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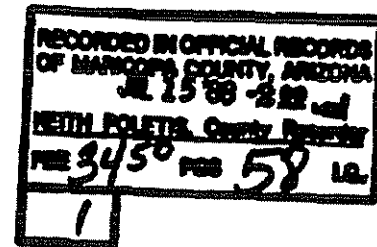
CHICAGO TITLE AGENCY OF ARIZONA

Paradise Valley Town Attorney
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

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MERRILL CANTATIERRA

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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MERRILL CANTATIERRA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made this ____ day of _____, 198_, by BRUCE MERRILL AND VIRGINIA M. MERRILL, hereinafter referred to as "Declarant", as further defined hereinafter.

W I T H E S E E T H

WHEREAS, Declarant is the owner of certain property in Paradise Valley, County of Maricopa, State of Arizona, which is more particularly described as follows:

MERRILL CANTATIERRA - A SUBDIVISION SITUATED IN the East 1/2 of Section 33, Township 3 North, Range 4, East, G. & S.R.B. & M., Maricopa County, Arizona. As recorded in Book 323 of Maps at page 38, Maricopa County Recorder (the "Plat").

WHEREAS, Declarant will convey the said property and desires to subject the same to certain protective covenants, conditions and restrictions, reservations, liens and charges as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that the Property and all parts thereof shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to the restrictions which are hereinafter set forth; and to any subsequent amendments thereto, and which are for the purpose of establishing a common plan for the protection, maintenance, development, improvement and enhancement of value of the Property, and which shall run with the Property and be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

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DEFINITIONS

Section 1: "Architectural Committee" shall mean the committee created pursuant to Article IV hereof.

Section 2: "Association" shall mean and refer to the Homeowners' Association, which may be established pursuant to Article V hereof.

Section 3: "Declarant" shall mean and refer to BRUCE MERRILL AND VIRGINIA M. MERRILL, their successors and assigns.

Section 4: "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as the same may be amended from time to time.

Section 5: "Improvement" shall mean the buildings, roads, driveways, parking areas, fences, walls, hedges, plantings, planted trees and shrubs and any and all structures and landscaping of any type and kind.

Section 6: "Lot" shall mean any parcel of real property designated as a lot on the Plat within Merrill Cantatierra. A Lot shall be deemed "Developed" when a Single Family Residence has been completely constructed thereon. A residence shall be deemed completely constructed when so determined by Declarant. Completion of construction shall not be later than two hundred (200) days after the start of construction thereon. All other lots shall be deemed "undeveloped" lots.

Section 7: "Owner" shall mean and refer to the record owner of equitable title (or legal title if it has merged with equitable title) of any Lot, whether such owner comprises one or more persons or entities.

Section 8: "Property" shall mean and refer to that certain real property as set forth on the Plat and that certain real property described in exhibit A attached hereto ("the

Indian Bend Wash Parcel") and such additions thereto as may hereafter be brought under the purview of this Declaration.

Section 9: "Visible From Neighboring Property" shall mean with respect to any given object that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Section 10: "Default Rate" shall mean the prime rate of interest as reported from time to time in the Wall Street Journal plus eight percent (8%) interest.

Section 11: "Plat" means the Plat(s) of subdivision of the parcel as first recorded in the official records of Maricopa County, and as thereafter from time to time amended or supplemented together with all subsequent plats of subdivision for real property annexed to the Property.

Section 12: "Drainage and Pedestrian Easement" shall be those two (2) strips of common area as shown on the final Plat and more fully described in exhibit B.

Section 13: "Private Road(s)" means any street, roadway, median(s) within said roadway, drive or any other right of way which is depicted on the Plat and more fully described on exhibit C.

Section 14: "Indian Bend Wash Parcel" means that area as shown on exhibit A.

Section 15: "Perimeter Wall(s)" shall mean those wall(s) existing or proposed along the perimeter of the Property and along the encroachment line. This definition shall also include those walls existing or proposed along the Drainage and Pedestrian Easements.

ARTICLE II

USE RESTRICTIONS

Permitted uses, conditions and restrictions for all of the Property covered by this Declaration shall be as follows:

Section 1: Single Family Residential Use. All of the Property shall be used, improved and devoted exclusively to single family residential use or as otherwise permitted by the Town of Paradise Valley. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any portion of the Property. No structure whatever, other than one private single family residence, together with a private garage for not more than four (4) cars, a guest house, and servants' quarters shall be erected, placed or permitted to remain on any Lot unless approved in writing by the Architectural Committee. No accessory structure shall be erected until the primary residence has been previously erected; provided, however, that such additional buildings may be constructed simultaneously with the main residence. No boat, truck, mobile home, trailer, camper or recreation vehicle shall be used as a living area while located on the Property. No one story dwelling house shall be erected on any Lot which shall have a liveable floor area of less than three thousand five hundred (3500) square feet and no two story dwelling shall be erected on any Lot which shall have a first level liveable floor area of less than three thousand (3000) square feet, exclusive of open porches, garages, guest house or servants' quarters. The maximum permitted height for each single family dwelling within the subdivision is thirty (30) feet. One story dwellings only shall be allowed on Lots 2 through 4, 13 through 17, 21 through 29, 32, and 43 through 49. The Architectural Committee shall have the power to allow and approve plans for two story dwellings on the remaining Lots. The height will be measured according to the Town of Paradise Valley Code.

Section 2: Animals. No animals, except a reasonable number of generally recognized house or yard pets and horses, excluding poultry or livestock of any kind, shall be maintained on any portion of the Property and then only if they are kept,

bred or raised thereon solely as domestic pets and not for commercial purposes. No such animal shall be allowed to make an unreasonable amount of noise or become a nuisance. Upon the written request of any Owner, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any portion of the Property is reasonable. Any decision rendered by the Architectural Committee shall be enforceable as other restrictions contained herein. Horses shall be kept and maintained according to the provisions of the Town of Paradise Valley Code.

Section 3: Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be created, used or maintained outdoors on any portion of the Property, whether attached to a building or structure or otherwise, unless screened from view or approved by the Architectural Committee.

Section 4: Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, or lines, wires, or cable for use in conjunction with telephone, television or radio, shall be erected, placed or maintained anywhere or in upon any portion of the Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

Section 5: Improvements and Alterations - General Powers of Architectural Committee. No improvements, alteration, repair, excavation or other work which in any way alters the exterior appearance of any improvement or any portion of the

Property from its natural or improved state as existing on the date of this Declaration and no building, fence, wall or other structure shall be commenced, erected, maintained, improved, altered, made or done until the plans and specifications for the same in all construction details, including shape, height, materials, floor plans, colors, location and approximate cost shall have been submitted to and approved in writing by the Architectural Committee established herein in Article IV. The Architectural Committee shall have the right to refuse to approve any plans or specifications or grading plans which are not suitable or desirable in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation on the foregoing, it shall have the right to take into consideration the suitability of the proposed improvements, the materials of which it is to be built, the site upon which it is proposed to be erected, the extent to which natural growth and terrain would have to be altered, the harmony thereof with the surroundings and the effect of the improvement as planned on the outlook from the adjacent or neighboring property. All subsequent additions to or changes in or alterations in any improvement, including exterior color scheme, shall be subject to the prior written approval of the Architectural Committee. No changes in or deviations from such plans and specifications once approved, shall be made without the prior written approval of the Architectural Committee.

All decisions of the Architectural Committee shall be final and neither the Owner nor any other party shall have recourse against the Architectural Committee for its refusal to approve any such plans and specifications. No basketball standards or fixed sports apparatus shall be erected on any lot without the prior written approval of the Architectural Committee. The Architectural Committee shall not be liable for damages to anyone submitting plans for approval or making any

other request of the Committee, nor to any Owner, lessee or sublessee of the Property or any portion thereof by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of, directly or indirectly, or in connection with the approval or disapproval, or failure to approve, any plans or other requests and each and every Owner agrees not to bring action or suit to recover any such damages against the Architectural Committee or any of the members thereof.

Section 6: Construction Regulations. All applicable federal, state, and local regulations and guidelines pertaining to construction shall be observed. Any Owner or builder who desires to bring a construction trailer, field office or the like onto the Project shall first receive written approval from the Architectural Committee. Such temporary structures shall be located in a place agreed upon by both parties and shall be removed upon completion of construction. Completion of construction shall be as of the date an occupancy permit shall have been issued by the governing authority. Owners and builders shall clean up all trash and debris on the construction site at the end of each day. Trash and debris shall be removed from each construction site at least once a week to a dumping site located off the project. Burning of trash or debris is prohibited.

Section 7: Temporary Occupancy. No trailer, tent, shack, garage or barn, and no temporary buildings or structures of any kind shall be used at any time for a residence on any portion of the Property. Temporary buildings or structures used during the construction of a dwelling on any Lot shall be removed immediately after the completion of construction.

Section 8: Trucks, Boats, Campers, Trailers and Motor Vehicles. Except with the approval of the Architectural Committee, no mobile home, boat, recreational vehicle, trailer of any kind, truck camper, or permanent tent or similar structure shall be kept, placed, or maintained, or constructed,

reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any portion of the Property or on any street within the Property, in such a manner as will be Visible From Neighboring Property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters of facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee. Except as provided above, only automobiles in operating condition shall be parked in the streets, driveways, or in any place or in any manner that will be Visible From Neighboring Property. Overnight parking in the streets shall be prohibited.

Section 9: Garages. Garages shall be used for parking vehicles and storage purposes only and shall not be converted for living or recreational activities without prior written consent by the Architectural Committee. Except as provided above, only automobiles in operating condition shall be parked in uncovered parking areas. Carports shall be prohibited except as approved in writing by the Architectural Committee.

Section 10: Landscaping and Landscaping Maintenance. All front yard landscaping and landscaping upon portions of the Property which are Visible From Neighboring Property shall only be installed in accordance with a landscaping plan which has been approved in writing by the Architectural Committee. Plans submitted to the Architectural Committee for the construction of the residence on a Lot must include the landscaping plan for such Lot. The landscaping pursuant to an approved plan must be completed by the Owner of a Lot within sixty (60) days following the completion of the construction of a residence on such Lot. Each Owner of a Lot upon which a residence has not been constructed shall, within eighteen (18) months from the date of purchase of such Lot, landscape forty (40) feet on the front,

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forty (40) feet on the rear, and twenty (20) feet on each side thereof. No substantial change of landscaping after installation pursuant to an approved plan may be made by the Owner of any Lot without the approval of the Architectural Committee. Each Owner of a Lot within the Property shall at all times keep all shrubs, trees and plantings of every kind on his Lot neatly trimmed, properly cultivated, and free from trash, weeds, and other unsightly material. In the event any Owner fails to landscape his Lot or maintain the landscaping on his Lot in accordance herewith, the Association shall have the right (but not the obligation) to do so and shall charge Owner the reasonable cost thereof, which charges together with interest at the Default Rate shall be paid by the Owner to the Association within thirty (30) days after demand therefor and shall create a claim enforceable in the same manner as other assessments provided for in this Declaration.

Section 11: Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any portion of a Lot nor shall a Lot be used in whole or in part for the storage of any property or thing that will cause a Lot or any part thereof to appear in any unclean, or untidy condition or that will be unsightly, offensive, obnoxious or detrimental; nor shall any substance, thing or material be kept or used upon a Lot or any part thereof that will emit a foul, offensive or obnoxious odor or that will cause any noise that will or might disturb the peace, quiet, comfort, serenity or tranquility of the occupants of the neighboring property. No nuisance of whatever kind or description shall be permitted to exist or operate upon a Lot so as to be offensive, unsanitary, unsightly, or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices shall be located, used or placed on

any portion of a Lot. The Architectural Committee, in the exercise of its sole discretion, shall have the right to determine the existence of any nuisance whether described herein or not. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Property. Noise caused by improperly muffled motor vehicles will not be permitted. Construction machinery and equipment must be operated within the manufacturers' recommendations and specifications and only during reasonable working hours.

Section 12: Lawful Use. No immoral, improper, offensive or unlawful use shall be made of any portion of the Property, and all valid laws, zoning ordinances and regulations of all government bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of any Lot or Improvements thereon shall be the same as the responsibility for the maintenance and repair required by Paragraph 10 of this Article.

Section 13: Leasing. Nothing herein shall be deemed to prevent the leasing of an entire Lot with all Improvements thereon from time to time by the Owner thereof, subject to all of the provisions of the Declaration, provided the occupancy is only by the Lessee and his family, its servants and guests. No rooms may be rented, and no transient tenants may be accommodated.

Section 14: Repair of Buildings. No exterior portion of any building or structure upon any portion of the Property shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner.

Section 15: Trash Containers and Collection. No garbage or trash shall be placed or kept on any property within the Property except in covered containers of a type, size and

shall be approved by the Architectural Committee. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and, then, only for the shortest period of time reasonably necessary to effect such collection. The Architectural Committee shall have the right, in its sole discretion, to require all Owners to subscribe to a trash collection service. All rubbish, trash, or garbage shall be removed from the lots and no rubbish, trash, garbage or debris shall be burned by open fire or incinerator or otherwise on any portion of the Property.

Section 16: Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any portion of the Property unless they are erected, placed, and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.

Section 17: Encroachments. No tree, shrub or planting of any kind on any property shall be allowed to overhang or otherwise encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of twelve (12) feet without the prior written approval of the Architectural Committee.

Section 18: Right of Inspection. During reasonable hours, and after five (5) days' written notice, except in the event of an emergency, Declarant, or any member of the Architectural Committee or any authorized representative of the Association or the Architectural Committee shall have the right to enter upon and inspect any portion of the Property and the improvements thereon for the purpose of ascertaining whether the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 19: Mineral Exploration. No portion of the

Property shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, sand, gravel, earth or any earth substance of any kind.

Section 20: Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any portion of the Property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures, or other improvements.

Section 21: Diseases and Insects. No owner shall permit any thing or condition to exist upon any property within the Property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 22: Setback Requirements. No building shall be erected on any Lot any wall of which is closer than forty (40) feet from the front line of said Lot, closer than twenty (20) feet to any side line, or closer than forty (40) feet to the back line thereof, except that such accessory buildings as are permitted under Paragraph 1 of this Article II shall not be closer than twenty (20) feet to said back line. However, the Architectural Committee, in any event, may by affirmative action and in the exercise of its sole discretion, permit minor variances from the setback requirements set forth herein. Prior to requesting a variance from the Architectural Committee, the Owner shall, however, be required to obtain all necessary permits and variances from the Town of Paradise Valley. In the absence of contrary rules established by the Architectural Committee, setback lines on irregular lots shall be determined in accordance with provisions of the zoning ordinance of the Town of Paradise Valley.

Section 23: Perimeter Walls and Party Walls. The walls of any buildings or improvements and fences constructed on any Lot shall not exceed the height of the original construction.

thereof unless approved in writing by the Architectural Committee. Setback lines shall be maintained in accordance with the original construction on each Lot unless otherwise permitted by written approval of the Architectural Committee. No Perimeter Wall(s) or Party Wall(s) or similar structure (including boundary walls on any Lot within the Property), regardless of location, shall be erected, constructed, maintained, improved or altered upon the Property unless (1) detailed plans and specifications containing the information required above and including a plot plan (or similar drawing drawn to scale) showing the precise location and dimensions of the proposed wall or similar structure are submitted by the Owner to and approved in writing by the Architectural Committee, and (2) the proposed wall or similar structure, as depicted and described on the aforementioned plans, specifications and plot plan, conform in all respects to the wall requirements set forth by the Architectural Committee. All Perimeter Wall(s) and Party Wall(s) on any Lot shall be constructed prior to the completion of the primary residence.

(a) The rights and duties of the Owners with respect to Perimeter Walls shall be as follows:

(i) There is hereby created an affirmative easement in favor of the Declarant, Association, and Architectural Committee, its employees and agents, upon, over, and across each Lot, Private Road, or tract shown on the Plat adjacent to the perimeter boundaries of the subdivision for reasonable access, installation, replacement, maintenance, and repair of the Perimeter Wall located along such boundaries. The easement shall be of sufficient reasonable width to accommodate the initial or subsequent installation of the Perimeter Wall should the Declarant, at his sole discretion and exclusive option, elect to erect any portion or all of the Perimeter Wall(s).

(ii) If the Declarant, Association, or the Architectural Committee, at their sole discretion and

exclusive option, elect to erect any portion or all of the Perimeter Wall(s), then the cost of erecting such wall shall be born by each Owner whose Lot upon such wall has been erected. The cost will represent a proportionate share of the actual cost of constructing such wall. Payment by Owner will be made upon presentment of a written receipt of the actual cost setting forth said Owner's proportionate share. The Declarant, Association, or Architectural Committee shall have the right to charge the Owner the cost thereof together with interest at the Default Rate which shall be paid by Owner within thirty (30) days after demand thereof and shall create a claim enforceable in the same manner as assessments are enforced as provided for in this Declaration.

(iii) The design of any Perimeter Wall(s) abutting the Indian Bend Wash Parcel and the design of any Perimeter Wall(s) abutting the Drainage and Pedestrian Easements (Lots 12-18 and Lots 21-30) shall be of uniform design and color, and such design and color shall be approved in writing by the Architectural Committee.

(iv) All Perimeter Walls shall be maintained in good condition and repair by the Association, and the Association shall have the right to enter upon such Lot to do so, and the Owner of the Lot on which such wall or similar structure is situated shall be responsible for maintaining the remainder of any such walls or similar structure.

(b) The rights and duties of Owners with respect to Party Walls shall be as follows:

(i) Each wall or fence, including perimeter and patio walls and fences, which is constructed as part of the original construction of any structure or subsequently constructed with the written approval of the Architectural Committee, any part of which is placed on the dividing line between separate Lots, shall constitute a Party Wall. With respect to any such Party Wall, each of the adjoining

Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding Party Walls shall be applied thereto.

(ii) In the event any such Party Wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests, tenants, licensees, agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such Party Wall, then the first of such Owners shall forthwith proceed to rebuild or repair the same to as good condition as formerly without cost to the adjoining Owner.

(iii) In the event any such Party Wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agent, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

(iv) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(v) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Architectural Committee, the written decision of which shall be binding.

(vi) Each Owner shall permit the Owners of adjoining Lots, or their respective representatives, members

of the Architectural Committee or the Association, when reasonably required, to enter his Lot for the purpose of performing installations, alterations, or repairs to the property of such adjoining Owners, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this paragraph shall not be deemed guilty of trespass by reason of such entry.

(c) No Owner shall do or permit to be done anything which would affect, alter, damage, destroy, or modify any part of a Party Wall or Perimeter Wall or similar structure which would otherwise undermine, damage, or expose to damage by the elements any part of such Wall (Perimeter and Party) or similar structure; and if any Owner (or such Owner's guests, invitees, licensees, lessees, contractors, agents, or the like) does or permits to be done any such act, the Association shall have the right, but not the obligation, to repair or correct such alteration, damage, destruction, or modification, and such Owner shall pay the cost thereof to the Association upon demand, with interest from the date of expenditure by the Association at a rate equal to the Default Rate, with all such amounts (including interest) to be secured by a lien in favor of the Association against such Owner's Lot.

Section 24: Fences. No chain link boundary fence, grape stake fence or other fence which fails to harmonize with the design of a single family residence shall be erected on the Property. Any fence put within twenty (20) feet of the front line of a Lot shall not exceed three (3) feet in height unless a variance is specifically given by the Architectural Committee in the exercise of its sole discretion. No fence at any time shall exceed six (6) feet in height, except as approved by the Architectural Committee.

Installation of a fence shall otherwise comply with the applicable ordinances of the Town of Paradise Valley.

Section 25: Tennis Courts. Tennis courts will be permitted only if, in the judgment of the Architectural Committee, after proper application, the proposed tennis court is not detrimental to the view from surrounding properties and does not materially interfere with the harmonious and orderly development of the Property or necessitate unreasonable destruction to the natural growth and terrain of the Property. The granting by the Architectural Committee of the application of any Owner for a tennis court or the approval of his plans and specifications shall not entitle any other Owner to have his application granted or have his plans and specifications approved.

Section 26: Signs. No signs of any kind (including, but not limited to, commercial, real estate for sale and rent, or similar signs) which are Visible From Neighboring Property shall be erected or maintained on the Property or any part thereof, except (1) such signs as may be required by legal proceedings, (2) not more than one (1) residential identification sign with a total face area not in excess of fifty-four (54) square inches on each side, (3) during the time of construction of any building or other improvement one (1) job identification sign not larger than eighteen (18) inches by twenty-four (24) inches (18" x 24") in height and width, having a face area not larger than three (3) square feet, (4) one (1) sign advertising only a lot and not a residence as for sale or rent, which sign shall not be larger than twelve (12) inches by fifteen (15) inches (12" x 15") and shall be made of wood and mounted in a single wooden stake so that the bottom of the sign is not more than twenty-four inches (24") above ground level, (5) such other signs, the nature, number and location of which have been approved by the Architectural Committee, and (6) such signs, the

number, type and size of which as may be approved from time to time by Declarant during the original development and sales of the Properties.

Section 27: Items Prohibited From Being Visible to Neighboring Property. In furtherance of and not in limitation of the requirements set forth elsewhere in this Declaration, the following shall not be erected, used, maintained or kept on any portion of the Property so as to be Visible From Neighboring Property; clotheslines, pet facilities, air conditioners, coolers, pool filters, pool heaters, meters, antennas, campers, trailers, boats, coaches, recreation vehicles, lawn and garden equipment, and storage tanks for water, gas, fuel oil, gasoline or oil. No exterior window covering shall be permitted and visible interior window coverings must be attractive and aesthetically acceptable as determined by the Architectural Committee in its sole discretion. Notwithstanding the foregoing, the Architectural Committee may permit exterior window coverings of a material, color and design which it in its sole discretion deems acceptable.

Section 28: Roof Mounted Air Conditioning Units. No air conditioning units, air coolers, furnaces or similar equipment may be mounted on the roof of any dwelling unit or building located on any portion of the Property.

Section 29: Lights and Reflective Material; Solar Ray Panels and Solar Ray Collector Units.

(a) Spot lights or other lights which may reflect upon or cause glare to neighboring property will not be allowed. Foil or other light-reflective material may not be placed or maintained in the windows or glass areas of any structure erected on any portion of the Property. Other reflective articles, including reflective house sidings and roofing material are prohibited unless erected and maintained as to not be Visible From Neighboring Property.

(b) No solar ray panels or collector units

or any other type of solar energy device or similar equipment may be installed, constructed or mounted on the roof of any dwelling unit or building or located on any portion of the Property as to be Visible From Neighboring Property. The installation, construction or mounting of all such panels, units, devices and equipment must be approved in advance in writing by the Architectural Committee.

(c) Notwithstanding the foregoing, the Architectural Committee may in its sole discretion approve additional building materials which it deems aesthetically acceptable and which, considering the state of the industry, were not reasonably contemplated by the Declarant.

Section 30: Roofs and Flashings. No asbestos shingle roofs or light-reflective roofs are permitted to be constructed or maintained on any structure within the Property, and all roof materials, metal flashings, vents, gutters, down spouts, wires or pipes must be approved in advance by the Architectural Committee and are required to be matched or coordinated with the wall color and texture. Changes in color or material of the roof after the structure is built must have the advance written approval of the Architectural Committee.

Section 31: Aluminum Doors and Windows. All aluminum doors, windows or arcadia doors must be anodized in a natural earthtone color approved in advance in writing by the Architectural Committee.

Section 32: Restriction on Further Subdivision. No Lot within the Property shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any Lot nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Architectural Committee. This restriction shall not prevent the conveyance of a part of a Lot to the Owner of an adjacent Lot in such manner that thereafter

the Lots owned by each shall not be less than twenty thousand (20,000) square feet. Any conveyance of a lot or any portion thereof to an adjacent Owner must have the prior written approval of the Architectural Committee. Prior to requesting such approval from the Architectural Committee, the Owner shall be required to obtain all necessary approvals, if any, from all appropriate governing bodies.

Section 11: Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, trailers, improvements or signs necessary or convenient to the development, sale, operation or other disposition of the Property. Declarant is undertaking the work of constructing residential dwellings and incidental improvements upon the Lots included within the Property. The completion of that work and the sale, rental and other disposal of said residential units is essential to the establishment and welfare of the Property as a residential community. In order that the work may be completed and the Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Property or any Lot thereof, whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on the Property, such structures, model homes, sales offices, and trailers as may be reasonably necessary for the conduct of its business of completing the work and disposing of the Lots by sale, lease or otherwise; or

(c) Prevent Declarant from maintaining such signs on the Property as may be necessary for the sale, lease or disposition thereof;

Declarant shall have the right at any time prior to acquisition of title to one (1) Lot by a purchaser to amend this Declaration, to establish on the Property additional easements, reservations and rights of way to itself, to utilities companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. Declarant shall have the right following the acquisition of title to a Lot by a purchaser from Declarant, to grant easements and rights of way over, under, and through such Lot to utility companies for the purpose of serving Property.

Section 34: Water Company Exemption. Nothing contained in this Declaration shall be construed to apply to existing easements or activities of any water company servicing the area nor shall it prevent the future maintenance by any such water company or its agents of existing facilities or the erection and maintenance of new facilities or to prevent the carrying on of all reasonable activities of any such water company on the Property or any part thereof.

Section 35: Mail and Delivery Boxes. The Architectural Committee shall have the authority to approve the design, color, size, location, numbering and lettering and all other particulars of all mail, paper, delivery or similar boxes for each residence.

ARTICLE III

PRIVATE ROAD, EASEMENTS, MAINTENANCE AREAS, AND COMMON AREAS

Section 1: Private Road. The term "Private Road" as used herein shall mean that portion of the property upon which there is a duly recorded instrument describing a Private Road. To the extent an Owner is permitted to use any portion of the Private Road(s), the provision of this Declaration shall apply. Each Owner of a Lot lying adjacent to the Private Road shall use

said Private Road only in accordance with this Declaration and with the criteria therefor established by the Architectural Committee and any laws applicable thereto. Each Owner of a Lot lying adjacent to the Private Road is granted an affirmative right of ingress and egress upon and across said Private Road(s). The Association shall at all times continuously maintain the Private Road and all landscaping installed in or upon it, in good condition and repair and in accordance with the criteria established by the Architectural Committee.

Section 2: Utility Easements. There is hereby created a blanket easement upon, across, over and under the above described Property for reasonable ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electricity, television cable and communication lines and systems. By virtue of this easement it shall be expressly permissible for the utility companies to erect and maintain the necessary equipment on said Property and to affix and maintain electrical and/or telephone wires, conduits and circuits on, above, across and under the Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, television cable and communication lines and systems, or other utilities may be installed or relocated on said Property except as initially programmed and approved by the Declarant or thereafter approved by the Architectural Committee. In no event shall any portion of the above-mentioned easement for utilities be placed on or installed under any permanent building or structure constructed thereon. This easement shall in no way affect any other recorded easement on the Property. Each Owner of a Lot lying adjacent to the Utility Easement shall at all times continuously maintain the Utility Easement and all landscaping installed in or upon it in good condition and repair at his expense and in accordance with the criteria established by the Architectural Committee. If any Owner fails to comply with

his obligation to provide maintenance hereunder, the Association shall have the right, but not the obligation, to make such repairs and provide such maintenance as the Association may deem necessary in the exercise of its sole discretion, and shall charge the Owner the reasonable cost thereof, which charges together with interest at the Default Rate for contracting parties, shall be paid by the Owner to the Association within thirty (30) days after demand therefor and shall create a claim enforceable in the same manner as assessments are enforced as provided for in this Declaration.

Section 3: Security and Maintenance Areas. In addition to the areas (Indian Bend Wash Parcel, Drainage and Pedestrian Easements, and Private Roads) which may be maintained, improved and cared for by the Association pursuant to the Declaration, as herein amended, and for the general appearance and betterment or security of the Property, the Association shall have the authority and duty to improve and provide maintenance and care for such other areas or parcels of property such as, including without limitation, entryways to the Property, guard houses or security buildings and/or gates as may be designated by the Board of Directors of the Association in the exercise of its sole discretion, such areas being hereinafter referred to "Security Areas" or "Maintenance Areas". The authority and duty provided for herein shall be subject to authorization as may be required by the Town of Paradise Valley and shall be valid and binding.

Section 4: Common Areas. Declarant hereby designates and sets as Common Areas the Indian Bend Wash Parcel as shown on exhibit A and all of the Property except for the individual Lots shown on the Plat. The Common Areas shall be transferred by Declarant by Trust Indenture to and shall be held by the Association for the mutual benefit of the Owners pursuant to the terms of this Declaration. The Common Areas will be maintained

by the Association and/or its designated assignee as stipulated in a separate agreement.

Section 5: Easements of Enjoyment and Use of Common Areas. Every Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration. Notwithstanding anything else in this Section and any other provision of this Declaration, Owners shall not have exclusive rights to any Common Areas.

In addition there is hereby created an easement on and over each Lot which is contiguous to said Common Areas and more fully described on the Plat as Lots eleven (11) through fifteen (15) and Lots seventeen (17) through thirty-two (32). Said Common Areas shall be enjoyed by all Merrill Cantatierra Homeowners without such entering being deemed a trespass. Owners of Lots adjacent to said Common Areas shall not do or permit any act from or within their Lot which would detract from the enjoyment of the Common Areas.

Section 6: Common Area Condemnation. Definition of Taking. The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

(a) Representation in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Common Areas, the Owners hereby appoint the Association through such persons as the Association may delegate to represent the Association and all of the Owners in connection therewith. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

(b) Award for Common Areas. Any awards received by the Association on account of the taking of Common Areas shall be paid to the Association. The Association may, in

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its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Owners as their interests may appear. The rights of an Owner of a Lot as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

ARTICLE IV

ARCHITECTURAL COMMITTEE

Section 1: Membership - Architectural Committee. The Architectural Committee shall consist of no more than three (3) members. The initial members shall be:

Bruce Merrill
Virginia M. Merrill
Bruce Francis

In the event of the death, incapacity or resignation of any member of the Architectural Committee, the Declarant shall have the right and power to fill all vacancies on the Architectural Committee. In the event that the Declarant shall fail to do so within sixty (60) days, the record Owners of the Lots shall have the power through a duly recorded written instrument executed by Owners representing fifty-one (51%) percent of the Lots, to designate such successors. Any member of the Architectural Committee who fails to attend three (3) consecutive meetings of the Architectural Committee may be removed from the Architectural Committee by the unanimous vote of the remaining member(s) of the Architectural Committee and his vacancy shall be filled as aforesaid. All changes in membership of the Architectural Committee shall be evidenced by a duly recorded written instrument. At any time, if the Architectural Committee is inoperative, Declarant may, but shall not be required to, appoint one (1) or more new members of the Architectural Committee by duly recording a written instrument evidencing same. The Architectural Committee may appoint alternate members to act in the temporary absence of regular members. Members of the

Architectural Committee need not meet any particular qualifications and need not be Owners of Lots. Only after all Lots have been sold by Declarant to public purchasers, the right to remove and appoint all regular and alternate members shall be vested in the Owners. Thereafter any vacancy occurring on the Architectural Committee shall be filled by an election of Owners to be held on the first Tuesday in February, commencing with the first such day following the sale by Declarant of all Lots within the Property. The election may be held at a meeting of Owners after at least ten (10) days' written notice mailed to each Owner, or by an election conducted by mail. There shall be one vote for each Lot, regardless of the number of persons having an interest therein; provided, however, that in the event more than one Lot is owned by the same person, persons, firm, partnership, or corporation, that person, persons, firm, partnership, or corporation shall be entitled to one vote for each Lot owned by that person, persons, firm, partnership, or corporation. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted. If any Owner or Owners cast a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the same authority and consent of any other Owners of the same Lot. The right to vote may not be severed or separated from the Lot ownership to which it is appurtenant, and any sale, transfer or conveyance of such Lot to a new Owner or Owners shall operate to transfer the appurtenant vote without the requirement of any express reference thereto. Notwithstanding the foregoing, if, at any time, the Architectural Committee is inoperative for a period of three (3) consecutive months, then, Declarant, or any of its successors, may, but, shall not be

required to, appoint one or more new members to the Architectural Committee by duly recording a written instrument evidencing same.

Notwithstanding the foregoing, Declarant shall have complete authority to appoint and remove members of the Architectural Committee until all Lots have been conveyed to an Owner, and failure to do so at any time will not constitute a waiver of such authority. Until all Lots have been sold, this paragraph may not be amended without the written approval of the Declarant.

Section 2: Decisions of the Architectural Committee - Approval or Disapproval. The Architectural Committee may exercise all powers granted to it under this Declaration in its absolute discretion and will not be bound in exercising that discretion by any of its earlier actions. All decisions of the Architectural Committee shall be by the affirmative vote of at least two (2) members or by sole member, if only one (1) member. The Architectural Committee's approval or disapproval of a request made pursuant to these restrictions, shall be in writing. In the event the Architectural Committee fails to approve or disapprove any matter within thirty (30) days after final plans and specifications have been submitted to it by the Owner, the Owner may give notice to the Architectural Committee by certified or registered mail at the address specified in Article VI, Section 8, that Owner is demanding approval or disapproval. In the event the Architectural Committee fails to approve or disapprove any matter within fourteen (14) days after actual receipt of such demand, approval will not be required and the requirement of prior written approval of the Architectural Committee shall be deemed to have been fully complied with. If an application is amended, supplemented or modified, whether at the request of the Architectural Committee or not, the thirty (30) day period shall cease and shall begin to run anew commencing on the date of the amendment, supplementation or

modification of the application.

Section 3: Purpose. The declared purpose of the Architectural Committee provided for herein is to assure that the character, design, exterior materials, color, roof, proportions, elevation and siting of each improvement shall be in harmony with its surroundings and shall not be offensive or aesthetically detrimental to neighboring property using reasonable and generally accepted criteria of aesthetic and architectural judgment in addition to the enforcement of the specific limitations set forth in these Restrictions. In addition to all other standards, the Architectural Committee may deny any application if it determines, in its sole discretion, that the quality, materials, amount of floor space, cost of construction, or probable fair market value, are not in keeping with the majority of residences in the subdivision at the time of the application. The committee shall have the power and authority, from time to time, in its own name and on its own behalf, or on the behalf of any Owner of a Lot who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and to enforce, by mandatory injunction or otherwise, any of the provisions of this Declaration.

Section 4: Variances. In the event of hardship cases, the Architectural Committee shall have the power, but not the duty, to grant a variance from the requirements of these Restrictions; provided, however, that all necessary permits or variances must first be obtained from the Town of Paradise Valley, Maricopa County, State of Arizona, or any other agency or department having jurisdiction.

Section 5: Rules and Regulations. The Architectural Committee shall have the power, but not the obligation, to establish such rules and regulations setting forth guidelines and standards, governing its activities and governing the procedures for applying for Architectural Committee approval, as it may deem

advisable.

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Section 6: Nonwaiver. The approval by the Architectural Committee of any plans, drawings or specifications for any matter requiring prior written approval by virtue of this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 7: Nonliability. Neither the Board of Directors of the Association (if an Association is established pursuant to Article V) nor the Architectural Committee nor any member thereof shall be liable to the Association, to any Owner or to any other party for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective or deficient, (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications, (c) the development of any portion of the Property or (d) the execution and filing of any estoppel certificate whether or not the facts therein are correct; provided, however, that with respect to the liability of member of the Board of Directors or the Architectural Committee, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing provisions of this Section 7, the Board of Directors or the Architectural Committee or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposals submitted to the Board of Directors or the Architectural Committee.

Section 8: Costs and Expenses. The Architectural Committee shall have the right, as a condition to the review of any matter submitted to it, to require the payment of a reasonable fee, as fixed by the Architectural Committee, to

defray the general operating costs of the Committee. In addition, with respect to any particular matter, the Architectural Committee shall have the right to charge any person or entity submitting any matter to the Committee a special fee to cover any expected or actually incurred costs or expenses peculiar to that particular matter. The Committee shall have the right to enforce collection of same in the same manner as provided in this Declaration for the enforcement of any provision hereof. The Architectural Committee shall have the authority to assess against any Lot covered by this Declaration such sums as are necessary or appropriate to pay for all costs which the Committee, in its absolute discretion, determines to be necessary and appropriate to carry out its powers and duties as stated herein, and to pay all of the costs, including attorneys' fees, whether or not suit is brought, incurred in enforcing any of the covenants, conditions, and restrictions of this Declaration.

Section 9: Enforcement. The covenants, conditions, limitations and agreements herein contained shall run with the land and shall be binding upon all persons who now own, lease, sublease or occupy any of the Property and upon all persons purchasing, leasing, subleasing, or occupying any of the Property after the date upon which this instrument has been duly recorded. The Declaration may be enforced by the Declarant, the Architectural Committee, or the Owner of a Lot of the Property, or any one or more of said individuals. The violation or breach of any provision hereof shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value upon said Property. Each and all of said provisions hereof shall be binding upon and effective against any Owner of any of the Property whose title thereto is acquired by foreclosure, trustee's sale, or otherwise. The breach of any of said provisions may be enjoined, abated or remedied by appropriate legal proceedings, notwithstanding the existence of any lien, deed of trust or mortgage instrument. Any and all instruments of

conveyance of any interest in all or part of the Property may contain reference to this instrument, and, whether so referenced or not, shall be subject to the Declaration herein set forth as fully as though said terms and conditions of this instrument were therein set forth in full. The delay, failure or omission to enforce any of the provisions hereof in the event of any breach thereof shall not constitute acquiescence therein nor constitute a waiver of any right to enforce any such provision or any other provisions of this Declaration, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Declarant, the Architectural Committee, or any Owner, for or on account of the failure to bring any action or take any steps as to any breach hereof. If any Owner breaches any of the provisions hereof and fails to cure the same within fifteen (15) days after notice thereof is given by Declarant or the Architectural Committee, the Declarant or the Architectural Committee may, at its option, cure said breach. Any amounts so spent to cure such breach, together with costs, reasonable attorneys' fees and interest thereon computed at the Default Rate from the date that said sums are paid to the date of repayment, shall be payable by the breaching Owner forthwith upon demand. The total sum of the foregoing amounts shall be a continuing lien thereon, and shall be the personal obligation of the breaching Owner. Either the Declarant or the Architectural Committee may bring an action at law against the breaching Owner to collect said sums or may foreclose the lien against the Property (and any improvements thereon) in the same manner as provided for foreclosing a mortgage lien, or at the option of the Declarant or the Architectural Committee, in the same manner as provided for foreclosing a materialman's lien, or, at the further option of the Declarant or the Architectural Committee, in such other manner as is available at law or in equity. Said lien shall be subordinate to only the first lien of any mortgage or deed of

trust with respect to the Property. The sale or transfer of such Property shall not extinguish or affect said lien, as stated above, except that the sale or transfer of such Property pursuant to mortgage foreclosure or forfeiture under the above-described mortgage or deed of trust, or any proceeding in lieu thereof, shall extinguish the lien as to any amount which became due prior to such sale or transfer.

ARTICLE V

ASSOCIATION

There shall be a Homeowners' Association which shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, the Bylaws for the Association and the Declaration. Neither the Articles nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association shall be named the "Merrill Cantatierra Homeowners' Association". (Hereinafter referred to as the "Association".)

Section 1: Membership and Voting Rights. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot.

(a) The Association shall have two (2) classes of voting membership:

Class A: Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B: The Class B member shall be the Declarant and shall be entitled to forty-nine (49) votes for each

lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals forty-nine (49).

The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If an Owner or Owners casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one (1) vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

(b) Each member shall have such other rights, duties and obligations as set forth in the Articles of Incorporation and the Bylaws of the Association as they may be amended from time to time.

(c) The Association membership of each Owner of a Lot within the Property shall be appurtenant to said Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to the Owner's Lot and then only to the transferee of ownership to such Lot or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under a deed of trust or such other legal processes as is now in effect or as may hereinafter be established under or pursuant to the laws of the State of Arizona. Any attempts to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer said membership to the new Owner thereof.

(d) The affairs of the Association shall be

conducted by a Board of Directors with the assistance of such officers as are designated in the Articles or Bylaws.

(i) As long as Class B membership exists, the Board of Directors shall be appointed by the Architectural Committee.

(ii) As long as Class B membership exists, the officers shall be appointed by the Board of Directors.

(iii) As long as Class B membership exists, persons other than Owners may serve as officers and directors. When Class B ownership ceases to exist, officers and directors must be Owners.

(iv) When Class B membership ceases to exist, the officers and directors shall be designated as provided in the Articles or Bylaws.

Section 2: Funds and Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association.

(i) Annual assessments or charges which may be collected in whatever manner deemed appropriate by the Association; i.e., monthly, bi-monthly, etc.; and

(ii) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who is the Owner of such Property at the time when the assessments fell due. The personal obligation for delinquent assessments shall not pass to the successors in title of the

person owning the property at the time the assessment fell due, unless expressly assumed by them.

(b) Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement, maintenance and replacement of the private roadway, of the easements and common areas, electronic security system and security service, and of the improvements situated or to be situated thereon, and to comply with all of the obligations of the Association hereunder, all in accordance with this Declaration and the Articles of Incorporation of the Association.

(c) Annual Assessments - Maximum Amounts. The annual assessments will be determined by the initial Board of Directors of the Association for the calendar year in which the Association is established. Until January 1 of the year immediately following the establishment of the Association. The maximum annual assessment shall be one hundred dollars (\$100.00) per each Lot, whether Developed or Undeveloped. Excluded from said maximum annual assessment is the additional assessment required for the Security Service which added assessment is to be determined by the Board of Directors and shall be included in the annual assessment.

(i) In the event that during the course of any year it shall appear to the Homeowners' Association that the estimated assessments are insufficient or inadequate to cover the cost to the Homeowners' Association of performing its responsibilities under this Declaration, then the Board of Directors shall prepare and approve a supplemental budget covering the estimated deficit for the remainder of such year for which a supplemental assessment shall be made of each Owner and against each Lot representing the Lot's pro rata share of the supplemental assessment.

(ii) In the event that during the course of

any year it shall appear to the Homeowner's Association that the estimated assessments have been excessive based on actual costs, then the Board of Directors shall notify each Owner of such excess and that such excess shall be eliminated by decreasing the monthly installments by a proportionate amount of such excess.

(d) Special Assessments for Capital Improvements, Maintenance, and Repair. The Association may choose to construct, reconstruct, repair or replace landscaping, Private Roads, or improvements upon the Property and exclusively for the health, safety and welfare of the residents. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment payable in not more than the next succeeding ten (10) years for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of any landscaping, Private Roads, or other improvements which may be installed by the Association upon the Property and exclusively for the health, safety and welfare of the residents provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for that purpose.

(e) Association Rights with Respect to Common Areas. In addition to any other rights specifically granted in this Declaration to the Association with respect to Common Areas, the Association shall have the right to:

(1) Levy assessments for the maintenance of the Common Areas/Greenbelt and pay expenses incurred in connection with the Common Areas.

(ii) Regulate the use of the Common Areas/Greenbelt through Association Rules and the Special Use Permit approved by the Town of Paradise Valley recorded as instrument No. _____, official records of Maricopa County, Arizona.

(iii) Regulate and restrict the use of the Common Areas, including recreational facilities, including the removal of any person who, in the sole discretion of the Association or its appointed agent, is causing a disturbance or nuisance or is harming or endangering other persons on the Common Areas/Greenbelt.

(f) Electronic Security System and Security Service. The Association shall select and contract with a single security company that will provide the following:

(i) Initial wiring for electronic security systems for each improvement throughout the entire subdivision.

(ii) Electronic security systems for each Merriil Cantatierra resident requesting said electronic security system plus any optional features.

(iii) Point of contact monitoring of individual homeowner's electronic security systems.

(iv) Security guard/gate to control access into and out of the subdivision.

Each Owner, by accepting a deed to its Lot, agrees to contract with the security company selected and contracted with by the Homeowners' Association for the installation and equipment of an electronic security system plus any optional features which will be paid for by Owner upon his request for said electronic security system.

The point of contact monitoring of individual homeowner's electronic security systems and security guard/gate is hereby considered a security service which cost of said service shall be included in the Annual Assessment.

(g) Meetings - Notice and Quorum for Action Authorized Under Sections (c) and (d) above. Written notice of any meeting called for the purpose of taking any action authorized under Section (c) and (d) above shall be sent to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting

called, the presence of members or proxies entitled to cast more than fifty percent (50%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same written notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(h) Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis as determined by the Board of Directors of the Association. The Board of Directors shall determine when an assessment is due and payable and when the payment of an assessment shall be deemed delinquent.

(i) Date of Commencement of Annual Assessments - Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the meeting of the Board of Directors of the Association at which the initial annual assessment is established. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

(j) Enforcement of Assessments. Each assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or Owners against whom the same is assessed, and shall constitute a lien and charge upon the Lot to which the assessment relates. The Declarant, for each Lot owned within the Property, and each Owner by acceptance of a deed relating to a Lot or Lots or by acceptance of any other document

or instrument conveying an ownership interest therein, whether or not it shall be so expressed in any such deed or other document or instrument, are and shall be deemed to covenant and agree to pay to the Association the assessments, both annual and special, provided for herein, and agree to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorneys' fees, accountants' fees, and costs thereby incurred in addition to any other amounts due from the Owner or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by any one or all of the following procedures

(i) Enforcement by Suit. The Association may bring a suit at law against each Owner or Owners to enforce each such assessment obligation. Each Owner agrees that any judgment rendered in any such action shall include a sum for reasonable attorneys' fees in such amount as the Court may adjudge against the defaulting Owner, plus all Court costs and necessary expenses and accounting fees incurred by the Association, plus interest at the Default Rate on the amount of said assessment from the time such assessment becomes delinquent until paid in full.

(ii) Enforcement by Lien. The Association may give notice to each Lot Owner whose assessment is due and unpaid by mailing to said Owner a copy of a Notice and Claim of Lien which shall state the following: (1) the last known name

of the delinquent Owners; (2) the legal description and street address of the Lot against which claim of lien is made; (3) the amount claimed to be due and owing (with any proper offset allowed); (4) that the claim of lien is made by the Association pursuant to the terms of the Declaration; and (5) that a lien is claimed against the Lot in an amount equal to the amount of the stated delinquency. The Association may record a duly executed original or copy of such Notice and Claim of Lien and the lien claimed therein shall immediately attach and become effective as a lien upon the Lot against which such assessment was levied. Each default in payment of an assessment shall constitute a separate basis for a claim of lien or a lien, but any number of defaults may be included within a single Notice and Claim of Lien. The amount of the lien shall include the amount of all unpaid assessment, plus interest on the amount of the assessment at the Default Rate from the date the assessment becomes delinquent until paid in full, plus a lien charge to cover recording, legal and accounting expenses incident thereto. The amount of said lien charge may be increased or decreased by the Board of Directors in its sole discretion. Any such lien may be foreclosed by appropriate action in Court, or in the manner provided by law for the foreclosure of a realty mortgage, or the exercise of a power of sale in a trust deed, as elected by the Association, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in its interest at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. In the event such foreclosure is by action in Court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the

enforcement and foreclosure of this lien in this manner and also hereby expressly waives the defense of the Statute of Limitations applicable to the bringing of any suit or action thereon.

(iii) Notification. The Association may notify all Owners of the names of all persons who have defaulted in the payment of any assessment when due and the amount thereof in the discretion of the Board of Directors.

(iv) Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, exercise of a power of sale pursuant to a deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve a Lot Owner or a Lot from liability for any assessments thereafter becoming due or from the lien thereof.

(k) Insurance. Authority to Purchase. The Association shall purchase and maintain certain insurance upon the Common Areas. Such policies, and endorsements thereon, or copies thereof, shall be deposited with the Association. The Association shall generally advise the Owners of the coverage of said policies in order to permit the Owners to determine which particular items are included within the coverage so that the Owners may insure themselves as they see fit if certain items are not insured by the Association. The Association shall maintain and pay for policies of insurance as follows:

(1) A multi-peril type policy covering 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, without limitation, perils normally covered by an "all-risk" policy, in an amount determined by the

Association.

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(ii) A policy of comprehensive public liability insurance covering all of the Common Areas in an amount determined by the 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, without limitation, liability for nonowned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance or use of the Common Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Association.

(iii) The Association may, 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 Association. If funds of the Association are handled by a management agent, then fidelity bond coverage may also be obtained for the officers, employees or agents thereof handling or responsible for Association funds. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection in an amount not less than the lesser of (a) one-half times the Association's estimated annual operating expenses and reserves, (b) a sum equal to twelve months' aggregate Regular Assessments plus reserves, or (c) the estimated maximum amount of funds, including reserves, in the custody of the 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.

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

(v) A policy of "directors and officers" liability insurance to the extent reasonable and available, in the Board's discretion.

(vi) Such other insurance, and in such amounts, as the Association shall determine from time to time to be desirable.

Notwithstanding the foregoing, the Association shall endeavor to obtain, to the extent reasonable and available, or shall discontinue such insurance coverage as two-thirds of the votes of the members shall direct; provided, however, the Association shall not discontinue casualty and public liability coverage as required previously.

(vii) Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member nor the Declarant shall be liable to any Owner, Mortgagee or other Person if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or member may desire.

(viii) Premiums for insurance policies purchased by the Association shall be paid by the Association as a common expense.

(ix) The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably

necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its 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 Association.

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

Section 3: Control of Architectural Committee. After the Association is established, and after all Lots have been conveyed to an Owner, and notwithstanding any contrary provision of this Declaration, the Architectural Committee shall consist of such regular members and alternate members as may be determined by the Board of Directors of the Association and the Board of Directors of the Association may thenceforth in the exercise of its sole discretion, assume any or all of the duties, obligations or functions of the Architectural Committee as provided for in this Declaration, and shall have the power, at any time and from time to time to promulgate, adopt, amend and repeal reasonable rules and regulations governing the Architectural Committee, applications thereto, Architectural Committee procedures and criteria for architectural control.

Section 4: Professional Management. The Association may engage the services of a professional manager or a professional management company or otherwise contract to maintain the Common Area, to collect assessments, to attend to the security within the Property and to perform such other duties and to fulfill such other functions as may be determined by the Board of Directors of the Association.

Section 5: Dissolution of Association. At any time after thirty (30) years from the recording of this Declaration, the Association may be dissolved by the recording with the Maricopa County Recorder of a Declaration of Dissolution duly signed by Owners representing two-thirds (2/3) of the Lots, and by compliance with all applicable laws and regulations governing the dissolution of corporations.

ARTICLE VI

GENERAL PROVISIONS

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

Section 2: Severability. Invalidity, illegality, or unenforceability of any one of these covenants or restrictions by statute, judgment, or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

Section 3: Amendment. The covenants, conditions and restriction of this Declaration shall run with and bind the land in perpetuity from the date this Declaration is recorded. This Declaration may be amended at any time by an instrument signed by the Declarant or after the Homeowners' Association has been formed by two-thirds (2/3) of the voting membership of the Homeowners' Association except as specifically provided to the contrary in this instrument. Any amendment must be recorded.

No amendment which would alter or terminate the landscaping or maintenance of the Easement Area lying outside the Perimeter Wall shall be effective until approval of an amended landscaping and maintenance plan in

substitution of the existing plan is obtained from the Town of Paradise Valley, or the successor jurisdiction.

Section 4: Rule Against Perpetuities. If any of the privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until 30 years after the death of the survivor of the now living descendants of the President of the United States, President Ronald Reagan, United States Senator John McCain, United States Senator Dennis D'Amico, Bruce Merrill, and Corwin L. Ellsworth.

Section 5: Annexation. Additional residential property and Common Area may be annexed to the Property with the consent of two-thirds (2/3) of the members of any Homeowners' Association which may be established pursuant to the authority hereof.

Section 6: Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners of Lots within the Property. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Architectural Committee, or any duly authorized agents of any of them, may enforce by self help any of the provisions or restrictions.

Section 7: Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, including laws pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in said Declaration.

Section 8: Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 9: Delivery of Notices and Documents. Except as otherwise provided in this Declaration, any written notice or other documents relating to or required by these Restrictions may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows:

If to the Association, at the principal office of the corporation as shown on the records of the Arizona Corporation Commission; if to the Architectural Committee, c/o Bruce and Virginia W. Merrill, 6330 East Mockingbird Lane, Paradise Valley, Arizona 85253; if to an Owner, to the address of any Lot within the Property owned, in whole or in part by him to any other address last furnished by an Owner to the Association; and if to the Declarant, c/o Bruce and Virginia W. Merrill, 6330 East Mockingbird Lane, Paradise Valley, Arizona 85253, provided however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association or Declarant. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

When the title to a Lot is changed or transferred in any manner, the Owner of such Lot shall file with the Association a written notice specifying the nature of each such change or transfer and the names of every person or entity who is the record owner of the equitable or legal title of such Lot.

Section 10: The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the Property, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assignees, to all of the provisions,

restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

Section 11: Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and the members of the Architectural Committee, and the Declarant (to the extent a claim may be brought against the Declarant by reason of its appointment, removal or control over the Association or the Architectural Committee) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Association, be indemnified by the 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 for his being or having served in such capacity on behalf of the Association (or in the case of the Declarant by reason of having appointed, removed or controlled or failed to control the Association or the Architectural Committee), or any settlement thereof, whether or not he is a director, officer or member of the Architectural Committee or serving in such other specified capacity at the time

such expenses are incurred, provided that the Association shall determine, in good faith, that such officer, director, member of the Architectural Committee or other person, or the Declarant, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties,. The foregoing rights or indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled at law or otherwise.

Section 12: Non-Liability of Officials. To the fullest extent permitted by law, neither the Declarant, the Association, the Architectural Committee or any other committees of the Association nor any member thereof, nor any directors or officers of the Association, shall be liable to any Owner, the 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 or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which the Declarant, the Association, or such committees or persons reasonably believed to be within the scope of their respective duties.

Section 13: Non-Liability for Approval of Plans. Plans and specifications shall be approved in writing by the Architectural 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 neither the Architectural Committee, the members thereof, the Association, nor the Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Architectural Committee, the Association, nor the Declarant shall 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 development, or manner of development of any property within the subdivision, or (d) the execution and filing of an estoppel certificate, whether or not the facts therein are correct; provided, however, that such action, with the actual knowledge possessed by him, was taken in good faith. Approval of plans and specifications by the Architectural 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.

Section 14: Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with accepted accounting principles.

Section 15: Records. The Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, and Association Rules. Notwithstanding the foregoing to the contrary, until the transition date, the Association shall not be required to make its books and records available for inspection except as required by law. The Declarant shall be under no obligation at any time to make its own books and records available for inspection by any Owner or other person.

Section 16: Managing Agent. All powers, duties and rights of the Association 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

Association of its obligation to perform any such delegated duty. Excepting only the use and management agreement, any agreement for professional management, or any other contract providing for services of the Association or any other party, shall not exceed a term of three (3) years, which term may be renewed by agreement of the parties for successive one-year (1) periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon ninety (90) days' written notice.

IN WITNESS WHEREOF, the undersigned being the Declarant herein or the qualified and appointed officer thereof, has hereunto set his signature and seal this 30TH day of

June, 1988.

BY: Bruce Merrill

BY: Virginia Merrill

STATE OF ARIZONA

County of Maricopa

} ss

On this the 30TH day of June, 1988,

before me, the undersigned Notary Public, personally appeared

BRUCE MERRILL and VIRGINIA MERRILL,

who acknowledged himself/herself to be

BRUCE MERRILL and VIRGINIA MERRILL

and that he/she being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing his/her name.

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

My Commission Expires:

Oct 7, 1991

Gilbert J. Parnassian
Notary Public

WHEN RECORDED RETURN TO:

Michael E. Woolf, Esq.
4110 N. Scottsdale Rd., #308
Scottsdale, AZ 85251

FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR MERRILL CANTATIERRA

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Merrill Cantatierra ("First Amendment") is made this 22nd day of September, 1988, by Merrill Revocable Trust, Dated August 26, 1982 (the "Trust").

RECITALS:

A. BRUCE MERRILL and VIRGINIA M. MERRILL (the "Merrills") recorded that certain Declaration of Covenants, Conditions and Restrictions for Merrill Cantatierra (the "Declaration") as Instrument No. 88-347145 with the County Recorder of Maricopa County, Arizona imposing certain covenants, conditions and restrictions upon the real property included within the subdivision known as Merrill Cantatierra, a subdivision recorded in Book 323 of Maps at Page 39, records of Maricopa County, Arizona (the "Property").

B. The Merrills have conveyed the Property to the Trust and the Trust has become successor Declarant under the Declaration.

C. The Trust, as successor Declarant, and as the current owner of all of the lots in Merrill Cantatierra, desires to amend and supplement the Declaration as hereinafter set forth. Article VI, Section 3 of the Declaration provides that prior to the formation of the homeowner's association, the Declaration may be amended by an instrument signed by the Declarant; said homeowner's association has not been formed.

D. The capitalized terms used in this First Amendment without definition shall have the meanings given to such terms in the Declaration.

NOW, THEREFORE, the Declaration is hereby amended and supplemented as follows:

1. The following subsection is hereby added to Article II, Section 23 of the Declaration:

"(d) The cost of erecting each Party Wall shall be born by each Owner on whose Lots the Party Wall has been erected. The Owner who first commences construction upon its respective Lot shall construct as Party Walls, side yard walls upon the side boundary lines of the Lot. At any time within one year after an adjoining Lot Owner (the "Non-constructing Owner") commences construction on its Lot, the Owner who constructed the Party Wall (the "Constructing Owner") may provide the Non-constructing Owner with invoices for all materials furnished and services rendered in connection with the initial construction of the Party Wall, together with paid receipts and lien waivers from all persons/entities who provided services and materials. Within thirty days after receipt of all invoices, paid receipts and lien waivers, the Non-constructing Owner shall pay 50% of the costs of the materials furnished and services rendered in connection with the construction of the Party Wall. If the Non-constructing Owner does not reimburse the Constructing Owner for its 50% share of the total cost of services rendered and materials furnished in connection with the construction of the Party Wall (the "Construction Cost") as provided for herein, the Non-constructing Owner's 50% share of the Construction Cost shall bear interest at the rate of eighteen percent (18%) per annum from the date due until paid and the Constructing Owner shall immediately thereafter have a lien upon the Non-Constructing Owner's Lot. The Constructing Owner may enforce payment of the amount due by taking either or both of the following actions, concurrently or separately (and by exercising either of the remedies set forth below, the Constructing Owner does not prejudice or waive its right to exercise any other remedy):

(i) Bring an action at law against the Non-constructing Owner; and/or,

(ii) Foreclose the lien against the Non-constructing Owner's Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages."

2. Except as supplemented by this First Amendment, the Declaration shall remain in full force and effect.

Dated as of the day and year first above written.

MERRILL REVOCABLE TRUST,
DATED AUGUST 20, 1982

By Bruce Merrill
Bruce Merrill
Its Co-trustee

By Virginia M. Walters Merrill
Virginia M. Walters Merrill
Its Co-trustee

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 22nd day of September, 1988, by Bruce Merrill and Virginia M. Walters Merrill, as Co-trustees of the Merrill Revocable Trust Dated August 20, 1982.

Simon P. Lord
Notary Public

My Commission Expires:

My Commission Expires April 9, 1989

105-1121

92288

CHICAGO TITLE AGENCY OF ARIZONA

ST 102476

WHEN RECORDED RETURN TO:

Michael E. Wolf, Esq.
4110 N. Scottsdale Rd., #308
Scottsdale, AZ 85251

MOD RSTR (DP)

| |
|--|
| RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY ARIZONA |
| SEP 26 '88 - 8 22 |
| WITH POLARIS CHECK BOOK |
| 10- 3 |
| 88-47325 |

FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR MERRILL CANTATIERRA

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D. The capitalized terms used in this First Amendment without definition shall have the meanings given to such terms in the Declaration.

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1. The following subsection is hereby added to Article II, Section 23 of the Declaration:

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(i) Bring an action at law against the Non-constructing Owner; and/or,

(ii) Foreclose the lien against the Non-constructing Owner's Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages."

88 473185

3. Except as supplemented by this First Amendment, the Declaration shall remain in full force and effect.

Dated as of the day and year first above written.

MERRILL REVOCABLE TRUST,
DATED AUGUST 20, 1982

By Bruce Merrill
Bruce Merrill
Its Co-trustee

By Virginia M. Walters Merrill
Virginia M. Walters Merrill
Its Co-trustee

STATE OF ARIZONA

County of Maricopa

The foregoing instrument was acknowledged before me this 21st day of September, 1986, by Bruce Merrill and Virginia M. Walters Merrill, as Co-trustees of the Merrill Revocable Trust Dated August 20, 1982.

Susan P. Lind
Notary Public

My Commission Expires:

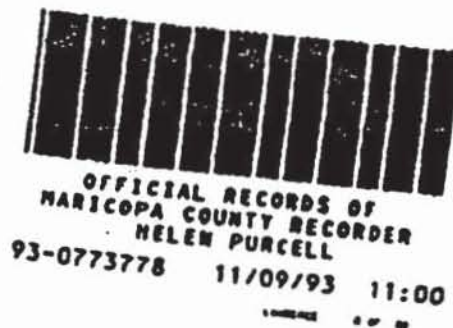
My Commission Expires April 9, 1989

105-1121
92288



After Recording Return to:

K. Layne Morrill, Esq.
BEUS, GILBERT & MORRILL, P.L.L.C.
Suite 1000 Great American Bank
3200 North Central Avenue
Phoenix, Arizona 85012



**SECOND AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
MERRILL CANTATIERRA**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MERRILL CANTATIERRA (the "Amendment") is made this 12th day of October, 1993, by MERRILL REVOCABLE TRUST, dated August 26, 1982 (the "Declarant").

RECITALS:

A. Bruce Merrill and Virginia M. Merrill (the "Merrills") recorded that certain Declaration of Covenants, Conditions and Restrictions for Merrill Cantatierra (the "Declaration") on July 15, 1988, at Instrument No. 88-347145, in the records of Maricopa County, Arizona, which was amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Merrill Cantatierra (the "First Amendment"), recorded on September 26, 1988, at Instrument No. 88-473254, in the records of Maricopa County, Arizona (collectively, the "Declaration"). The Declaration imposes certain covenants, conditions and restrictions on the real property included within the subdivision known as Merrill Cantatierra, a subdivision recorded in Book 323 of Maps, at page 39, records of Maricopa County, Arizona (the "Property").

B. Article VI, Section 3, of the Declaration provides that the Declaration may be amended at any time by an instrument signed by two-thirds ($\frac{2}{3}$) of the voting membership of the Merrill Cantatierra Homeowners' Association. Declarant currently owns eight lots within the Property. Accordingly, Declarant retains 392 Class B votes as described in Article V, Section 1, of the Declaration. There are currently 41 Class A votes in the Association. The total Class A and Class B votes in the Association is 433. Declarant's votes exceed two-thirds ($\frac{2}{3}$) of the available member votes in the Association.

C. A special meeting of the Homeowners' Association was properly called and convened on October 12, 1993, to consider the modifications set forth below. The meeting was

attended by Class A members holding 9 Class A votes and by Class B members holding 392 votes. The Amendment was approved by a vote of 397 votes in favor to 4 votes opposed.

D. The capitalized terms used in this Amendment without definition shall have the meanings given to such terms in the Declaration.

AMENDMENT:

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. The undersigned hereby acknowledge the accuracy of the Recitals set forth above.
2. The following text is hereby deleted from Article II, Section 1, of the Declaration:

One-story dwellings only shall be allowed on Lots 2 through 4, 13 through 17, 21 through 29, 32, and 43 through 49. The Architectural Committee shall have the power to allow and approve plans for two-story dwellings on the remaining Lots.

3. The first sentence of Article II, Section 22, is hereby amended to read as follows:

No building shall be erected on any Lot any wall of which is closer than forty (40) feet from the front line of said Lot, closer than twenty (20) feet to any side line, or closer than forty (40) feet to the back line thereof, except that such accessory buildings as are permitted under Paragraph 1 of this Article II may be erected with such setback as satisfy the minimum setback requirements of the Town of Paradise Valley, Arizona.

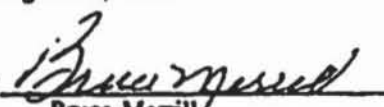
4. The reference to Book 323 of Maps, Page 39, in Recital A of the First Amendment is hereby modified to be Book 323 of Maps, Page 38.

5. Except as amended by this Amendment, the Declaration shall remain in full force and effect.

DATED as of the date first above written.

DECLARANT:

MERRILL REVOCABLE TRUST, dated
August 20, 1982

By 
Bruce Merrill
Its Co-Trustee

When recorded return to:

MAXWELL & MORGAN, P.C.
ENTRADA EXECUTIVE PLAZA
1423 S. HIGLEY ROAD, SUITE 119
MESA, ARIZONA 85204

**THIRD AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
MERRILL CANTATIERRA**

Pursuant to Article VI, Section 3 of the Merrill Cantatierra Declaration of Covenants, Conditions and Restrictions recorded July 15, 1988, in Maricopa County, Arizona, at document No. 88-347145 (including all amendments thereafter) ("Declaration"), by an affirmative vote of two-thirds (2/3) of the voting membership, the Members have consented to the amendment to Article II, Section 26 of the Declaration, which is deleted in its entirety and replaced by the following amendment:

Section 26: Signs. No signs of any kind which are Visible from Neighboring Property shall be erected or maintained on the Property of any part thereof, except (1) such signs as may be required by legal proceedings, (2) not more than one residential identification sign with a total face area not in excess of fifty-four (54) square inches on each side, (3) during the time of construction of any building or other Improvement one job identification sign not larger than eighteen inches by twenty-four inches (18" x 24") in height and width, (4) one sign advertising the sale of a lot, which sign shall not be larger than twelve inches by fifteen inches (12" x 15") and shall be made of wood and mounted on a wooden stake so that the bottom of the sign is not more than twenty-four inches (24") above ground level, (5) one real estate for sale or rent sign advertising the sale of the lot on which it is posted and not larger than twenty-four inches by thirty inches (24" x 30") in width and height, including any brochure box, sign holder and/or post similar to that customarily used in the real estate industry and appropriate for the sign, and (6) such other signs, the nature, number and location of which have been approved by the Architectural Committee.

Except as identified above, all other provisions of the Declaration shall remain in force and shall be unaffected by this Third Amendment to Declaration of Covenants, Conditions and Restrictions for Merrill Cantatierra.

I _____ President of the Merrill Cantatierra Homeowners Association hereby certify that this Third Amendment to Declaration of Covenants, Conditions and Restrictions for Merrill Cantatierra was passed by an affirmative vote of two-thirds (2/3) of the voting membership, evidenced by their signatures attached hereto, who appeared either in person or by absentee ballot at a Special Meeting of the Members held on the _____ day of _____, 2006.

President