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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CAREFREE MOUNTAIN ESTATES UNIT 1  
CAREFREE, ARIZONA

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CAREFREE MOUNTAIN ESTATES UNIT 1  
CAREFREE, ARIZONA

This Declaration of Covenants, Conditions and Restrictions (the "Community Declaration") is made and entered into as of the 6th day of January, 1993, by R.J.L. Properties, Inc., ("Declarant"). Defined terms appear throughout this Community Declaration with the initial letter of each word in the term capitalized.

Recitals

A. The Declaration provides for the establishment of a residential subdivision development to be known as Carefree Mountain Estates Unit 1.

B. Declarant is the record owner of that parcel of real property situated in Maricopa County, Arizona, described on Exhibit "A" attached hereto and made a part hereof (the "Parcel").

C. Declarant desires that the Property be developed as a residential subdivision. To that end, Declarant deems it desirable to establish covenants, conditions and restrictions upon the Property and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property.

D. Declarant desires and intends that the Owners, Mortgagees, beneficiaries and trustees under trust deeds, Occupants and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property.

NOW, THEREFORE, Declarant, for the purposes above set forth, declares that this shall constitute a community declaration. The Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights set forth herein. All of which shall run with the land and be binding upon the Property and any and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Community Association and each member of the Community Association.

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1. DEFINITIONS.

Unless the context clearly requires otherwise, defined terms used in this Community Declaration shall have the following meanings:

1.1. "Adjustment Date" is defined in Section 4.3.4.

1.2. "Adjustment Index" is defined in Section 4.3.4

1.3. "Articles" means the Articles of Incorporation of the Community Association, as they may be amended from time to time, or of any successor thereto.

1.4. "Assessments" shall include the following:

1.4.1. "Regular Assessment" means the amount which is to be paid by each Member of the Community Association as such Member's Proportionate Share of the Common Expenses of the Community Association, as provided in Section 4.3.

1.4.2. "Adjusted Regular Assessment" is defined in Section 4.3.4.

1.4.3. "Special Assessment" means a charge against a particular Member, an Owner or a Lot, directly attributable to such Member, Owner or Lot, to reimburse the Community Association for costs incurred in bringing the Member, the Owner or the Lot into compliance with the provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines, Community Association Rules or any other charge designated as a Special Assessment in this Community Declaration, the Articles, Bylaws, Community Design Guidelines or Community Association Rules, together with attorneys' fees and other charges payable by such Member or Owner pursuant to the provisions of this Community Declaration, as provided in Section 4.4.

1.4.4. "Reconstruction Assessment" means the amount which is to be paid by each Member representing such Member's Proportionate Share of the cost to the Community Association for reconstruction of any portion of the Common Areas, as provided in Section 6.

1.4.5. "Capital Improvement Assessment" means the amount which is to be paid by each Member or Owner representing such Member's or Owner's Proportionate Share of the cost to the Community Association for the installation or construction of any capital improvements on any of the Common Areas that the Community Association may from time to time authorize pursuant to the provisions of Section 4.5.

~~1.4.6.~~ "Base Assessment" is defined in Section 4.4.3.

1.4.7. "Beginning Index" is defined in Section 4.3.4(c).

1.5. "Board" means the Board of Directors of the Community Association.

1.6. "Bylaws" means the bylaws of the Community Association adopted in accordance with the Articles, as such Bylaws may be amended from time to time, or of any successor thereto.

1.7. "Common Areas" means Community Common Areas.

1.8. "Common Expenses" means the actual and estimated costs incurred by the Community Association in maintaining, operating, and administering the Property, including, but not strictly limited to, the following:

(a) the costs of maintenance, management, operation, repair and replacement of the Common Areas, and all other areas on the Property which are maintained by the Community Association;

(b) the costs of maintenance, repair and replacement of landscaping and any additions thereto, and the costs of painting and minor stucco repairs to be performed by the Community Association all as provided in Section 8.2 hereof;

(c) unpaid Assessments;

(d) the costs of management and administration of the Community Association, including, but not limited to, compensation paid by the Community Association to managers, accountants, attorneys and employees;

(e) the cost of utilities including, but not limited to, water, electricity, gas, sanitary sewer, trash pick-up and disposal, which are provided to the Community Association or the Property and are not individually metered or assessed by Lot or to be paid by the Association as a common expense of the Association, landscaping maintenance and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Community Association (other than such services, if any, that may be provided to individual Owners pursuant to separate contracts between the Owners and the Community Association);

(f) the costs of fire, casualty, liability, workmen's compensation and any other insurance obtained by the Community Association;

(g) if deemed appropriate by the Community Association, reasonable reserves for contingencies, replacements and other proper purposes to meet or defray the costs and expenses of routine maintenance, repairs and replacement of those parts of the Property which must be maintained, repaired, or replaced by the Community Association on a periodic basis;



(h) the costs of bonding the members of the Board, the President, any professional managing agent or any other person handling the funds of the Community Association;

(i) taxes paid by the Community Association;

(j) amounts paid by the Community Association for discharge of any lien or encumbrance levied against any property or improvements of the Community Association;

(k) the costs incurred by committees established by the Board or the President;

(l) subject to Section 4.3.4. hereof, the costs of security guards, and operation of guard gates and/or key gates at entrances to the Property. If providing such guard gate and/or key gate facilities and services are approved by the Members as set forth in Section 9.16 hereof, and any other security systems or services installed, operated or contracted for by the Community Association; and

(m) other expenses incurred by the Community Association for any reason whatsoever in connection with the Common Areas (excepting reconstruction costs and capital improvements as otherwise provided herein), or the costs of any other item or items designated by, or to be provided or performed by the Community Association pursuant to this Community Declaration, the Articles, Bylaws, Community Design Guidelines, Community Association Rules, or in furtherance of the purposes of the Community Association or in the discharge of any duties or powers of the Community Association.

1.9. "Community Association" means The Carefree Mountain Estates Community Association, an Arizona nonprofit corporation, its successors and assigns.

1.10. "Community Association Rules" means the rules and regulations adopted by the Community Association pursuant to Section 2.10.

1.11. "Community Common Areas" means all real property and the improvements or amenities thereon which may from time to time be owned, leased or enjoyed under an easement, license or similar permissive arrangement by the Community Association or otherwise held for the common use and enjoyment of the Members or Owners by the Community Association.

1.12. "Community Declaration" means this instrument, as from time to time amended.

1.13. "Community Design Guidelines" means the rules, regulations, restrictions, architectural standards and design guidelines from time to time adopted by the Community Design Review Committee.

1.14. "Community Design Review Committee" means the committee provided for in Section 10 of this Community Declaration.

1.15. "Declarant" means the above recited Declarant, its successors and any Person to whom Declarant's rights hereunder are hereafter assigned by recorded instrument.

1.16. "Default Rate of Interest" means an annual rate of interest equal to the prime rate as announced by Veterans Administration Home Loans (as the rate charged to its largest and most credit worthy customers) from time to time while interest is accruing (with interest hereunder adjusted as and when said prime rate is adjusted) plus 4% per annum, but never less than 18% (so that if during any periods while interest is accruing said prime rate plus 4% per annum is less than 18%, interest shall accrue during said periods at 18% per annum). Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said periods shall be the highest lawful rate. If the Veterans Administration Home Loans should cease doing business or no longer announce its prime rate as described above, the Community Association may compute interest hereunder upon the announced prime rate of any other bank doing business in Arizona. If banks should cease announcing prime rates, the Community Association may elect to use 18% as the Default Rate of Interest or may specify (for purposes of the computation hereunder) the rate, in lieu of said prime rate, which the Community Association would reasonably have to pay to borrow money at the time.

1.17. "Declarant" means RJL Properties, Inc., its successors and any Person to whom Declarant's rights hereunder are hereafter assigned by recorded instrument, or any Mortgagee of Declarant which acquires title to or succeeds to the interest of Declarant in any Lot or other portion of the Property by reason of the foreclosure (or conveyance in lieu of foreclosure) of or trustee's sale under the Mortgage of said Mortgagee.

1.18. "Index" is defined in Section 4.3.4.

1.19. "Insurance Trustee" is defined in Section 6.7.

1.20. "Lot" means a subdivided lot as shown on the Plat, together with any residential dwelling unit, garages, structures and other improvements constructed thereon.

1.21. "Majority of Members" means the Members holding more than 50% of the total votes entitled to be cast with respect to a given matter; and any specified fraction or percentage of the Members means the Members holding that fraction or percentage of the total votes entitled to be cast with respect to a given matter.

specified fraction or percentage "of all of the Members except Declarant" means that fraction or percentage of the total votes of all Members other than votes held by Declarant,. Unless otherwise specified, any provision herein requiring the approval of the Members means the approval of a Majority of Members.

1.22. "Member" means every Person who holds a membership in the Community Association pursuant to Section 2.

1.23. "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration (which is not a fraudulent conveyance under Arizona law) as security for the performance of an obligation, including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "Mortgagee" means the holder of a note secured by a mortgage, including the trustee and beneficiary under any deed of trust. "Mortgagor" means a Mortgage which is the first and most senior of all Mortgages upon the same property. "First Mortgagee" means the holder of a First Mortgage.

1.24. "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant or otherwise.

1.25. "Owner" means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case of Lots, the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor.

1.26. "Parcel" means that parcel or real property referred to in the recitals hereof and described in Exhibit "A" hereto.

1.27. "Person" means an individual, corporation, partnership, trustee or other entity capable of holding title to real property, and their respective heirs, personal representatives, successors and assigns.

1.28. "Plat" means the plat of subdivision of the Parcel as first recorded in the official records of Maricopa County, Arizona, on 19\_\_\_\_, in Book \_\_\_\_\_ of Maps at page \_\_\_\_\_, and as thereafter from time to time amended or supplemented including, but not limited to, the Replat.

1.29. "President" means the duly elected or appointed president of the Community Association.

1.30. "Private Roads" and "Private Streets" are synonymous and mean any street, roadway, drive, sidewalk, walkway, path, or other right of way within the Project, which have not expressly been dedicated to the public use.

1.31. "Project" means the Subdivision described in the recitals hereof, called "Carefree Mountain Estates Unit 1."

1.32. "Property" means the Parcel together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.33. "Proportionate Share" means, for each Lot or Membership appurtenant thereto, that fraction wherein the numerator is one and the denominator is the number of Lots in the Parcel.

1.34. "Record" or "Recording" means an instrument of record in, or the act of recording an instrument with, the office of the County Recorder for Maricopa County, Arizona.

1.35. "Taking" means a taking as defined in Section 7.

1.36. "Transition Date" means the date set forth in Section 2.17 on which Declarant's control of the Community Association terminates.

## 2. COMMUNITY ASSOCIATION.

2.1 Purpose of Community Association. The Community Association has been incorporated as a nonprofit corporation to serve as the governing body for all of the Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Community Declaration, the Articles, Bylaws, Community Design Guidelines, and Community Association Rules. The Community Association shall not be deemed to be conducting a business of any kind, and all funds received by the Community Association shall be held and applied by it for the Owners and Members in accordance with the provisions of this Community Declaration, the Articles and the Bylaws.

### 2.2 Membership in Community Association.

2.2.1. There shall be one membership in the Community Association with one membership vote for each Lot. An Owner shall be entitled to one membership in the Community Association for each Lot he owns so long as he is the Owner of the Lot. If the Owner of a Lot is other than one individual, the Owner shall specify i-

writing to the Community Association the individual who is the Member of the Community Association for the Lot. In the absence of such written specification, Assessments shall nevertheless be charged against the Lot and Owner thereof, but there shall be no right to vote the membership. The Member must be an individual who is an Owner or, if the Owner is or includes a Person other than an individual, an individual who is a partner, if the Owner is or includes a partnership; or an officer of the corporation, if the Owner is or includes a corporation; or a beneficiary of the trust, if the Owner is or includes a trust; or an owner of the entity, if the Owner is or includes a Person other than an individual, a partnership, a corporation or a trust. The Member, as so specified, shall be the only Person entitled to vote for the Owner of the Lot at Community Association meetings and elections. An Owner may change the individual who is the Member for his Lot, provided each such individual is eligible to be a Member hereunder, in such manner and with such frequency, and subject to such reasonable processing fees, as the Board from time to time may permit.

2.2.2. A membership in the Community Association shall not be transferred, pledged or alienated in any way except as expressly provided herein. A membership shall automatically be transferred to the new Owner (subject to the provisions of Section 2.2.1.) upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot.

2.3 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his membership to a Mortgagee as additional security, only the vote of such Mortgagee will be recognized in regard to such special matters if a copy of such proxy or other instrument pledging such vote has been filed with the Community Association prior to the vote. In the event that more than one such instrument has been filed prior to the vote, the Community Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

2.4 Declarant's Voting Rights and Assignment Thereof. Notwithstanding anything to the contrary herein, Declarant shall be entitled to three votes for each Lot owned by Declarant. If any lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Community Declaration succeeds to the interests of Declarant's as provided in Section 2.17 shall not be terminated thereby, and such lender shall hold Declarant's voting rights on the same terms as they were held by Declarant pursuant hereto.

2.5 Board of Directors.

2.5.1. The affairs of the Community Association shall be conducted by the Board as herein provided and in accordance with the Articles and Bylaws. Except for directors elected by Declarant, each director shall be a Member or the spouse of a Member. If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant.

2.5.2. Declarant shall have the absolute power and right to appoint and remove the members of the Board until the Transition Date. After that date, the Members of the Community Association shall have the power and right to appoint and remove the members of the Board as provided in the Articles and Bylaws.

2.5.3. Notwithstanding anything in Section 2.5.2. to the contrary, after the Transition Date all or any members of the Board may be removed from office at any time by action of the Members, as provided below. Upon the presentation to the President of a petition duly executed by not less than 25% of the Members in favor of the removal from office, a meeting of the Community Association shall be promptly held to determine whether such member or members of the Board should be removed from office. Upon the affirmative vote of two-thirds of the Members to remove such member or members of the Board from office, such member or members shall be deemed removed from office. Any vacancy on the Board created by the removal of a member of the Board as herein provided shall be filled by an election of all of the Members in the manner provided in the Articles or Bylaws for the election of directors.

2.6. Duties and Powers of the President.

2.6.1. To the extent not prohibited by law, or as otherwise herein expressly limited, including, but not limited to, Section 2.6.2., the President of the Community Association shall be empowered to exercise control over the affairs of the Community Association and to act on behalf of, and bind, the Community Association in every instance wherein the Community Association is required or permitted to take any action. The action of the President shall at all times be subject to the review of the Board.

2.6.2. Notwithstanding anything in Section 2.6.1. to the contrary, the President shall not have the power to borrow any funds on behalf of the Community Association or make any expenditures on behalf of the Community Association which are, in the aggregate, more than the total amount of the Community Association's budget, or increase the amount of or levy any Assessment (except a Special Assessment applicable to fewer than all Members and Owners), without the prior approval of the Board.

2.6.3. The President may appoint such assistants as he deems necessary or appropriate. No compensation shall be paid to any assistant except as provided in the Community Association's budget or as otherwise approved by the Board.

2.6.4. Any right or power herein given or delegated to the President which cannot be exercised by the President, whether by reason of law or otherwise, shall be deemed to be a right or power to be exercised by the Board.

2.7. Board's Determination Binding. In the event of any dispute or disagreement between any Owners, Members, or any other Persons subject to this Community Declaration (except officers or directors of the Community Association while acting in their capacities as such), relating to the Property, or any question of interpretation or application of the provisions of this Community Declaration, the Articles, Bylaws, Community Association Rules to the Property, the determination thereof by the Board shall be final and binding on each and all of such Owners, Members or Persons. The Board may, at its election, delegate the resolution of such dispute or disagreement to a committee appointed by the Board.

2.8. Notice and Quorum for Meetings Requiring Action by the Membership. Written notice of any meeting called for the purpose of taking action by the membership should be sent out not less than thirty day nor more than sixty days in advance of the meeting. At the first meeting called, sixty percent of the membership entitled to vote, whether present or by proxy, would constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements. The required quorum at the subsequent meeting would be reduced to one-half of members from the previous meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

2.8.1. Voting Eligibility. All members should be current and in good standing with the Community Association to be allowed to vote.

2.8.2. Approval by Members. Unless elsewhere otherwise specifically provided in this Community Declaration, the Articles or Bylaws, any provision of this Community Declaration, the Articles or Bylaws which requires the vote or assent of the Members of the Community Association shall be deemed satisfied by the following:

(a) ~~The vote in person or by proxy of the specified percentage of Members at a meeting duly called and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings of the Members; or~~

(b) ~~Written consents signed by the specified percentage of Members if provided in the Bylaws and permitted by law.~~

(c) If no percentage of Members is otherwise specified, then the vote or written assent by a Majority of Members shall be required.

2.9. Additional Provisions in Articles and Bylaws. The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Community Association and the rights and powers of its directors, officers, employees, agents and Members not inconsistent with law or this Community Declaration. A current copy of the Articles and Bylaws shall at all times be kept on file with the Association.

2.10. Community Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate binding upon all Persons subject to this Community Declaration and governing the use and/or occupancy of the Common Areas and all other parts of the Property. The Community Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Community Association Rules shall govern matters in furtherance of the purpose of the Community Association including, but not limited to, the use of the Common Areas; provided, however, that the Community Association Rules may not discriminate among Owners and Members except as expressly provided or permitted herein, and shall not be inconsistent with this Community Declaration, the Articles, Bylaws and, Community Design Guidelines. A copy of the Community Association Rules, as they may from time to time be adopted or amended, or a notice setting forth the adoption, amendment or repeal of specific portions of the Community Association Rules shall be delivered to each Owner and Member in the same manner established in this Community Declaration for the delivery of notices. A current copy of the Community Association Rules shall at all times be kept on file with the Association. Upon completion of the notice requirements, the Community Association Rules shall have the same force and effect as if they were set forth in and were part of this Community Declaration and shall be binding on the Owners and Members, and all other Persons having any interest in, or making any use of, the Property, whether or not actually received by them. A current copy of the Community Association Rules shall be available at the principal office of the Community Association to each Owner, Member or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Community Association Rules and any provisions of this Community Declaration, or the Articles, Bylaws, Community Design Guidelines shall be deemed to be superseded by the provisions of this Community Declaration to the extent of any such conflict.

2.11. Indemnification. To the fullest extent permitted by law, every director and every officer of the Community Association and Declarant (to the extent a claim may be brought against Declarant by reason of its appointment, removal or control over members of the Board) shall be indemnified by the Community Association, and



every other person serving as an employee or direct agent of the Community Association, or on behalf of the Community Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Community Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Community Association (or in the case of Declarant by reason of having appointed, removed or controlled or failed to control members of the Board), or any settlement thereof, whether or not he is a director, officer or member of any such committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, or other person, or Declarant, did not act, fail to act, or refuse to act willfully or with gross negligence of fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to any not exclusive of all other rights to which such person may be entitled at law or otherwise.

2.12. Non-Liability of Officials. To the fullest extent permitted by law, Declarant, the President, the Board, any committees of the Community Association and every member thereof, and every director and officer of the Community Association, shall not be liable to any Member, Owner, Occupant, the Community Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether of not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the President, the Board, or such committees or persons reasonably believed to be within the scope of their respective duties.

2.13. Easements. In addition to the blanket easements granted in Section 3.1, the Community Association is authorized and empowered to grant upon, across or under real property owned or controlled by the Community Association such permits, licenses, easements and rights-of-way for sanitary sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas and for the preservation of the health, safety, convenience and welfare of the Owners and Members, provided that any damage to a Lot resulting from such grant shall be repaired by the Community Association at its expense.

2.14. Accounting. The Community Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles specifying in reasonable detail all expenses incurred and funds accumulated

from Assessments or otherwise and shall have such books available for the inspection of all Owners and Members at reasonable times during regular business hours.

2.15. Records. The Community Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Member the books, records and financial statements of the Community Association together with current copies, as amended from time to time, of this Community Declaration and the Articles, Bylaws, Community Association Rules, and Community Design Guidelines. Notwithstanding the foregoing, the Community Association shall not be required to make its books and records for the period prior to the Transition Date available for inspection except as required by law. The Declarant shall not be under any obligation to make its own books and records available for inspection by any Owner, Member or other person. The books and records of the Community Association may be audited or unaudited as the Board may from time to time determine.

2.16. Managing Agent. All powers, duties and rights of the Community Association, the President and the Board, as provided by law and herein, may be delegated to a managing agent, under a management agreement; provided, however, that no such delegation shall relieve the Community Association of its obligation to perform any such delegated duty. Any agreements for professional management, and any other contract providing for services of Declarant or any other party, shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 90 days' written notice.

2.17. Declarant's Control of Community Association. Notwithstanding anything in this Community Declaration to the contrary, Declarant shall maintain absolute control over the Community Association, including appointment of the President and the members of the Board, until the Transition Date. Until the Transition Date, only Declarant will be entitled to cast any vote with respect to the election of directors to the Board, removal of directors or any other matter requiring the approval of the Members except a vote of the Members with respect to certain provisions of this Community Declaration as set forth in Section 14. The Transition Date shall be the first to occur of (a) the date on which at least 90% of the completed residences have been conveyed to purchasers other than Declarant or (b) the date on which Declarant requires the Members to assume control of the Community Association as provided in the next sentence. Declarant voluntarily may (but shall not be required to) require the Members to assume control of the Community Association at any time.

### 3. EASEMENTS

3.1. Blanket Easements. There is hereby created a blanket easement upon, across, over and under the Property for ingress and egress (over existing roadways), installing, constructing, replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sanitary sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the providing utility company to erect or place underground and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the Property. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sanitary sewers, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by Declarant or thereafter created or approved by the Community Association. This provision shall in no way affect any other recorded easements on the Property.

3.2. Use of Common Areas. Except for the use limitations provided in Section 3.3 which, by becoming an Owner or Member, each Owner and Member accepts and shall be deemed to have accepted, each Owner and Member shall have the nonexclusive right to use the Common Areas in common with all other Owners and Members as required for the purposes of ingress and egress to (and use, occupancy and enjoyment of) the Owner's Lot and between any Lot owned by such Owner or Member and Common Areas or other portions of the Project available for the use of said Owner or Member. Such right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Community Association Rules, extend to each Owner, Member, Occupant and the agents, servants, tenants, family members and invitees of each Owner or Member. This right to use the Common Areas shall be perpetual and appurtenant to each respective Lot, subject to and governed by the provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines, Community Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein.

3.3. Exclusive Use Rights. Certain portions of the Common Areas may be reserved by the Board for the exclusive control, possession and use of the Owner of a Lot. ~~If such an area serves as access to and from two or more Lots, the Owners of the Lots shall have joint control, possession and use of such portion of said area as reasonably serves all such Lots. Easements are hereby created in favor of and running with each Lot having such an area for the exclusive control and use of each such area. The use rights authorized herein are subject to the blanket utility easement and maintenance provisions contained in this Community Declaration and~~

to such reasonable rules and regulations with respect to possession, control, use and maintenance as the Community Association may from time to time promulgate. Each Owner, by accepting title to a Lot, shall be deemed to have further ratified the easements and rights to exclusive use created by this Section 3.3.

3.4. Declarant Easement. There is hereby created an affirmative, nonexclusive easement in favor of Declarant, and appurtenant to the portions of the Property owned by Declarant, for ingress and egress over all Common Areas including, but not limited to, Private Streets, and for the right to go over, under and across, and to enter and remain upon all Common Areas for all purposes reasonably related to Declarant's rights and obligations hereunder and to the developments, operation, maintenance, advertisement and sale or rental of any portions of the Property owned by Declarant.

3.5. Community Association Easement. There is hereby created an affirmative, nonexclusive easement in favor of the Community Association for ingress and egress over all of the Property (except the interior of occupied residential dwelling units) for the purpose of enabling the Community Association and its contractors, employees, representatives and agents to implement the provisions of the Community Documents.

3.6. Wall Easement. One or more Lots may contain walls constructed by developer that form an aesthetic, architectural or structural element. In such event, there shall exist an easement upon the Lot in favor of the Lot for the establishment, maintenance, repair and replacement of each such wall. Notwithstanding anything herein to the contrary, the maintenance, repair and replacement of each such wall shall be governed by the provisions of Sections 8.1 and 8.2 hereof.

#### 4. ASSESSMENTS.

4.1. Creation of Lien and Personal Obligation. Each Owner and Member, by acceptance of a deed or other conveyance of an interest in a Lot or by acceptance of his membership, is deemed to covenant and agree to pay to the Community Association: Regular Assessments, Special Assessments, Capital Improvement Assessments, and Reconstruction Assessments, if applicable, such Assessments to be established and collected from time to time as provided in this Community Declaration. The Assessments, together with interest thereon, late charges, fines, attorney's fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon the Owner's or Member's Lot against which the Assessments are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of

the Member and/or Owner to whom the Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's or Member's successor unless expressly assumed by him. The obligation of a Member, and the Owner of the Lot to which such membership appertains, for the payment of Assessment shall be joint and several.

4.2. Purpose of Assessments. The Assessments levied by the Community Association shall be used to promote the recreation, health, safety and welfare of the Owners and Members, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Community Association and all other Common Expenses, and otherwise to further the interests of the Community Association.

4.3. Regular Assessments.

4.3.1. Except as otherwise specifically provided herein (including, but not limited to, Section 4.3.4), each Member shall pay as his Regular Assessment the Member's Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Community Association.

4.3.2. Not later than 60 days prior to the beginning of each fiscal year of the Community Association after the year in which Assessments are first payable hereunder, the Community Association shall make available for review by each Owner and Member at the Community Association's office during reasonable times a pro-forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. Subject to the provisions of Section 4.3.4, the Community Association shall at that time determine the amount of the Regular Assessment to be paid by each Member and notify the Member thereof. Each Member shall thereafter pay to the Community Association his Regular Assessments in monthly installments. Each such installment shall be due and payable on the first day of each month. Notwithstanding anything foregoing to the contrary, the Community Association shall not be required to prepare, or distribute to Members, any operating statement or budget for any period prior to December 31, 1993.

4.3.3. Subject to the limitations set forth in parts (a) through (g) of Section 4.3.4, if the Community Association determines at any time during a fiscal year that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Community Association's budget for that year (except as provided in Section 4.4 hereof), the President shall then immediately determine the approximate amount of such inadequacy and, with the consent of

the Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Member for the balance of the year, and the date or dates when due. If the revised increase in the Regular Assessment, set forth in this Section 4.3.3, exceeds ten percent, the increase must be ratified by a two third vote of the membership. If the estimated total Regular Assessments for the current year proves to be excessive in light of the actual Common Expenses, the Community Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for such period as it deems appropriate. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

4.3.4. Notwithstanding anything in this Section 4.3 to the contrary, the provisions of this Section 4.3.4 shall apply and be controlling.

(a) No Regular Assessments shall be levied or due prior to all Common Area improvements being completed. Regular Assessments for each fiscal year of the Association shall be payable in equal quarterly installments. The installments of Regular Assessments payable for 1993 by each Lot shall be \$ 50.00 per month (said monthly installment herein called the "Base Assessment"). Thereafter, through 2013, the Regular Assessment shall automatically be increased annually for each fiscal year of the Association (as hereinbelow provided) to reflect any increase in the Index (as hereinafter defined). The fiscal year of the Association shall be the calendar year, unless otherwise specified in the Articles or Bylaws.

(b) Commencing with the year 1993, the annual Regular Assessment (the amount of which Regular Assessment shall remain payable in equal monthly installments for each month of the fiscal year) for each Lot shall be equal to the Owner's Adjusted Regular Assessment (as hereinafter defined), determined most recently prior to commencement of the fiscal year.

(c) The Adjusted Regular Assessment shall be determined in any given year by reference to the Consumer Price Index, as published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"). The "Beginning Index" shall be the Index published most recently prior to 1982. The "Adjustment Index" shall be the Index published most recently prior to the Adjustment Date. The "Adjustment Date" shall be the 30th day of September of each year during the period beginning with the year 1993 and ending with the year 2013

(d) The "Adjusted Regular Assessment" for a Lot shall equal twelve times the product of the Base Assessment multiplied by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no case, however, shall the Adjusted Regular Assessment for any Lot be less than the Adjusted Regular Assessment for the same Lot for the previous year. If the Index is revised or discontinued at any time, the Beginning Index shall be converted to a comparable figure under such revised index or any other similar index selected by the Association in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, or any other publisher thereof, and such revised index or similar index shall thereafter be used in computing the Adjusted Regular Assessments; provided, that if such index conversion is unchangeable, Declarant shall in its sole and absolute discretion select any such other similar index to be used thereafter. If the Adjusted Regular Assessment, contained in parts (c) and (d) of this Section 4.3.4., exceeds ten percent, the increase must be ratified by a two third vote of the membership.

(e) Commencing with the year 1993, Regular Assessments shall be determined in the manner set forth in this Section 4.3, exclusive of the provisions of parts (a) through (d) of this Section 4.3.4.

(f) For so long as the provisions of Section 4.17 exempt Lots owned by Declarant from Assessments, Declarant shall supply the Community Association with funds, services or materials from time to time as required to allow the Community Association to perform necessary or appropriate functions, as provided for herein. Any such contribution of services or materials shall be valued for the purposes of this part (f) at their fair market value. Notwithstanding anything foregoing to the contrary, in no event shall Declarant's contribution obligations pursuant to this part (f) exceed the amount Declarant would have been obligated to pay in Assessments if the exemption provisions of Section 4.17 were not in effect.

(g) If the Members elect, pursuant to Sections 9.16 and 9.19 hereof, to erect, install, operate and maintain a guard house (and related amenities), the costs thereof shall be borne, so long as Section 4.17 exempts Lots owned by Declarant from Assessments, entirely by Owners and Members and shall not in any manner increase Declarant's obligations under part (f) of this Section. Costs imposed upon Owners and Members pursuant to this part (g) shall be deemed to be Assessments secured by the lien provided for in this Section 4, but such costs shall not be subject to the limitations set forth in parts (a) through (d) of this Section 4.3.4.

~~4.4. Special Assessments. Special Assessments shall be levied by the Community Association against any Member and/or an Owner and his Lot to reimburse the Community Association for:~~

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4.4.1. Costs incurred in bringing a Member or an Owner and his Lot into compliance with the provisions of this Community Declaration, or the Articles, Bylaws, Community Design Guidelines, and Community Association Rules;

4.4.2. Any other charge designated as a Special Assessment in this Community Declaration, the Articles, Bylaws or Community Association Rules;

4.4.3. Fines levied or fixed by the Board as provided herein; and

4.4.4. Attorney's fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Community Declaration, the Articles, Bylaws, Community Design Guidelines, and Community Association Rules.

In the event the Community Association undertakes to provide materials or services which benefit individual Members or Lots and which can be accepted or not by individual Members, such Members, in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

4.5. Capital Improvement Assessments.

4.5.1. In addition to the Regular Assessments, the Community Association may levy in any calendar year a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, any action or undertaking on behalf of the Community Association in connection with, or the cost of, any construction or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, to the extent the same is not covered by the provisions concerning Reconstruction Assessments in Section 6. However, the Community Association shall not impose a Capital Improvement Assessment in an amount which in any one year exceeds the estimated annual Common Expenses without the vote of a Majority of Members. No portion of reserves collected by the Community Association for the future maintenance and repair of the Common Areas shall be included in determining the foregoing limitation on any annual Capital Improvement Assessment.

4.5.2. If Members elect to construct guard house improvements pursuant to Section 9.16 and 9.19 hereof, the Association shall levy a Capital Improvement Assessment for the cost of such improvements, including any necessary fixtures and personal property related thereto. Any such Assessments shall be in addition to and not in lieu of any Capital Improvement Assessments authorized under Section 4.5.1. hereof.



4.5.3. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Community Association in a separate bank account to be held for such purposes. Such funds shall not be commingled with any other funds of the Community Association and shall be deemed a contribution to the capital account of the Community Association by the Members.

4.5.4. All Capital Improvements must be approved by the Membership by a two thirds majority vote.

4.6. Uniform Assessment. Subject to the provisions of Sections 4.3.4 and 4.17, the Regular Assessment and any Capital Improvement Assessment or Reconstruction Assessment shall be uniform for all Lots in the Property.

4.7. Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

4.8. Date of Commencement of Regular Assessments. Subject to the provisions of Section 4.3, Regular Assessments shall commence as to each Member and Owner on the first day of the month following the date on which the transfer of title occurs on the Lot to which the membership appertains.

4.9. Time and Manner of Payment; Late Charges and Interest. Assessments shall be due and payable by the Members in such manner and at such times as the Community Association shall designate. If not paid within ten days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount of Assessment or such other charge as the Board may specify from time to time. Any Assessment not paid within ten days of its due date shall bear interest at the Default Rate of Interest from the due date until paid. The Community Association may not waive the late charge and/or interest in any particular instance except in the case of fees assessed in error.. A delinquent Member shall also be liable for attorney's fees and other related costs incurred by the Community Association as a result of such delinquency whether or not any legal proceeding is commenced for collection of unpaid amounts, and if any suit, action or arbitration proceeding is brought to collect any such Assessment or charge, the costs of suit and reasonable attorney's fees to be fixed by the court shall be added to the amount thereof and included in any judgement or award rendered thereon. ~~The delinquency of a Member shall be deemed also to constitute the delinquency of the Owner of the Lot to which such Membership is appurtenant.~~

4.10. No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason, but not limited to, a claim that (a) the Community Association, the Board,

the President or Declarant is not properly exercising its duties and powers as provided in this Community Declaration; (b) Assessments for any period exceed Common Expenses; or (c) a Member has made, and elects to make, no use of the Common Areas.

4.11. Homestead Waiver. Each Owner and Member, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Community Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect or in effect from time to time hereafter.

4.12. Reserves. Any reserves included in the Common Expenses which are collected as part of the Regular Assessments shall be deposited by the Community Association in a separate bank account to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Community Association, except to the extent that the Community Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to non-profit corporations or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Community Association by the Members. The responsibility of the Board (whether while controlled by Declarant or Members) shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither Declarant, nor the Board nor any member thereof shall have any liability to any Owner or Member or to the Community Association if any reserves prove to be inadequate.

4.13. Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner or Member to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded First Mortgage on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment (together with any interest, costs, reasonable attorney's fees and any late charges related thereto) which accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first, and if any lien for unpaid Assessments prior to the date of the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which such First Mortgagee came into possession of or acquired title to the Lot, the First Mortgagee shall not be liable for such unpaid Assessments and, upon written request to the Community Association by the First Mortgagee, such lien shall be released in writing by the Community Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner and Member and may also be reallocated by the Community Association among all Members as part of the Common Expense.

4.14. Certificate of Payment. Any Person acquiring an interest in any Lot shall be entitled to a certificate from the Community Association setting forth the amount of due but unpaid Assessments relating to the Lot, if any, and the Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur or become due after the date thereof and any interest, costs, attorney's fees and any late charges related to such subsequent Assessments.

4.15. Enforcement of Lien. The lien provided for in this Section 4 may be foreclosed by the Community Association in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 4 relating to the enforcement of the lien provided for herein (including, but not limited to, the subordination provision in Section 4.13 or the provisions of this Section 4.15) shall apply with equal force in each other instance provided for in this Community Declaration, the Community Design Guidelines or the Community Association Rules wherein it is stated that payment of a particular Assessment, charge or other such shall be secured by the lien provided for in this Section 4. Nothing herein shall be construed as requiring that the Community Association take any action required hereunder in any particular instance, and the failure of the Community Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

4.16. Pledge of Assessment Rights as Security. The Community Association shall have the power to pledge the right to exercise its assessment powers and rights provided for in this Community Declaration as security for any obligation of the Community Association. The Community Association's power to pledge its assessment powers shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Community Association. Any such assignment may be presently effective but shall allow the Assessments to continue to be paid to the Community Association and used by the Community Association as set forth in this Community Declaration, unless and until the Community Association defaults on the obligations secured by the assignment.

4.17. Exemption of Unsold Lots. Notwithstanding anything in this Section 4 or in Section 6 to the contrary, prior to the year 19\_\_ or, if earlier, the Transition Date, no Assessments except those provided for in Section 4.5.2 hereof shall be levied upon, or payable with respect to, any Lot owned by Declarant, or any affiliate of Declarant, or any shareholder (or such shareholder's successors, heirs or devisees) in Declarant to whom the Lot has been distributed by Declarant (as distinguished from having been purchased by the shareholder), or by any trustee for any of the aforesaid Persons, until such Lot has been conveyed by Declarant

(or said affiliate, shareholder or trustee) to an unaffiliated purchaser.

## 5. INSURANCE

5.1. Authority to Purchase. The Community Association shall purchase and maintain insurance including, but not limited to, the insurance described in Section 5.3. Such policies and any endorsements thereon, or copies thereof, shall be deposited with the Community Association. The Community Association shall advise Owners and Members of the coverage provided by these policies in order to permit Owners and Members to determine which particular items are included within the coverage so that Owners and Members may insure themselves as they see fit if certain items are not insured (or are not insured adequately, in the opinion of the Owner or Member) by the Community Association.

5.2. Owner's and Member's Responsibility. It shall be each Owner's or Member's responsibility to provide insurance for himself to cover the contents and structure of any dwelling unit or other improvements located on his own Lot, his additions thereto, his personal property stored elsewhere within the Property, his personal liability to the extent not covered by the public liability insurance obtained by the Community Association and such other insurance which is not carried by the Community Association as the Owner or Member desires. No Owner or Member shall maintain any insurance, whether on his Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Community Association.

5.3. Coverage. The Community Association shall maintain and pay for policies of insurance as follows:

5.3.1. A multi-peril type policy covering the Community Association's interest in all of the Common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, but not limited to, perils normally covered by an "all-risk" policy, in an amount determined by the Community Association.

5.3.2. ~~A policy of comprehensive public liability insurance covering the Property in an amount determined by the Community Association but not less than \$1,000,000.00 per occurrence, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, but not limited to, liability non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation~~

maintenance or use of the Common Areas and the portions of the Lots to be maintained by the Community Association hereunder, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Community Association.

5.3.3. The Community Association shall, at its election, obtain fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Community Association. If funds of the Community Association are handled by a management agent, then fidelity bond coverage shall also be obtained for the officers, employees or agents thereof handling or responsible for Community Association funds. The fidelity bond or insurance shall be written to provide protection in an amount not less than the lesser of (a) one-half times the Community Association's estimated annual operating expenses and reserves, (b) a sum equal to three months' aggregate Regular Assessments plus reserves, or (c) the estimated maximum amount of funds, including reserves, in the custody of the Community Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers. Such coverage must name the Community Association as an obligee.

5.3.4. A workmen's compensation policy, if necessary to meet the requirements of law.

5.3.5. A policy of "directors and officers" liability insurance.

5.3.6. Such other insurance, in such amounts, as the Community Association shall determine from time to time to be desirable.

5.4. Required Provisions. The insurance policies purchased by the Community Association shall, to the extent available upon terms and conditions deemed reasonable in the Board's discretion, contain the following provisions:

5.4.1. The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by any Owner, Member or First Mortgagee.

5.4.2. The conduct of any one or more Owners or Members shall not constitute grounds for avoiding liability on any such policies.

5.4.3. There shall be no subrogation with respect to the Community Association, its agents or employees, Owners, Members, or members of their households or families and employees, and each Mortgagee of all or any part of the Property or of any Lot, or the policy(s) should name said persons as additional insured; and, each policy must contain a waiver of any defenses based on coinsurance or any invalidity arising from the acts of the insured.

5.4.4. A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner or Member because of the conduct or negligent acts of the Community Association and its agent or other Owners or Members.

5.4.5. Any "no other insurance" clause shall exclude insurance purchased by Owners, Members or First Mortgagees.

5.4.6. Coverage must not be prejudiced by (a) any act or neglect of Owners or Members when such act or neglect is not within the control of the Community Association or (b) any failure of the Community Association to comply with any warranty or condition regarding any portion of the Property over which the Community Association has no control.

5.4.7. Coverage may not be cancelled or substantially modified without at least 30 days' (or such lesser period as the Community Association may reasonably deem appropriate) prior written notice to the Community Association.

5.4.8. Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the Community Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

5.4.9. A recognition of any insurance trust agreements entered into by the Community Association.

5.4.10. Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating as designated in Best's Key Rating Guide of Class A or better, or if such rating service is discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

5.4.11. Policies shall not be utilized where, under the terms of the carrier's charter, bylaws or policy, contributions may be required from or assessments may be made against Owners, Members or the Community Association or loss payments are contingent upon action by the carrier's board of directors, policyholders or members.

5.5. Non-Liability of Community Association/Board/President  
Notwithstanding the duty of the Community Association to obtain insurance coverage as stated herein, the Community Association, Board members, the President of the Community Association, and Declarant shall not be liable to any Owner, Member, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be th

responsibility of each Owner and Member to ascertain the coverage and protection afforded by the Community Solicitations insurance and to procure and pay for such additional insurance coverage and protection as the Owner or Member may desire.

5.6. Premiums. Premiums upon insurance policies purchased by the Community Association shall be paid by the Community Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Areas, by an Owner or Member, shall be assessed against that particular Owner or Member as a Special Assessment.

5.7. Insurance Claims. The Community Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Community Association and to execute and deliver release upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The President of the Community Association has full and complete power to act for the Community Association at his discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Community Association.

5.8. Benefit. Except as otherwise provided herein, all insurance policies purchased by the Community Association shall be for the benefit of, and any proceeds of insurance received by the Community Association or any insurance trustee shall be held or disposed of in trust for, the Community Association, the Owners or the Members, as their interests may appear.

## 6. DAMAGE AND DESTRUCTION OF COMMUNITY COMMON AREAS.

6.1. Duty of Community Association. In the event of partial or total destruction of the Community Common Areas, or any improvements thereon, it shall be the duty of the Community Association to restore and repair the same as promptly as practical pursuant to this Section 6. The proceeds of any casualty insurance maintained pursuant to this Community Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

6.2. Automatic Reconstruction. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Community Association, shall be at least 75% of the estimated cost of restoration and repair, a Reconstruction Assessment against each Member in his Proportionate Share may be levied by the Community Association to provide the necessary funds for such reconstruction in excess of the amount of the funds

available for such purpose. The Community Association shall thereupon cause the damaged or destroyed Community Common Areas to be restored to substantially the condition the Community Common Areas were in prior to the destruction or damage.

6.3. Vote of Members. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Community Association, shall be less than 75% of the estimated cost of restoration and repair, the Community Common Areas shall be replaced or restored unless two-thirds of the Members, at a special meeting held for such purpose, disapprove of such replacement or restoration. If the Members do not disapprove the proposed replacement or restoration, the Community Association shall levy a Reconstruction Assessment against each Member in his Proportionate Share and cause the damaged or destroyed Community Common Areas to be restored as closely as practical to its former condition prior to the destruction or damage. If the Members disapprove of the repair or restoration of the damaged or destroyed improvements on the Community Common Areas as provided above, the Community Common Areas so damaged or destroyed shall be cleared and landscaped for community park use or other community use determined by the Community Association and the costs thereof shall be paid with the insurance proceeds.

6.4. Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Community Association pursuant to this Section, the Community Association, in its sole discretion, may retain such sums in the general funds of the Community Association or may distribute all or a portion of such excess to the Members in their Proportionate Shares, subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Community Association. The rights of a Member, an Owner, or the Mortgagee of a Lot as to such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

6.5. Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Section 6 and shall be deposited by the Community Association in a separate bank account to be held for such purposes. ~~These funds shall not be commingled with any other funds~~ of the Community Association and shall be deemed a contribution to the capital account of the Community Association by the Members. Any Reconstruction Assessment shall be secured by the lien provided for in Section 4.

6.6. Contract for Reconstruction. In the event the Community Association undertakes the repair and restoration of the Community Common Areas, the Community Association shall contract with



licensed contractor or contractors who may be required to post a suitable performance or completion bond. The contract with such contractor or contractors shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of an architect's, or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Community Association.

6.7. Insurance Proceeds Trust. Upon receipt by the Community Association of any insurance proceeds, the Community Association may cause the insurance proceeds to be paid directly to a bank, savings and loan Association, or trust company located in Maricopa County, Arizona, as designated by the Community Association as trustee (the "Insurance Trustee"). Such funds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Community Declaration and which shall be entered into between the Insurance Trustee and the Community Association. Disbursements to contractors performing any repair or reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Maricopa County, Arizona.

## 7. EMINENT DOMAIN.

7.1. Definition of Taking. The term "taking" as used in this Section 7 shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Community Common Areas.

7.2. Representation in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Community Common Areas, the Owners and Members hereby appoint the Community Association, through such persons as the Board may delegate, to represent all of the Owners and Members in connection therewith. The Community Association shall act in its taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

7.3. Award for Community Common Areas. Any awards received by ~~the Community Association on Account of the Taking of Community Common Areas~~ at its sole discretion, may retain any award in the general funds of the Community Association or distribute all or any portion thereof to the Owners or Members as their interest may appear. The rights of an Owner and the Mortgagee of his Lot as to any distribution shall be governed by the provisions of ~~the Mortgagee encumbering such Lot.~~

## 8. MAINTENANCE, REPAIRS AND REPLACEMENTS.

8.1. Owner's Responsibility. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Lot. The Owner is responsible for the maintenance and replacement of the landscape on the lot. For purposes of this Section only, any portion of the driveway serving a Lot which lies between the perimeter boundary line of the Lot and the curb line of the abutting Private Street shall be deemed a part of such Lot.

If the dwelling unit or any other structure located on a Lot is partially or totally destroyed, the Owner of the Lot shall repair and rebuild the same promptly. If the Owner rebuilds the dwelling unit or structure substantially as it was prior to destruction or damage, the Owner need not receive the approval of the Community Design Review Committee pursuant to Section 10.4

8.1.1 Notification of Non-Conformance. If for any reason the Board rules that the Owner is not maintaining his lot in an acceptable manner, the Board shall notify the Owner in writing. The Owner shall be required to make such improvements within 30 days of notification. If the Owner fails to comply with the Written Notification, the Board may authorize the needed improvement and levy a Special Assessment, as to pay for such improvements.

8.1.2. Septic Tanks. Septic Tanks shall be the sole responsibility of the Owner. The Owner shall maintain and pump Septic Tanks to conform with Maricopa County Health Department standards.

8.2. Maintenance by Community Association. Except as otherwise provided herein to the contrary and subject to the Bylaws, Community Design Guidelines and Community Association Rules, the Community Association shall provide as part of the Common Expenses: maintenance, repairs and replacement of the Community Common Areas. These areas shall include; Private Streets, Private Street Medians, all Common Landscaped Areas, Drainage Easements Areas, Emergency Access Easements and Common Natural Areas. The Community Association shall be responsible for the maintenance of Walls included in Section 3.6. If, due to the act or neglect of an Owner or Member, or the invitee, guest or other authorized visitor of either, or an Occupant of an Owner's or Member's Lot, damage is caused to the Community Common Areas or to a Lot or Lots owned by others, or maintenance, repairs or replacements are required which would otherwise be a Common Expense, then such Owner or Member shall pay for the damage and for such maintenance, repairs and replacements determined to be necessary or appropriate by the Community Association, to the extent that they are not covered by the Community Association's insurance. Any such obligation shall be a Special Assessment secured by the lien provided for in Section 4.

8.3. Right of Access. An authorized representative of the Community Association, and all contractors, repairmen or other agents employed or engaged by the Community Association, shall be entitled to reasonable access to each of the Lots as may be required or appropriate for maintenance, repairs or replacements of or to the Community Common Areas or any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas, or to perform any of the Community Association's duties or responsibilities hereunder.

## 9. USE AND OCCUPANCY RESTRICTIONS.

9.1. Residential Use. Each Lot may be used only for residential purposes and none other. No business or commercial building may be erected on any Lot and no business or commercial enterprise or other nonresidential use may be conducted on any part thereof. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by, and in compliance with, the terms of this Community Declaration and the Community Design Guidelines. Nothing herein contained shall be deemed to limit Declarant's rights as set forth in Section 13.

9.2. Violation of Law or Insurance. No Owner or Member shall permit anything to be done or kept in his Lot or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.

9.3. Signs/Mailboxes. No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Community Association, except: (a) such signs as may be used by Declarant in connection with the development and sale or leasing of Lots in the Project; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; and (c) such signs as may be required for traffic control and regulation of Common Areas. No "For Sale" or "For Rent" sign may be posted on any Lot; provided, however, an Owner may, in accordance with applicable provisions of the Community Association Rules, be permitted to post one "For Sale" or "For Rent" notice in a form approved by the Board in a location specified for that purpose by the Board, which may be in a Common Area rather than on the Lot. The Board also may require mailboxes for all Lots to be placed in groups of two or more collectively at one or more locations on the Common Areas rather than placed individually on Lots.

9.4. Animals. No animals, including horses or other domestic farm animals, fowl or poisonous reptiles of any kind may be kept, bred or maintained in any Lot or in or upon any Common Area, except a reasonable number of commonly accepted household pets in accordance with the Community Association Rules. No animals shall be kept, bred or raised within the Property for commercial purposes. In no event shall any domestic pet be allowed to run

free away from its owner's Lot without a leash, or conduct itself so as to create an unreasonable annoyance. All such domestic pets must be registered with the Community Association and shall have proof of proper immunization presented with said registration.

9.5. Nuisances. No Owner or Member shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Property, which will obstruct or interfere with the rights of other Owners, Members, Occupants or authorized Persons to the use and enjoyment of the Common Areas, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner and Member shall comply with the terms of this Community Declaration, the Community Design Guidelines, the Community Association Rules, and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property. Normal construction activities and parking in connection with the building of permitted improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Community Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Board. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Board, which may also require screening of the storage areas. The Board shall have the right to determine, in its sole discretion, the existence of an unreasonable annoyance or nuisance under this Community Declaration or the Community Association Rules.

9.6. Boats and Motor Vehicles. Except as specifically permitted by the Community Association Rules, (a) no boats, trailers, busses, motor homes, campers or other vehicles shall be parked or stored in or upon the Common Areas or upon a Lot except within an enclosed garage as permitted by the Community Association and as permitted under (c) and (d) below; (b) no vehicle shall be repaired, serviced or rebuilt in any Lot or upon the Common Areas; and, (c) nothing shall be parked overnight on the Streets except in such parking areas as may be designated by the Community Association. (d) on street parking shall be allowed for temporary parking of construction vehicles. The Community Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

9.7. Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot in any manner which will allow light to be directed or reflected on the Common Areas, or any part thereof, or any other Lot, except as may be expressly permitted by the Community Design Guidelines or Community Association Rules.

9.8. Antennas. No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon any Lot except as may be permitted by the Community Design Guidelines or the Community Association Rules.

9.9. Garbage. No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from another Lot or the Common Areas. No incinerators shall be kept or maintained in any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot.

9.10. Mining. No portion of the Property shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

9.11. Safe Condition. Without limiting any other provision in this Section, each Owner shall maintain and keep his Lot at all times in safe, sound and sanitary condition and shall repair and correct all unsafe conditions, so that reasonable enjoyment by other Owners or Members of their respective Lots and the Common Areas is not inhibited.

9.12. Fires. Other than barbecues, in properly constructed barbecue pits or grills, and fire pits in compliance with the Community Design Guidelines, Community Association Rules, no open fires shall be permitted on the Lots nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Area, or for other Owners.

9.13. Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind. All such facilities shall be provided within the buildings to be constructed on each Lot.

9.14. No Further Subdivision. No Lot shall be divided or subdivided. An Owner may own more than one Lot which, if contiguous, may be combined into a single homesite with the consent of the Town and the Community Design Review Committee; provided, however that any such combination of Lots shall not reduce or alter the voting rights obtained by ownership of each Lot, nor shall it reduce or alter the amount which would have been assessed against the Owner of such Lots pursuant to the terms hereof in the absence of combination. The Assessments shall be a lien, as provided in Section 4, upon the entire combination of Lots held by the Owner.

9.15. No Obstruction to Drainage. No Owner of Member shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal

drainage of the land or within any area designated on a Plat, or other binding document, as a "drainage easement", except that, with the prior consent of the Town and the Community Association, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

9.16. Entrance Gates. The Community Association may, upon a vote of Members holding not less than 30 memberships, cause an entrance gate to be erected on Common Areas at the entrance to the Property. In such event, the Community Association shall thereafter determine from time to time who may have access through any entrance gate to the Property, subject to the easements created herein. Declarant reserves the unrestricted right of entry and use of Private Roads in the Property for itself and its future adjacent developments and for its employees, agents, invitees, licensees, contractors and guests. The Community Association may make reasonable rules restricting the right of entry for Members, Owners, their tenants and guests or for prospective purchasers of homes or lots invited by an Owner. Any entrance gate may be manned or unmanned, may be abandoned, and its hours of manned operation changed from time to time, at the discretion of the Community Association.

9.17. Rental of Lots. An Owner who leases or otherwise grants any Person occupancy rights to his Lot shall be responsible for assuring compliance by the Occupant with all of the provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines and Community Association Rules, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by the Occupant thereof.

9.18. Prohibited Vehicles. Golf carts, dirt bikes, off-road type vehicles and other similar vehicles are prohibited on the Common Areas except as may be expressly authorized from time to time by Community Association Rules.

9.19. Enforcement. The Community Association or its authorized agents may enter any Lot in which a violation of this Community Declaration, the Articles, Bylaws, Community Design Guidelines or Community Association Rules, exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to the Bylaws, or Community Association Rules shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Section 4 hereof. All remedies described in Section 14 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Member, Occupant or other Person of any provision of this Section 9.

9.20. Modification. The Board may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Lots by reasonable rules and

regulations of general application adopted by the Board from time to time which shall be incorporated into the Community Association Rules.

## 10. ARCHITECTURAL AND LANDSCAPE CONTROL.

10.1. Appointment of Community Design Review Committee. The Community Association shall have a Community Design Review Committee consisting of not less than three nor more than five persons, as specified from time to time in the Community Design Guidelines by resolution of the Board. Declarant shall initially appoint the members of the Community Design Review Committee. Declarant shall retain the right to appoint, augment or replace all members of the Community Design Review Committee until the Transition Date or as otherwise provided in the Community Design Guidelines. Thereafter, members of the Community Design Review Committee shall be appointed by the Board and may consist in whole or part of Board members. Persons appointed to the Community Design Review Committee, other than those persons appointed by Declarant, must be Members or satisfy such other requirements as may be set forth in the Community Design Guidelines. Declarant voluntarily may (but shall not be required to) permit the Members to appoint one or more members of the Community Design Review Committee at any time.

10.2. Community Design Guidelines. The Community Design Review Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines which the Community Design Review Committee may, from time to time, amend, repeal or augment. The Community Design Guidelines are hereby incorporated herein and shall be binding on all Owners, Members or other Persons as if expressly set forth herein. A copy of the current Community design Guidelines shall at all times be a part of the Community Association's records. Any request for an approval from the Community Design Review Committee must be in writing, before action is taken on the matter by the Community Design Review Committee.

10.2.1. To impose time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Community Design Guidelines.

~~10.2.2. To designate of a "building envelope" within a Lot, thereby establishing the maximum developable area of the Lot.~~

10.2.3. To ensure conformity of completed improvements to plans and specifications approved by the Community Design Review Committee; provided, however, as to purchasers and encumbrancers in good faith and for value, unless notice of noncompletion or non-conformance identifying the violating Lot and specifying the reason for the notice, executed by the Community Design Review

Committee, shall be recorded with the County Recorder of Maricopa County, Arizona, and given to the owner of such Lot within one year of the expiration of the time limitation described in Section 10.2.1 above, or, if later, within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Community Design Review Committee and in compliance with the architectural standards of the Community Association and this Community declaration but only with respect to purchasers and encumbrancer in good faith and for value.

10.2.4. To impose such other limitations and restrictions as the Board or Community Design Review Committee in its reasonable discretion shall adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, but not limited to, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement.

### 10.3. General Provisions.

10.3.1. The Community Design Review Committee may assess reasonable fees in connection with its review of plans and specifications.

10.3.2. The Community Design Review Committee may delegate its plan review responsibilities, except such final review and approval as may be required by the Community Design Guidelines, to one or more of its members or architectural consultants retained by the Community Design Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Community Design Review Committee.

10.3.3. The address of the Community Design Review Committee shall be the address established for notice to the Community Association, unless otherwise specified in the Community Design Guidelines. The Committee's address shall be the place for the submittal of plans and specifications and the place where the current Community Design Guidelines shall be kept.

10.3.4. The establishment of the Community Design Review Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Community Declaration, the Bylaws or Community Association Rules.



10.3.5. The Community Design Review Committee shall approve or disapprove any plans and specifications submitted to it in accordance with the Community Design Guidelines within such period as may be specified in the Community Design Guidelines.

10.4. Approval and Conformity of Plans. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property by any owner, nor shall there be any addition to or change by any owner to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, but not limited to, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Community Design Review Committee in accordance with the Community Design Guidelines as to harmony of external design and location in relation to surrounding structures and topography.

10.5. Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Community Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications the Community Design Review Committee, the members thereof, the Community Association, the Members, the President, the Board and Declarant assume no liability or responsibility thereof, or for any defect in any structure constructed from such plans and specifications. The Community Design Review Committee, the members thereof the Community Association, the President, the Board, Declarant shall not be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the developments, or manner of development of any property within the Property, or (d) the execution and filing of an estoppel certificate pursuant to the Community Design Guidelines, whether or not the facts therein are correct; provided, however, that such action, with the actual knowledge possessed by the person or persons so acting, was taken in good faith. Approval of plans and specification by the Community Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

10.6. Inspection and Recording of Approval. Any member or authorized consultant of the Community Design Review Committee, and any authorized officer, director, employee or agent of the Community Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable

notice as provided herein to the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with the Community Design Guidelines and this Community Declaration. The Community Design Review Committee shall cause such an inspection to be undertaken within 30 days of a request therefor from any Owner as to his Lot, and if such inspection reveals that the improvements located on such Lot have been completed in compliance with this Section 10 and the Community Design Guidelines, the Community Design Review Committee shall provide to such Owner a notice of such approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of this Section 10 and the Community Design Guidelines as to the improvements described in such recorded notice, but as to such improvements only.

10.7. Reconstruction of Common Areas. The reconstruction by the Community Association or Declarant after destruction by casualty or otherwise of any Common Areas or other portions of the Property for which the Community Association has responsibility, which is accomplished in substantial compliance with "as built" plans for such areas, shall not require compliance with the provisions of this Section 10 or the Community Design Guidelines.

10.8. Additional Powers of the Board. The Board may promulgate as a part of the Community Design Guidelines such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with this Community Declaration. WITHOUT LIMITING THE GENERALITY OF THE PROCEEDING SENTENCE, THE BOARD MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE COMMUNITY DESIGN REVIEW COMMITTEE.

## 11. RIGHTS OF FIRST MORTGAGEES.

11.1. General Provisions. Notwithstanding and prevailing over any other provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines or Community Association Rules, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Lot.

11.2. Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner or Member to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded First Mortgage on the Lot, acquired in good faith and for value, except to the extent said lien secures the amount of any unpaid Assessment (together with any interest, costs, reasonable attorneys' fees and late charges related thereto) which accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever

occurs first, and if any lien for unpaid Assessments which becomes payable after recordation of the First Mortgage and prior to the date on which the first Mortgagee comes into possession of or acquires title to the Lot is not extinguished, to the extent it secures said unpaid Assessments, by the process by which such First Mortgagee acquired title to the Lot, neither such First Mortgagee nor a third party purchaser shall be liable for such unpaid Assessments, and, upon written request to the Community Association by such First Mortgagee or purchaser, the lien shall be released in writing by the Community Association to the extent it secured such unpaid Assessments. Nevertheless, in the event the Owner or Member against whom the original Assessment was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Community Association, or by the Board, for the respective Lot's Assessment that was due prior to purchase. Any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Member and the defaulting Owner of the respective Lot to the Community Association, and the Board may use reasonable efforts to collect the same from said Member and/or Owner even after he is no longer a Member of the Community Association or the owner of the Lot. Any unpaid Assessments which are extinguished pursuant to this Section 11.2 may be reallocated by the Community Association among all Owners and Members as a Common Expense. Except for taxes and other public charges which are made prior and superior by applicable law, the lien provided for in Section 4 hereof shall be prior and superior to any and all charges, liens and encumbrances which hereafter in any manner may arise or be imposed on any Lot.

11.3. No Personal Liability. A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Community Association, or any provision of the Articles or Bylaws, or the Community Design Guidelines, or any management agreements, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 11.

11.4. Enforcement After Foreclosure Sale. An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against purchasers who have acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.

11.5. Exercise of Owner's Rights. During the pendency of any proceedings to foreclosure, a First Mortgagee (including any period of redemption), or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred

under a deed of trust and pursuant to law, the First mortgagee, or a receiver appointed in any such action, may, but need not, exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a member of the Community Association in the place and stead of the defaulting Owner.

11.6. Subject to Declaration. At the time a First Mortgagee comes into possession of or becomes record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Community Declaration including, but not limited to, the obligation to pay all Assessments and charges accruing thereafter, in the same manner as any other Owner.

## 12. EXEMPTION OF DECLARANT FROM RESTRICTIONS.

Notwithstanding anything contained in this Community Declaration to the contrary, none of the restrictions contained in this Community Declaration shall be construed or deemed to limit or prohibit any act of Declarant, their employees, agents and contractors, or parties designated by them in connection with the construction, completion, sale or leasing of the Lots (including any improvements thereon), Common Areas or the Property.

## 13. REMEDIES.

13.1. General Remedies. In the event of a default by an Owner, Member, Occupant or other Person under the provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines or Community Association Rules, the Community Association, or its successors or assigns, or its agents, and Declarant shall have each and all of the rights and remedies which may be provided for in this Community Declaration, the Articles, Bylaws, Community Design Guidelines and Community Association Rules, and which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, Member, Occupant or other Person for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Lot, or for damages or specific performance, or for judgement for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and interest accrued thereon, and to sell the same as hereinafter provided in this Section 13.1, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner or Member. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs, including, but not limited to, reasonable attorneys' fees, and all other expenses of the proceeding and sale and all such items shall be taxed against the defaulting Owner

Member in a final judgement. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments hereunder or any liens shall be paid to the Owner or Member. Upon the confirmation of the sale, the purchasers shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgement shall so provide, that the purchaser shall take the interest in the property sold subject to this Community Declaration.

13.2. Expenses of Enforcement. All expenses of the Community Association and Declarant, and other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Section 13, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the defaulting Owner or Member or other Person and shall be a Special Assessment against the Owner, Member or other Person and the Community Association shall have a lien as provided in Section 4 therefor. In the event of default by any Owner, Member, or other Person, the Community Association and Declarant, and the manager or managing agent of the Community Association, if so authorized by the President, shall have the authority to correct the default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against the defaulting Owner, Member or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner or Member's Lot as provided in Section 4. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Community Association and Declarant.

13.3. Legal Action. In addition to any other remedies available under this Section 13, if any Owner or Member (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Community Declaration, or the Articles, Bylaws, Community Design Guidelines or Community Association Rules, as then in effect, then the Community Association, Declarant, and any affected or aggrieved Owner or Member, shall have the power to file an action against the defaulting Owner or Member for a judgement or injunction against the Owner or Member or such other Person requiring the defaulting Owner, Member or other Person to comply with the provisions of this Community Declaration, the Articles, Bylaws, Community Design Guidelines and Community Association Rules, and granting other appropriate relief, including money damages.

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13.4. Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitude provided for in this Community declaration, and any right of reentry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitude shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

13.5. Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that Declarant (including, but not limited to, any assignee of the interest of Declarant hereunder) and any director, officer, shareholder or partner of Declarant (and of any such assignee), shall have no personal liability to the Community Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Community Declaration or the Community Association except, in the case of Declarant (or its assignee) to the extent of its interest in the Property, and, in the event of a judgement, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

14. AMENDMENT.

14.1. Amendment to Declaration. Amendments to this Community Declaration shall be made by an instrument in writing entitled "Amendment to Community Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Community Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Amendments may be adopted at a meeting of the Members upon the approval thereof of two-thirds of all of the Members except Declarant or without any meeting if all Members have been duly notified and if two-thirds of all of the Members except Declarant consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Community Association and shall be attested by the secretary, who shall be acknowledged by them as officers of the Community Association. Amendments once properly adopted shall be effective upon recording of the Amendment to Community Declaration in the appropriate governmental offices, or at such later date as may be specified in the Amendment.

14.2. Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Community Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which ma:

be affected and any or all clauses of this Community Declaration or the Plat, unless otherwise specifically provided in the Section being amended or the amendment itself.

14.3. Amendment of Plat. Except as otherwise provided herein, the Plat may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Community Declaration adopted as provided for herein. Such an amendment to the Plat shall be effective, once properly adopted, when the Community Declaration amendment and the Plat amendment are both recorded.

14.4. Required Approvals. Notwithstanding the provisions of the foregoing Section of this Section 14:

(a) If this Community Declaration or any applicable provision of law requires the consent or agreement of all Members and/or all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Community Declaration, then any instrument changing, modifying or rescinding any provision of this Community Declaration with respect to such action shall be signed by all of the Members and/or all lienholders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Community Declaration or by said law.

(b) Until the Transition Date, this Community Declaration may not be amended by the Members pursuant to Section 14.1 without the written consent of Declarant, which may be withheld for any reason in the sole and absolute discretion of Declarant.

(c) The no provisions of this Community Declaration may not be amended at any time while Declarant owns any portion of the Property without the consent of Declarant.

14.5. Declarant's Right to Amend. Notwithstanding any other provision of this Section 14, until the Transition date, Declarant reserves the right to amend this Community Declaration and the Plat without the approval of the Board, other Owners or the Members; provided, however, that no such amendment shall have the effect of changing the plat of an Owner's Lot without the consent of the Owner; and provided, further, that after the conveyance of the first Lot to an Owner, Declarant may not amend the following provisions of this Community Declaration without the approval of the Members as provided in Section 14.1: Sections 2.2.1, 2.2.2, 2.6.2, 4.3.4(a) through (d) to increase amounts payable by Owners or Members or to accelerate the dates on which payments must be made, the second sentence of 4.5, and 14.5.

15. GENERAL PROVISIONS.

15.1. Notice. Notice provided for in this Community Declaration, or the Bylaws or Community Association Rules, shall be in writing and shall be addressed to the Community Association at the address specified in the Bylaws. The Community Association may designate a different address or addresses for notice by giving written notice of such change of address to all Owner and Members. All notices to Owners shall be to their respective Lots or to the last address shown on the records of the Community Association and to other Members at the last address shown on the address or addresses for notices to him by giving written notice of his change of address to the Community Association. Notices addressed as described above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

15.2. Captions and Exhibits; Construction. Captions given to various Section herein, and the Table of Contents for this Community Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. Any exhibit referred to herein is incorporated as though fully set forth where such reference is made. The provisions of this Community Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

15.3. Severability. If any provision of this Community Declaration, the Articles, Bylaws or Community Association Rules, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Community Declaration, the Articles, Bylaws, and Community Association Rules, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Community Declaration, the Articles, Bylaws, and Community Association Rules shall be construed as if such invalid part were never included therein.

15.4. Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Community Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until 21 years after the death of the survivor of the now living descendants of United States Senators Dennis DeConcini and John McCain.

15.5. Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Member shall have the right or authority



make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot.

15.6. Power of Attorney. Whenever the Community Association is granted rights, privileges or duties in this Community Declaration, the President shall have the authority to act for the Community Association, unless such right and power is herein expressly reserved to the Board. Further, unless otherwise specifically restricted by the provisions of this Community Declaration, wherever the Community Association is empowered to take any action or do any act, including but not limited to action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Community Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of the Community Association or by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, or a membership in the Community Association, each Owner and Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.


#### 16. RIGHTS AND OBLIGATIONS.

Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, or each person acquiring a membership in the Community Association, and the heirs, personal representatives, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Community Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitude, and shall bind any Person having at any time any interest or estate in said land, and shall inure to the benefit of any such person in like manner as though the provisions of this Community Declaration were received and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

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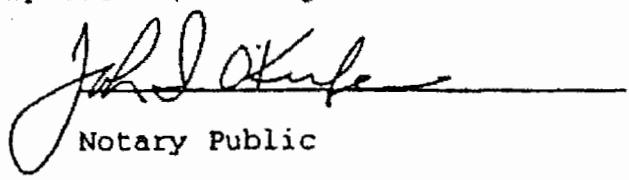
IN WITNESS WHEREOF, Declarant have caused this Community Declaration to be duly executed.

RJL PROPERTIES, INC.  
an Oregon Corporation

By:   
Its President

STATE OF ARIZONA     )  
                                  ) ss  
County of Maricopa    )

The foregoing instrument was acknowledged before me this 5 day of January, 1993, by Larry B. Gordon, as President of RJL Properties, Inc., an Oregon corporation, being authorized to do so on behalf thereof.

  
Notary Public

My Commission Expires:  
4/3/96

## EXHIBIT "A"

PROPERTY DESCRIPTION  
 CAREFREE MOUNTAIN ESTATES UNIT ONE

That part of the East half of the Southwest quarter of Section 4, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of said Southwest quarter;  
 thence West (assumed bearing) along the South line of said Southwest quarter a distance of 1325.88 feet to the Southwest corner of said East half;  
 thence North 00 degrees 03 minutes 34 seconds West along the West line of said East half a distance of 2646.55 feet to the Northwest corner of said East half;  
 thence South 36 degrees 05 minutes 20 seconds East 438.34 feet;  
 thence South 17 degrees 25 minutes 21 seconds West 168.52 feet;  
 thence North 88 degrees 25 minutes 40 seconds East 166.82 feet;  
 thence South 21 degrees 14 minutes 08 seconds East 251.60 feet;  
 thence South 27 degrees 24 minutes 29 seconds East 428.80 feet;  
 thence South 49 degrees 12 minutes 16 seconds East 137.27 feet;  
 thence South 27 degrees 52 minutes 36 seconds West 19.19 feet;  
 thence South 23 degrees 37 minutes 28 seconds West 70.59 feet;  
 thence South 22 degrees 42 minutes 39 seconds West 143.43 feet;  
 thence South 72 degrees 45 minutes 11 seconds East 50.04 feet;  
 thence North 18 degrees 07 minutes 27 seconds East 129.18 feet;  
 thence North 31 degrees 16 minutes 27 seconds East 42.89 feet;  
 thence South 62 degrees 53 minutes 42 seconds East 388.37 feet;  
 thence South 50 degrees 49 minutes 29 seconds East 253.51 feet to a point on the East line of said East half;  
 thence South 00 degrees 06 minutes 09 seconds East along said East line a distance of 1024.80 feet to the POINT OF BEGINNING.

Said parcel contains ~~51.1311~~ acres more or less.

GILBERTSON ASSOCIATES #29605 11-23-92



11-24-92

When recorded return to

Stewart Title  
Builder Services

M  
S

02/17/93 03:56

DIANA 1 OF 1

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
CAREFREE MOUNTAIN ESTATES UNIT ONE**

This First Amendment to Declaration of Covenants, Conditions and Restrictions is made as of the 17th day of February, 1993, by R J L Properties, Inc., an Oregon corporation, (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the sole owner of that certain real property described as follows (the "Property"):

Lots 1 to 47, inclusive, CAREFREE MOUNTAIN ESTATES UNIT ONE, according to the plat of record in the office of the Maricopa County Recorder in Book 359 of Maps, page 8.

WHEREAS, Declarant caused to be recorded a Declaration of Covenants, Conditions and Restrictions on January 8, 1993, at Instrument No. 93-0012236, in the office of the Maricopa County Recorder (the "Declaration"); and

WHEREAS, Declarant desires to amend said Declaration as set forth below;

NOW THEREFORE, Declarant, desiring to further establish the nature of the use and enjoyment of the Property, and being authorized so to do, does hereby declare that said Declaration is hereby amended as follows:

Section 1.28 thereof, the definition of "Plat", shall mean the plat of subdivision of the Parcel described in said Declaration as first recorded in the official records of Maricopa County, Arizona, on the 17th day of February, 1993, in Book 359 of Maps, page 8.

IN WITNESS WHEREOF, Declarant has executed this instrument as of this 17 day of FEBRUARY, 1993.

R J L Properties, Inc.,  
an Oregon Corporation

By [Signature]

Its President

STATE OF Az. )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of FEBRUARY, 1993, by L.B. Gordon, the President, of R J L Properties, Inc., an Oregon corporation, on behalf of such corporation.

[Signature]  
Notary Public  
Unofficial Document

My commission Expires:  
4/3/96

LAW OFFICES  
**SCULT, FRENCH, ZWILLINGER & SMOCK**  
A PROFESSIONAL ASSOCIATION

JUDITH E. ABRANSON  
JEANNE YOUNG CHANEN  
KATHY W. COOK  
DEAN M. DINNER\*  
WILLIAM P. FRENCH  
JAMES F. HENDERSON  
GREGORY M. KRUZEL  
WILLIAM M. LAWSON, JR.\*\*  
JOHN M. McVEY  
LORI R. MILLER

ANN C. MONALES  
THOMAS H. RUTTEN  
PATRICIA A. SALLEN  
MORTON M. SCULT  
LAURA A. SHORT  
TIMOTHY R. SMOCK  
G. PETER SPIESE  
ANN A. SCOTT TIMMER  
GARY R. ZWILLINGER

ONE ARIZONA CENTER  
ELEVENTH FLOOR  
400 EAST VAN BUREN STREET  
PHOENIX, ARIZONA 85004  
MAILING ADDRESS  
P.O. BOX 870  
PHOENIX, ARIZONA 85001-0870  
FACSIMILE (602) 382-8100  
(602) 382-8100

\* CERTIFIED BANKRUPTCY SPECIALIST  
\*\* CERTIFIED REAL ESTATE SPECIALIST

WRITER'S DIRECT NO.  
(602) 382-5112

*382-5112*

February 15, 1994

*OK'd  
to McVey  
8/16/94  
JMM*

Carl H. Larson  
Post Office Box 15033  
Scottsdale, Arizona 85267-5033

Re: RJL Properties, Inc./Carefree Mountain Estates

Dear Chip:

Enclosed is a draft of the Second Amendment to Declaration of Covenants, Conditions and Restrictions for Carefree Mountain Estates Unit One. Please review the draft and advise me of any comments or changes.

Sincerely,



John M. McVey

JMM:jl  
Enclosure

When Recorded, Return To:

John M. McVey, Esq.  
Scult, French, Zwillinger & Smock, P.A.  
One Arizona Center  
Eleventh Floor  
400 East Van Buren Street  
Phoenix, Arizona 85004

**SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
CAREFREE MOUNTAIN ESTATES UNIT ONE**

This Second Amendment to Declaration of Covenants, Conditions and Restrictions is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 1994, by RJL Properties, Inc., an Oregon corporation, (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the sole owner of that certain real property described as follows (the "Property"):

Lots 48 to 72, inclusive, CAREFREE MOUNTAIN ESTATES UNIT TWO, according to the plat of record in the office of the Maricopa County Recorder in Book \_\_\_\_\_ of Maps, Page \_\_\_\_\_.

WHEREAS, Declarant caused to be recorded a Declaration of Covenants, Conditions and Restrictions on January 8, 1993, at Instrument No. 93-0012236, in the office of the Maricopa County Recorder (the "Declaration");

WHEREAS, the Declaration was amended by that certain First Amendment to Declaration recorded in Instrument 93-0093914, Records of Maricopa County, Arizona; and

WHEREAS, Declarant desires to amend said Declaration as set forth below and Declarant has the power to amend said Declaration;

NOW THEREFORE, Declarant, desiring to further establish the nature of the use and enjoyment of the Property, and being authorized so to do, does hereby declare that said Declaration is amended as follows:

Section 1.28 thereof, the definition of "Plat", is amended to read:

"Plat" shall mean the plats of subdivision recorded in the official records of Maricopa County, Arizona, on the 17th day of February, 1993, in Book 359 of Maps, page 8 and on the \_\_\_ day of \_\_\_\_\_, 19\_\_\_, in Book \_\_\_ of Maps, page \_\_\_.

The title of the Declaration is amended to read:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CAREFREE MOUNTAIN ESTATES.

IN WITNESS WHEREOF, Declarant has executed this instrument as of this \_\_\_ day of \_\_\_\_\_, 1994.

RJL Properties, Inc.,  
an Oregon corporation

By: \_\_\_\_\_  
Larry B. Gordon  
Its President

STATE OF ARIZONA        )  
                              ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 1994, by Larry B. Gordon, the President of RJL Properties, Inc., an Oregon corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: