

VALLEY RANCH PATIOS
DECLARATION OF RESTRICTIVE COVENANTS

FOR

All Patio Home Lots in Hidden Valley Ranch, A Planned Area Development in the City of Prescott, Arizona, According to the Plats Recorded and to be Recorded in the Office of the Yavapai County Recorder, Arizona.

KNOW ALL MEN BY THESE PRESENTS:

The undersigned Declarant, YAVAPAI TITLE COMPANY, an Arizona corporation, as Trustee, and the owner of the property described in Exhibit A (attached hereto and made a part hereof), situate in Yavapai County, Arizona, has adopted a plan for the development of the property as a Planned Area Development in the City of Prescott, Arizona, known as Hidden Valley Ranch. Portions of the property have been subdivided by the plats of record in the Office of the County Recorder of Yavapai County, Arizona, in Book 21 of Maps and Plats at Pages 1314 (Phase I), in Book 21 of Maps and Plats at Pages 46-47 (Phase II), and in Book 21 of Maps and Plats at Pages 2183, inclusive (Phase III).

Declarant is the owner of the remainder of the Exhibit A property not included in Phases I, II, and III and has subdivided a portion of the residual property as Hidden Valley Ranch, Phase IV by the plat recorded in the Office of the Yavapai County Recorder in Book 21 of Maps and Plats Page 84 on which the number of each lot has been preceded by the letter "P" to designate that such lot is to be a Patio Home Lot. In the development of Hidden Valley Ranch as a Planned Area Development additional phases of the subdivision will contain lots designated for Patio Homes by the use of the letter "P" before the number of such lot.

The Declarant desires to impose uniform restrictions on all lots designated for Patio Homes in the subdivision phases of Hidden Valley Ranch for the purpose of establishing:

(1) The nature of the use and enjoyment of the Patio Home Lots,

(2) A plan for the residential ownership of real property estates consisting of a Patio Home Lot and the improvements thereon, subject to the powers of management, regulation and control by a nonprofit corporation with membership of such owners.

NOW, THEREFORE, Declarant does hereby declare that the lots in Hidden Valley Ranch Phase IV and all lots in subdivision phases of Hidden Valley Ranch designated by the letter "P" preceding the lot numbers are subject to the following covenants, restrictions, conditions, easements, assessments, liens, limitations and obligations all of which are covenants which shall run with the title to each Patio Home Lot:

ARTICLE I

DEFINITIONS

Unless the content clearly indicates a different meaning, the following terms as used in this Declaration are defined as follows:

1.01 "ARTICLES". Means the Articles of Incorporation of the VALLEY RANCH PATIOS, INC.

1.02 "ASSOCIATION". Means HIDDEN VALLEY ASSOCIATION, an Arizona nonprofit corporation, its successors and assigns, organized and existing pursuant to the MASTER DECLARATION for the purposes and with the rights, powers, and duties of the ASSOCIATION as provided in the MASTER DECLARATION.

1.03 "BY-LAWS". Means the BY -LA WS OF VALLEY RANCH PATIOS, INC.

1.04 "COUNCIL". Means the-governing body of the VALLEY RANCH PATIOS, INC.

1.05 "DECLARANT". Means Y A V APAI TITLE COMPANY, an Arizona corporation, as Trustee, and its successor as Trustee.

1.06 "DECLARATION". Means DECLARATION OF RESTRICTIVE COVENANTS FOR ALL PATIO HOME LOTS IN HIDDEN VALLEY RANCH, this Instrument.

1.07 "DEVELOPER". Means HVR Limited, an Arizona limited partnership, and the successors and assigns of the partnership of any of its interest in the property for the purpose of development.

1.08 "DWELLING". Means the residential structure on a LOT.

1.09 "GROUP". Means the VALLEY RANCH PATIOS, INC., an Arizona nonprofit corporation, its successors and assigns, formed as an entity through which the OWNERS may act in accordance with this DECLARATION, and its ARTICLES and BY-LAWS.

1.10 "GUEST". Means any agent, servant, tenant, guest or invitee of an OWNER or any person or entity who has acquired any title or interest in a LOT by, through or under an OWNER, including a licensee, or MORTGAGEE, or any agent, servant, tenant, GUEST or invitee of such a person or entity.

1.11 "LOT", Means a PATIO HOME LOT as platted on the recorded plat of Hidden Valley Ranch Phase IV and each lot to be subdivided in a subdivision phase of Hidden Valley Ranch, a Planned Area Development. Each Patio Home Lot is or will be designated on a recorded plat with the letter "P" followed by a lot number.

1.12 MASTER DECLARATION. Means DECLARATION OF RESTRICTIVE COVENANTS FOR ALL PHASES OF HIDDEN VALLEY RANCH, a Planned Area Development, in the City of Prescott, Arizona, as recorded in Book 1257, pages 597-628, inclusive, as amended by First Amendment recorded in Book 1281 of Official Records, pages 429-433, inclusive, records of the County Recorder of Yavapai County, Arizona, and as hereafter amended.

~~1.12 "MASTER DECLARATION". Means DECLARATION OF RESTRICTIVE COVENANTS FOR ALL PHASES OF HIDDEN VALLEY RANCH, a Planned Area Development, in the City of Prescott, Arizona, as recorded in Book 1257, Page 598, in the Office of the County Recorder of Yavapai County, Arizona and as hereafter amended.~~

1.13 "MEMBER", Means a member of VALLEY RANCH PATIOS, INC.

1.14 "MORTGAGE". Means a mortgage, deed of trust, or other security instrument, which is a lien on a LOT.

1.15 "MORTGAGEE", Means a beneficiary under, or holder of a MORTGAGE.

1.16 "OWNER", Means the DEVELOPER or record OWNER, whether one or more persons or entities (including, but not limited to DECLARANT), of equitable title or legal title (if equitable title has merged therewith) to a LOT. OWNER does not include a person or entity holding an interest in a DWELLING or LOT merely as security for the performance of an obligation. If the title to a LOT is vested of record in a trustee under a deed of trust, the trustor shall be the OWNER.

1.17 "PROPERTY". Means all PATIO HOME LOTS IN HIDDEN VALLEY RANCH, a Planned Area Development in the City of Prescott, Arizona.

ARTICLE II

STATEMENT OF PURPOSES, USE AND GENERAL RESTRICTIONS

2.01 Residential Use: Except as provided in the MASTER DECLARATION, an OWNER shall not occupy or use a LOT, or permit the same or any part thereof to be occupied or used, for any purpose other than for the personal use for dwelling purposes by the OWNER, or guests of the OWNER.

2.02 Commercial Business: Except as provided in the MASTER DECLARATION, no commercial business shall be permitted within the PROPERTY and a use permitted under Paragraph (iii) of Section 3.02 of the MASTER DECLARATION shall require written approval of the GROUP.

2.03 Construction and Alteration: All construction or reconstruction on a LOT shall be according to the architectural plans and specifications filed by DECLARANT with the GROUP and approved by the Architectural Control Committee of the ASSOCIATION. No OWNER shall, without first obtaining the written consent of the GROUP, make any structural alteration of a DWELLING or any change to the exterior of a DWELLING, or paint or decorate any portion of the exterior.

2.04 Fencing: No fencing shall be erected, removed, heightened, or altered in any way without first obtaining the written consent of the GROUP.

2.05 Lot Split: No LOT may be divided for sale or encumbrance.

2.06 Easements: Each OWNER of a LOT with a DWELLING located less than five (5') feet from a boundary line common to an adjacent LOT or COMMON AREA is hereby granted a non-exclusive easement over, upon and across such adjacent LOT or COMMON AREA for:

- (i) Drainage of rain and surface waters by artificial or natural means;
- (ii) Maintenance and repair of the DWELLING;
- (iii) Fire protection; and
- (iv) Public utilities.

The easement shall be located on the adjacent LOT or COMMON AREA, five (5') feet in width, adjacent to the common boundary line and run the entire length thereof. The easement shall include a non-exclusive right of ingress and egress and the right of maintenance and repair to effect the purposes thereof and shall be appurtenant to and run with the title to the LOT benefited thereby. The installation by an OWNER of artificial drainage or public utilities (other than those installed by DEVELOPER in the original construction of the DWELLING) shall be subject to the prior approval of the GROUP.

ARTICLE III

OWNERS RIGHTS AND RESPONSIBILITIES IN GENERAL

3.01 Declaration Binding: The acceptance of a deed or conveyance or the entering into a lease or the entering into occupancy of any LOT shall constitute an agreement that the provisions of this DECLARATION, the ARTICLES and BY-LAWS and the rules and regulations adopted pursuant thereto, as the same may be amended from time to time, are accepted and ratified by such OWNER or GUEST and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such LOT as though such provisions were recited and stipulated at length at each and every deed of conveyance or lease thereof.

3.02 Strict Compliance: Each OWNER shall strictly comply with the provisions of this DECLARATION, the ARTICLES and BY-LAWS and the rules and regulations adopted pursuant thereto, as the same may be amended from time to time. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the COUNCIL on behalf of the OWNERS, or in a proper case, by an aggrieved OWNER.

ARTICLE IV

OWNER'S RIGHTS AND RESPONSIBILITIES RE: DWELLING

4.01 Exclusive Ownership and Possession: Each OWNER shall be entitled to exclusive ownership and possession of his LOT, subject to easements and rights granted to the GROUP and OWNERS herein, and subject to the provisions of the MASTER DECLARATION.

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4.02 Maintenance: Except for those portions which the COUNCIL is required to maintain and repair hereunder, each OWNER shall, at his own expense, maintain his LOT and improvements in good order, condition and repair.

4.03 Water Service: Each OWNER shall at all times, maintain water service to his LOT and shall pay when the same becomes due all charges for water used on the LOT, including the water utilized by the GROUP in maintaining the landscaping on the LOT.

4.04 Casualty Insurance: It is declared that the GROUP and all OWNERS have an interest that the PROPERTY and all improvements be maintained in a uniform, neat and attractive condition and that loss or damage to the improvements on any LOT will affect the financial interests of the OWNERS and the GROUP unless the improvements are restored or the site cleared and landscaped. The provisions for casualty insurance are to protect these economic interests. Each OWNER shall keep the improvements on his LOT insured by a company authorized to do insurance business in the State of Arizona, against loss by fire and perils covered under the standard extended coverage endorsement. Such insurance coverage shall contain a Replacement Cost Endorsement, if available. The OWNER shall provide the COUNCIL with a Certificate of Insurance, or other evidence of insurance satisfactory to the COUNCIL, and shall instruct the insurer to notify the COUNCIL of any modification, alteration, cancellation, or termination of the insurance coverages reflected in the Certificate of Insurance or other evidence of insurance provided to the COUNCIL.

Upon the failure of an OWNER to file evidence of current insurance, the COUNCIL shall have the right and power, but without obligation to do so, to insure the improvements on the LOT of such OWNER in an amount estimated to cover the cost of razing improvements on the LOT to ground level and replacing the surface with top soil. The policy shall be issued to the GROUP and the OWNER as the named insureds. The cost of any insurance obtained by the COUNCIL pursuant to this section, shall be the obligation of the OWNER of the insured LOT, and shall be collected by the COUNCIL from the OWNER as a special assessment against the OWNER, secured by a lien on the LOT as provided in this DECLARATION for assessments or other charges.

4.05 Loss to Improvements: In the event the improvements are damaged or destroyed, the OWNER shall within

a period of thirty (30) days notify the GROUP in writing of his election either to:

(a) raze the improvements to ground level and replace the surface with top soil within ninety (90) days from the date of the damage or destruction, or

(b) repair and rebuild the improvements within a reasonable time, not to exceed six (6) months from the date of the damage or destruction.

If the OWNER:

(a) fails to give timely notice of election to the GROUP, or

(b) having elected to raze the improvements, fails to complete the restoration of the ground within the time required, or

(c) having elected to repair and rebuild, fails within ninety (90) days from the date of the damage or destruction to enter into a bona fide contract for the repair and rebuilding of the exterior of the DWELLING, then, in any such event, the GROUP is hereby irrevocably authorized by such OWNER to raze the improvements to ground level and replace the surface with top soil and the GROUP is granted an easement on the LOT for such purpose. The expense of razing and restoration of the ground not Provided under section 4.06(c) shall be the obligation of the OWNER and shall be collected by the COUNCIL from such OWNER as a special assessment against the OWNER, and such cost shall be secured by a lien on the LOT as provided in this DECLARATION for assessments or other charges.

The terms "repair" and "rebuild" as used herein shall mean the repair and restoration of the improvements in a good and workmanlike manner to substantially the same condition as they existed prior to the occurrence of the loss of damage, bringing such DWELLING into conformity with the plans and specifications filed by the DECLARANT with the GROUP for the unit model.

4.06 Proceeds of GROUP'S Insurance on a LOT: The proceeds of insurance, if any, procured by the GROUP under Section 4.04 and collected on account of loss or damage to improvements on any LOT shall be available to the COUNCIL:

(a) in its entirety to apply towards the payment of any bona fide reconstruction contract entered into by the OWNER, or if the OWNER elects not to restore the improvements,

(b) in its entirety to be paid to the OWNER when he makes timely completion of the razing and restoration of the ground,

(c) to the GROUP to the extent required for its cost of a permitted razing and restoration of the ground and the balance to the OWNER.

ARTICLE V
VALLEY RANCH PATIOS, INC.

5.01 The Group: The GROUP is a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the ARTICLES, BY-LAWS, rules and regulations, and this DECLARATION.

5.02 Membership: Each OWNER shall be a member of the GROUP. Each membership shall be appurtenant to the LOT upon which it was based and shall be transferred automatically by conveyance of that LOT. Ownership of a LOT shall be the sole qualification for membership and shall be evidenced only by recordation in the records of the GROUP (no certificate of membership will be issued). No person or entity other than an OWNER may be a member of the GROUP, and a membership therein may not be transferred except in connection with the transfer of a LOT. If title to a LOT is held by more than one person or entity, the membership related to that LOT shall be shared by all such persons and entities in the same proportionate interest and by the same type of tenancy or ownership by which the title to the LOT is held.

5.03 Voting: The GROUP shall have two classes of voting membership:

CLASS A - Class A Membership shall be all OWNERS, other than DECLARANT or DEVELOPER, and shall be entitled to one vote for each LOT owned.

CLASS B - Class B Membership shall be the DECLARANT or DEVELOPER who shall be entitled to three votes for each LOT owned. Class B Membership shall cease and be converted to Class A Membership on the happening of the first of the following events:

- (i) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership, or
- (ii) When DECLARANT or DEVELOPER, in writing, surrenders the Class B Membership, or
- (iii) On December 31, 1990.

Where there is more than one OWNER of the same LOT, any such OWNERS may attend any meeting of the GROUP, but it shall be necessary for those several OWNERS present to act unanimously in order to cast the vote or votes to which they are entitled. The COUNCIL may suspend the voting rights of any OWNER during any period or periods in which such OWNER has failed to comply with the rules and regulations published by the COUNCIL, or with any other obligation imposed on such OWNER under this DECLARATION, the ARTICLES or BY-LAWS, or the MASTER DECLARATION.

5.04 Power of Attorney: The GROUP is hereby irrevocably appointed the attorney-in-fact for each OWNER, for him and on his behalf, to manage, control, administer and otherwise deal with the PROPERTY, including the repair and rebuilding of all or any portion thereof and the collection and disbursement of proceeds from casualty insurance and condemnation awards. The acceptance by any person or entity of a deed or conveyance to a LOT hereunder shall constitute the appointment by such person or entity of the GROUP as his attorney-in-fact for the purposes defined herein.

5.05 Duties and Powers of the GROUP: The GROUP shall have such rights, duties and powers prescribed by the DECLARATION and as set forth in the ARTICLES and BY-LAWS, as the same may be amended from time to time.

In addition to the duties and powers enumerated in the ARTICLES, BY-LAWS, and the rules and regulations adopted pursuant thereto, or elsewhere set forth in this DECLARATION, and without limiting the generality thereof, the GROUP shall:

- (a) Subject to Section 4.05 of this DECLARATION, maintain and otherwise manage and be responsible for the maintenance and repair of all exterior portions of the DWELLING (excluding the roof), fences and the landscaping of the grounds of each LOT visible from the street providing access to the LOT, which may be necessary to maintain the good appearance and condition of the PROPERTY.

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(b) Obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, as well as such other personnel as the COUNCIL shall determine to be necessary or desirable for the proper operation of the PROPERTY, whether such personnel are furnished or employed directly by the GROUP, or by any person or entity with whom it contracts; and

(c) Undertake any activity, function or service for the benefit of or to further the interest of all, some or any of the OWNERS, DWELLINGS or LOTS in the PROPERTY.

5.06 Personal Liability: No MEMBER of the COUNCIL, GROUP, any committee of the GROUP, or any officer of the GROUP, shall be personally liable to any OWNER, or to any other party, including the GROUP, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the GROUP, the COUNCIL or any other representative or employee of the GROUP, or any committee or officer of the GROUP, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

5.07 The COUNCIL - General Powers: The COUNCIL shall manage the business and affairs of the GROUP and may exercise all such authority and powers of the GROUP and do all such lawful acts as are not by law, the ARTICLES, BY-LAWS, or this DECLARATION directed or required to be exercised or done by the MEMBERS. The powers of the COUNCIL shall encompass, but not be limited to, all of the rights and duties of the COUNCIL as set forth elsewhere in this DECLARATION, ARTICLES and BY-LAWS.

5.08 Rules and Regulations: The COUNCIL shall have the power to adopt, amend, repeal, and enforce such rules and regulations ("PATIO HOMEOWNER RULES") pertaining to such rights and duties as are consistent with its general powers. A copy of the rules as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each OWNER.

5.09 Right of Entry: The COUNCIL or its duly authorized agent is hereby granted a right of entry onto the premises of each LOT for the purposes of its duty or right of maintenance or repair. Such entry shall be made with as little inconvenience to the OWNER as is practicable and any damage caused thereby will be repaired at the expense of the GROUP. Each OWNER shall at the OWNER'S expense furnish to the GROUP such water as shall be reasonable for the maintenance of the landscaping maintained by the GROUP on the OWNER'S LOT.

5.10 Voting Rights. Suspension: The COUNCIL may suspend any OWNER'S voting rights during any period or periods in which the OWNER fails to comply with the rules and regulations, or with any obligations of such OWNER under this DECLARATION. The COUNCIL may also take legal action against any OWNER to enforce compliance with such rules, regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

5.11 Insurance: The COUNCIL shall have the right but not the duty to purchase and maintain casualty insurance for any LOT under Section 4.04.

Additionally, the COUNCIL shall have the authority, the right, and the duty, to obtain and maintain such other insurance coverage which the COUNCIL deems necessary, to protect the GROUP, including but not limited to, casualty insurance covering personal property of the GROUP, workmen's compensation and employer's liability insurance as may be necessary to comply with local laws, fidelity bonds, liability insurance covering the GROUP and its employees and agents, and insurance indemnifying officers, directors, employees and agents of the GROUP. The cost of such additional insurance shall be borne by the GROUP.

The COUNCIL shall obtain all insurance under policies issued by responsible companies duly authorized to do insurance business in the State of Arizona. In addition, all such policies of insurance shall, to the extent possible:

(a) Provide for a waiver of subrogation by the insurer as to claims against the COUNCIL, the GROUP, OWNERS, GUEST, and the respective servants and agents of each;

(b) Provide that any policy of insurance on the PROPERTY shall not be terminated, cancelled or substantially modified without at least ten (10) days prior written notice to the GROUP.

The coverage and limits of such policies obtained and maintained by the GROUP shall be reviewed annually by the COUNCIL and may be increased or decreased in the COUNCIL'S discretion. Any insurance policy may contain such deductible provisions as the COUNCIL deems consistent with good business practice.

The COUNCIL shall have the exclusive authority to adjust losses and to receive the proceeds thereof under policies obtained and maintained by the GROUP pursuant to this DECLARATION.

5.12 Implied Rights: The GROUP, and the COUNCIL, shall have and may exercise any right or privilege expressly granted to it by this DECLARATION, the ARTICLES or the BY-LAWS, or reasonably to be implied from the provisions of such documents, and such rights and privileges given or implied by law, or reasonably necessary or desirable to fulfill the duties, obligations, rights or privileges as set forth herein and in the BY-LAWS.

ASSESSMENTS AND COMMON EXPENSES

6.01 Duty of Membership: DECLARANT, for each LOT owned by it within the PROPERTY, and for and as the OWNER of the PROPERTY and every part thereof, hereby covenants, and each OWNER of a LOT by the acceptance of a deed or other instrument of conveyance therefor, whether or not it be so expressed in such instrument, covenants and agrees with each other and with the GROUP to be a MEMBER of the GROUP and to pay to the GROUP assessments made by the COUNCIL for the purposes provided in this DECLARATION, the ARTICLES, and in the BY-LAWS, as therein provided.

6.02 Determination of Budget and General Assessments: The total amount required to be raised by regular assessments shall be determined for each fiscal year of the operation of the PROPERTY by the COUNCIL. To determine the total amount required, the COUNCIL shall prepare a budget for such fiscal year showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses which will be payable, the estimated income and other funds which will be received as well as any estimated surplus from prior fiscal years, and the estimated total amount required to be raised by regular assessments to cover costs and expenses and to provide a reasonable reserve for contingencies.

The total amount required to be raised by regular assessments for any fiscal year shall include the amount necessary to cover the costs and expenses of fulfilling the obligations of the GROUP made in connection with or contemplated under any previously approved budget. If the total amount required to be raised by regular assessments proves inadequate for any reason, including nonpayment by any OWNER of his share thereof, the COUNCIL may levy a supplemental assessment which shall be assessed to the OWNERS. Except as emergencies may require, the COUNCIL shall make no commitment for expenditures in excess of the funds reasonably expected to be available from regular assessments.

6.03 Rate and Commencement of Assessment: The total amount required to be raised by assessments shall be apportioned among the improved lots on the basis of the model of DWELLING units with which the LOTS are improved, but the rate of assessment shall be uniform for each model of DWELLING unit, provided no assessment shall be made against a LOT until three (3) months after a developed LOT is sold by DECLARANT or DEVELOPER. The close of escrow shall be the date of sale for the purposes of this section.

6.04 Notice of Assessments and Time for Payment; The COUNCIL shall give written notice to each OWNER as to the amount of the regular assessments with respect to each LOT subject to assessment prior to the date of the annual meeting and such assessment, unless otherwise provided for by the COUNCIL, shall be payable in monthly installments on the first day of each month thereafter provided, however, a LOT which first becomes subject to assessment after the commencement of the fiscal year shall be assessed for the remainder of the year prorata at the rate established for the appropriate DWELLING model. The COUNCIL shall give written notice to each OWNER as to the amount of any supplemental or special assessment on the OWNER'S LOT as soon as is practicable after the COUNCIL has levied such assessment. The amount of any such assessment shall be payable in any reasonable manner as determined by the COUNCIL, at one time, or at regular intervals, but not less than thirty (30) days after written notice with respect thereto has been given to each OWNER.

6.05 No Waiver: The failure by the COUNCIL prior to commencement of any fiscal year to determine the budget

therefor and the amount required to be raised by regular assessments, shall not be deemed a waiver or modification in any respect of the provisions of this DECLARATION or a release of any OWNER from its obligation to pay the regular assessment or any installment thereof for that or the subsequent year, rather, the regular assessment and the monthly installments thereof fixed for the current fiscal year shall continue until such budget is determined and assessment fixed.

6.06 Records and Accounting: All funds collected hereunder shall be expended for the purposes designated in this DECLARATION, ARTICLES, or the BY-LAWS. The GROUP shall keep detailed and accurate books and records of the receipts and expenditures of the GROUP and shall specify and itemize the maintenance and repair expenses thereof and any other expenses incurred. Such records and books shall be available for examination by any OWNER or his duly authorized representative at convenient hours on weekdays. The GROUP MAY MAINTAIN SUCH SEPARATE ACCOUNTS AS IT DEEMS PROPER.

6.07 Personal Obligations of OWNER: The amount of each assessment (including monthly installments of the regular assessments) shall be a separate, distinct and personal debt and obligation of the OWNER against whom the same has been assessed at the time such assessment is made and shall be collectible as such with interest at a rate established by the COUNCIL. The COUNCIL shall have the right to impose a reasonable late charge for nonpayment of any payment of any assessment or installment thereof within fifteen (15) days of the date any such payment became due. Suit to recover a money judgment for such personal obligation shall be maintainable by the COUNCIL without foreclosing or waiving the lien securing the same. No OWNER may exempt itself, avoid, or diminish any personal obligation or liability for payment of any assessment by abandonment of his LOT or otherwise. The purchaser of a LOT shall be jointly and severally liable, except as otherwise provided herein, with the seller for all assessments which are unpaid at the time of sale, without prejudice, however, to the right of purchaser to recover from seller amounts paid by purchaser to secure or defray the amount of the unpaid assessments.

6.08 Lien for Assessment: The amount of any assessment, whether regular, supplemental or special, assessed to the OWNER, together with late charges thereon, interest at the rate established by the COUNCIL, and costs, including reasonable attorneys' fees, shall become a lien upon such LOT. Each OWNER waives all rights of homestead in respect to such lien.

To evidence any such lien, the COUNCIL may prepare and cause to be recorded in the Office of the County Recorder of Yavapai County, Arizona a written notice of lien setting forth the amount of the assessment, the due date thereof, the amount remaining unpaid, the name of the OWNER and a description of his LOT. The cost of such recording shall be borne by the OWNER. No such notice of lien shall be so recorded until a delinquency occurs in payment of the assessment or installments due. Such liens shall be superior to all other liens and encumbrances, recorded or unrecorded, except for valid tax and special assessments liens on the LOT in favor of any governmental or other validly constituted taxing authority, and the lien for all sums unpaid on a first MORTGAGE thereon or any MORTGAGE under which DECLARANT is the MORTGAGEE, which is recorded in the official records of the County Recorder of Yavapai County, Arizona. Sums unpaid on such MORTGAGE shall include all unpaid obligatory advances made pursuant thereto as well as all other amounts advanced thereon and secured by the lien, thereof in accordance with the terms of such instrument.

All persons or entities acquiring liens (other than a first MORTGAGE or governmental tax or special assessment liens) on any LOT after the recordation of this DECLARATION in the official records of the County Recorder of Yavapai County, Arizona, shall be deemed to consent that such lien shall be inferior to the assessment lien provided for herein, whether or not such consent be specifically set forth in the instrument which creates any such other lien.

The COUNCIL shall report to any MORTGAGEE any unpaid assessments remaining delinquent for more than ninety (90) days provided that such MORTGAGEE shall have previously requested written notice with respect thereto to the COUNCIL. Any MORTGAGEE may, but shall not be required to, pay any amount secured by the lien for assessments created hereunder and upon such payments such MORTGAGEE shall be subrogated to all rights of the COUNCIL with respect to such lien, including priority.

6.09 Release of Lien: Upon payment or other satisfaction of a delinquent assessment for which a notice of lien has been recorded in the official records of the County Recorder of Yavapai County, Arizona, the COUNCIL shall cause to be recorded in the same manner a further notice setting forth the satisfaction and release of such lien. The OWNER shall be required to pay the costs and expenses of such recording.

6.10 Foreclosure of Lien: The COUNCIL may foreclose the assessment lien against a LOT in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages and may recover a deficiency judgment against persons obligated for the assessment if the judicial sale of the LOT does not satisfy the judgment. In any foreclosure, the OWNER shall be required to pay the costs and expenses of such proceeding, any assessments or installments thereof becoming due during the pendency thereof, and costs, including reasonable attorneys' fees. The GROUP acting on its own behalf shall have the power to bid in and purchase the LOT at foreclosure sale and to hold, lease, mortgage, convey and thereafter otherwise deal with the LOT as the OWNER thereof, subject to the right of redemption as provided by law.

6.11 Estoppel Certificate: Upon payment of a reasonable fee and upon written request of any OWNER, MORTGAGEE, or any person intending to acquire any right, title or interest in a LOT, the GROUP shall furnish a written statement setting forth the amount of the unpaid assessment on the LOT, the amount of the current regular assessment, the date that such assessment becomes or became due, any to which installments have been paid thereon, and credit for advance payments. Such statement shall be conclusive upon the GROUP in favor of persons who rely thereon in good faith. ,

Unless such request for a statement of account shall be complied with within twenty (20) days from the receipt thereof by the GROUP, all unpaid assessments which become due prior to the date of making such request shall be subordinate to the lien of a MORTGAGEE which acquired its interest subsequent to requesting such statement. Where a prospective purchaser of a LOT makes such request, both the lien for such unpaid assessments and the personal obligation of such person, as a purchaser, shall be automatically released with respect thereto, if the statement is not furnished within such twenty (20) day period and thereafter an additional written request is made therefor by such person and is not complied with within ten (10) days from the receipt thereof by the COUNCIL.

ARTICLE VII

MISCELLANEOUS PROVISIONS

7.01 Amendments: Except as otherwise provided herein, the provisions of this DECLARATION may be amended by an Instrument in writing signed and acknowledged by OWNERS representing a majority of the LOTS, such amendment shall be effective upon the recordation thereof in the official records of the County Recorder of Yavapai County, Arizona, provided, however:

(a) Any amendment which changes or alters the basis for sharing of the common expenses or changes the apportionment of assessments that may be levied by the GROUP or alters the respective voting power of the OWNERS or otherwise alters the basis upon which the OWNERS are entitled to vote shall require the consent of the OWNERS of eighty-five percent (85%) or more of the LOTS.

(b) Any amendment which diminishes or defeats the rights or interests of any MORTGAGEE shall require the consent of such affected MORTGAGEE.

(c) Prior to December 31, 1990 and so long as DECLARANT or DEVELOPER has any interest in the PROPERTY, every amendment shall require the consent of DECLARANT and DEVELOPER having such interest in the PROPERTY.

7.02 Compliance with Provisions of DECLARATION and BY-LAWS: Each OWNER shall comply with the provisions of this DECLARATION, the ARTICLES and BY-LAWS, the rules and regulations of the COUNCIL issued pursuant thereto, as the same may be amended from time to time, and the MASTER DECLARATION. Failure to so comply shall be grounds for an action to recover sums due and for damages or injunctive relief, or both, maintainable by the DECLARANT or the COUNCIL on behalf of the OWNERS or, in a proper case, by an aggrieved OWNER. Each OWNER shall be responsible for the compliance by GUESTS, and the respective servants and employees of each of them with respect thereto, and his failure to so ensure compliance by such persons shall be grounds for the same action available to the COUNCIL by reason of such OWNER'S own noncompliance. Should court proceedings be instituted in connection with any such right of enforcement, the prevailing party therein shall be entitled to recover its or his costs and expenses in connection therewith, including reasonable attorneys' fees.

7.03 Notice: Any notice to be given to an OWNER may be delivered in person or may be deposited in the United States Mail in the State of Arizona, with postage prepaid and addressed to the OWNER. Each OWNER shall register the address to which he desires any such notice to be addressed or, in the absence of registering such an address, any such notice may be addressed and shall be deemed given to OWNER for the purposes of service thereof, to the street number of the LOT. Such address may be changed from time to time by notice in writing to the COUNCIL. Service of any such written notice shall be deemed complete at the time of such personal delivery or within five (5) days after the mailing thereof. All notices or demands to be served on MORTGAGEES shall be served upon them by depositing in the United States Mail in the State of Arizona of such notice, with postage prepaid, and addressed to such address as any SliGH MORTGAGEE may have furnished to the COUNCIL by written notice. In the absence of furnishing any such address by a MORTGAGEE, such MORTGAGEE shall not be entitled to receive any notice as provided for in this DECLARATION. Any such notice to be furnished to a MORTGAGEE shall be deemed served upon it within five (5) days after mailing as herein provided.

7.04 Transfer of DECLARANT'S Rights: Any right or interest reserved herein to the DECLARANT may be transferred or assigned by DECLARANT, either separately or with one or more of such rights or interest, to any person or entity.

7.05 Continuation of OWNER'S Obligations. All obligations of an OWNER under this DECLARATION shall continue, notwithstanding that a GUEST may occupy his LOT pursuant to lease or otherwise. No OWNER shall, however, be responsible for the expenses or other obligations accruing from and after the date upon which he has sold his LOT or conveyed it to another, not a MORTGAGEE thereof.

7.06 Number and Gender: Whenever a singular number is used in this DECLARATION and required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporations, firms, partnerships or other forms of association or entity. Whenever the

plural number is used herein and required by the context, the same shall include the singular number.

7.07 Captions: Section titles or captions contained in this DECLARATION are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this DECLARATION or the intent of any provisions hereof.

7.08 Severability: The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of anyone provision or portion thereof, section or portion thereof, sentence, clause, phrase or any portion thereof, shall not affect the validity or enforceability of any other provision, section, sentence, clause or phrase herein.

7.09 Law Controlling: The provisions of this DECLARATION shall be in addition and supplemental to all other provisions of law, and shall be construed and controlled by and under the laws of the State of Arizona.

7.10 Effect of Provisions of DECLARATION: Each provision of this DECLARATION, and any agreement, promise, covenant and undertaking to comply with each provision of this DECLARATION, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this DECLARATION, shall:

(a) Be deemed incorporated in each deed or other instrument by which any right, title or interest to the PROPERTY or in any LOT is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(b) By virtue of acceptance of any right, title or interest in the PROPERTY or in any LOT by an OWNER, be deemed accepted, ratified, adopted and declared as a personal covenant of such OWNER, and, as a personal covenant, shall be binding on such OWNER and such OWNER'S heirs, personal representatives, successors and assigns, and shall be deemed a personal covenant to, with and for the benefit of the GROUP;

(c) Be deemed a real covenant by DECLARANT, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the PROPERTY and each LOT and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the PROPERTY and each LOT;

(d) Be deemed a covenant, obligation and restriction secured by a lien in favor of the GROUP, burdening and encumbering the title to a LOT in favor of the GROUP to secure the performance of the obligation of an OWNER as provided in this DECLARATION.

7.11 Protection of MORTGAGEE: Except as otherwise provided in this DECLARATION, no violation or breach of, nor failure to comply with, any provision of this DECLARATION by an OWNER and no action against him to enforce any such provision shall affect, defeat, render invalid or impair the lien of any MORTGAGEE taken in good faith, for value and perfected by recording in the Official Records of the County Recorder of Yavapai County, Arizona, prior to the time of the recording in the Official Records of the County Recorder of an instrument describing the LOT, listing the name or names of the OWNER or OWNERS in fee simple title thereof, and giving notice of such violation, breach, failure to comply, or action of enforcement affect, defeat, render invalid or impair the title or interest of the holder of any such MORTGAGE or result in any liability, personal or otherwise, as to such MORTGAGEE.

Any purchaser of a LOT on foreclosure sale shall take subject to this DECLARATION; provided, however, that violations or breaches of, or failures to comply with, any provisions of this DECLARATION which occur prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, its heirs, personal representatives, successors or assigns.

7.12 Limited Liability; Indemnification: Neither DECLARANT, the GROUP, the COUNCIL, nor any servant or agent of any of them shall be liable to an OWNER or to any other person for any action or for any failure to act unless the injury or damage proximately resulting therefrom shall be caused by the fraudulent conduct, gross negligence, or bad faith of the entity or person taking such action or failing to act.

The GROUP shall indemnify DECLARANT, itself, each member of the COUNCIL, and any servant or agent of any of them against any loss or threat of loss or exposure to liability resulting from any claim or legal proceeding relating to the performance or nonperformance of any act or obligation with respect thereto of any such entity or person, except where the entity or person otherwise so entitled to indemnification hereunder is adjudged guilty by a court of competent

jurisdiction of fraudulent conduct, gross negligence or bad faith in taking the action or in the failure to act. Where any such claim or legal proceeding is settled prior to or without judgment, any such indemnification shall apply only when a COUNCIL approves such settlement as being in the best interest of the PROPERTY. Indemnification as authorized pursuant to this section shall include payment of reasonable attorneys' fees or other expenses incurred in settling any claim or threatened action or incurred in any final adjudicated legal proceedings as well as expenses incurred in the removal of any lien affecting property owned by the indemnitee. The COUNCIL may levy, in advance, a special assessment or assessments sufficient to provide funds required in order to indemnify the entity or person against whom such claim or action has been brought, but no OWNER shall be deemed personally liable to any such indemnitee by reason of this provision.

7.13 Binding on Successors: This DECLARATION shall be binding upon and inure to the benefit of DECLARANT, the GROUP, the COUNCIL, each OWNER, the GUEST of an OWNER, as well as the heirs, personal representatives, successors in interest and assigns of each of them. Benefits conferred upon an OWNER hereunder and burdens assumed by OWNER shall be binding upon and shall inure to the benefit of a GUEST unless the right conferred or the obligation representing such burden would appear in the context in which conferred or imposed to be personal to an OWNER.

7.14 No Waiver: The failure of the GROUP or COUNCIL to insist, in anyone or more instances, upon the strict performance of any of the covenants, conditions, restrictions or provisions of this DECLARATION, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment, for the future, of any such covenant, condition, restriction or provision shall remain in full force and effect.

7.15 Interpretation: The provisions of this DECLARATION shall be liberally construed to effectuate its purpose in creating a uniform plan for the development and operation of the PROPERTY.

7.16 Effective Date: This DECLARATION shall take effect as of the date upon which it has been signed and acknowledged by an authorized representative of DECLARANT. This DECLARATION shall be recorded in the Official Records of the County Recorder of Yavapai County, Arizona, or where appropriate, in the Official Records of other governmental entities or agencies.

IN WITNESS WHEREOF, this DECLARATION is signed this 13th day of January, 1981.

Y A V AP AI TITLE COMPANY, an Arizona corporation, as Trustee

By

Frank Kelly, President

STATE OF ARIZONA

COUNTY OF YAVAPAI

The foregoing instrument was acknowledged before me this 13th day of January, 1981, by Frank Kelly, President of YAVAPAI TITLE COMPANY, an Arizona corporation, as Trustee for HVR LIMITED, an Arizona limited partnership, on behalf of the partnership.

Notary Public

STATE OF ARIZONA

County of Yavapai

FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS

FOR

All Patio Home Lots in Hidden Valley Ranch, a Planned Area Development in the City of Prescott, Arizona, According to the Plats Recorded and to be Recorded in the Office of the Yavapai County Recorder, Arizona.

KNOW ALL MEN BY THESE PRESENTS:

The undersigned Declarant, YAVAPAI TITLE COMPANY, an Arizona corporation, as Trustee,

(i) Is the Owner of all of that certain property situate in Yavapai County, Arizona, and more particularly described on Exhibit "A", and

(ii) Hereby amends that certain Declaration of Restrictive Covenants for All Patio Home Lots in Hidden Valley Ranch, a Planned Area Development in the City of Prescott, Arizona, dated January 13, 1981, and recorded January 13, 1981, in Book 1352 of Official Records, pages 380-424, inclusive, in the Office of the County Recorder of Yavapai County, Arizona, as follows:

1. Section 1.12 on page 4 is deleted and in lieu thereof a new Section 1.12 is inserted to read:

"1.12 MASTER DECLARATION. Means DECLARATION OF RESTRICTIVE COVENANTS FOR ALL PHASES OF HIDDEN VALLEY RANCH, a Planned Area Development, in the City of Prescott, Arizona, as recorded in Book 1257, pages 597-628, inclusive, as amended by First Amendment recorded in Book 1281 of Official Records, pages 429-433, inclusive, records of the County Recorder of Yavapai County, Arizona, and as hereafter amended. "

2. ARTICLE II is amended by inserting a new Section 2.06 on page 5 to read:

"2.06 Easements: Each OWNER of a LOT with a DWELLING located less than five (5') feet from a boundary line common to an adjacent LOT or COMMON AREA is hereby granted a non-exclusive easement over, upon and across such adjacent LOT or COMMON AREA for:

- (i) Drainage of rain and surface waters by artificial or natural means;
- (ii) Maintenance and repair of the DWELLING;
- (iii) Fire protection; and
- (iv) Public utilities.

The easement shall be located on the adjacent LOT or COMMON AREA, five (5') feet in width, adjacent to the common boundary line and run the entire length thereof. The easement shall include a non-exclusive right of ingress and egress and the right of maintenance and repair to effect the purposes thereof and shall be appurtenant to and run with the title to the LOT benefited thereby. The installation by an OWNER of artificial drainage or public utilities (other than those installed by DEVELOPER in the original construction of the DWELLING) shall be subject to the prior approval of the GROUP."

3. Section 4.01 on page 5 is deleted and in lieu thereof a new Section 4.01 is inserted to read:

"4.01 Exclusive Ownership and Possession: Each OWNER shall be entitled to exclusive ownership and possession of his LOT, subject to easements and rights granted to the GROUP and OWNERS herein, and subject to the provisions of the MASTER DECLARATION."

4. Subparagraph (a) of Section 5.05 on page 7 is deleted and in lieu thereof a new subparagraph (a) of Section 5 .05 is

inserted to read:

"(a) Subject to Section 4.05 of this DECLARATION, maintain and otherwise manage and be responsible for the maintenance and repair of all exterior portions of the DWELLING (excluding the roof), fences and the landscaping of the grounds of each LOT visible from the street providing access to the LOT, which may be necessary to maintain the good appearance and condition of the PROPERTY."

Except as herein amended, the Declaration of Restrictive Covenants for All Patio Home Lots in Hidden Valley Ranch, a Planned Area Development, in the City of Prescott, Arizona, as recorded on January 13, 1981, in Book 1352, of Official Records, pages 380-424, inclusive, in the Office of the County Recorder of Yavapai County, Arizona, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 11th day of February, 1981.

YAVAPAI TITLE COMPANY, an Arizona corporation, as Trustee

STATE OF ARIZONA

COUNTY OF YAVAPAI

The foregoing document was acknowledged before me this 11th day of February, 1981, by HAROLD E. SNYDER, Trust Officer of YAVAPAI TITLE COMPANY, an Arizona corporation, as Trustee for HVR, Limited, an Arizona limited partnership and CORVILLA, INC., an Arizona corporation, on behalf of the partnership and corporation.