted in advance of construction to the Board of Directors of the DOBSON ASSOCIATION, INC. for approval.

ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by an proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty-five (25) year period by an

instrument signed by not less than ninety percent (90%) of the lot owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the lot owners. Any amendment must be recorded.

Section 4. Annexation.

(a) Additional residential property and Common Area may be annexed to the properties with the consent of two-thirds (2/3) of each class of members, except as provided in Article IX, Section 4. (b) herein.

(b) Additional residential property and common area within the area shown on the general plan of Dobson Ranch, as approved by the City Council, City of Mesa, Maricopa Count, Arizona, may be annexed by Declarant without the consent of Class A, Class B or Class C members within seven (7) years of the date of this instrument, provided that the FHA and VA determine that the annexation is in accordance with the general plan heretofore approved by them.

Section 5. FHA/VA Approval. As long as there is a Class D membership, the following will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Conditions and Restrictions.

This is a true and correct copy of the CC&Rs for the Dobson Association, Inc., relative to common areas as recorded on October 23, 1973, Docket 10365, Pgs. 944-956, the county recorder's office in Maricopa County, Arizona, including any amendments thereto. Paragraph headings shown in bold type are not part of the original document but are used to improve the readability of the document.