

When recorded mail to:
Cardon Homes Corporation
1819 E. Southern, Suite #C-10
Mesa, AZ 85204

TRANSAMERICA TITLE INS.

RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND
RESTATED DECLARATION OF USE RESTRICTIONS
FOR
SUNTRAILS III TOWNHOMES

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THIS RESTATED DECLARATION made on this 1st day of July,
1983, by Cardon Homes Corporation, an Arizona Corporation.

WITNESSETH:

WHEREAS, Cardon Homes Corporation is the owner of
Suntrails III Townhomes under that Declaration of Covenants,
Conditions and Restrictions, Declaration of Party Wall
Convenants and Declaration of Use Restrictions recorded in
docket 15186, pages 313 through 369, and as amended in the
document with recording number 83 108476, in the office of
the county recorder, Maricopa County, Arizona, said property
being described as lots 64 through 185, inclusive, and Common
Areas C through K, inclusive of SUNTRAILS III, as recorded
in Book 231 of Maps, page 40, which property is affected and
encumbered by said Declarations;

WHEREAS, Cardon Homes Corporation, as the Declarant
under said Declarations desires and intends hereby to further
supplement and amend said Declarations;

NOW, THEREFORE, said Declaration of Covenants, Conditions
and Restrictions, the Declaration of Party Wall Convenants and
the Declaration of Use Restrictions heretofore amended and
currently in affect, are hereby further supplemented, amended,
combined and restated in their entirety so that hereafter
the terms of said Declarations for Suntrails III Townhomes,
lots 64 through 185, inclusive, and Common Areas C through
K, inclusive, shall be and read in their entirety as follows:

RECORDED IN OFFICIAL RECORDS
OF MARICOPA COUNTY, ARIZONA

JUL 18 1983 -8 00

BILL HENRY, COUNTY RECORDER

FEE 41.50 PGS 40

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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SUNTRAILS III

THIS DECLARATION is made on the date hereinafter set forth by Cardon Homes Corporation, an Arizona corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property in the City of Mesa, County of Maricopa, State of Arizona, more particularly described as:

Lots 64 through 185, inclusive, and Common Areas C through K, inclusive, of SUNTRAILS III, as recorded in Book 231 of Maps, page 40, records of Maricopa County, Arizona.

WHEREAS, Declarant desires to impose upon the above described property certain mutual covenants, conditions, restrictions, easements and charges under a general plan of improvement for the benefit of said property and the owners thereof.

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NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and charges, all of which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all persons having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Architectural Committee" shall mean the committee which may be created pursuant to Article VI hereof. If no such committee is created, "Architectural Committee" shall mean and refer to the Board.

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Section 2. "Articles" shall mean the Articles of Incorporation of the Association which are, or shall be, filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 3. "Association" shall mean and refer to SUNTRAILS III HOMEOWNERS' ASSOCIATION, INC., an Arizona non-profit corporation, its successors and assigns.

Section 4. "Board" shall mean the Board of Directors of the Association.

Section 5. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 6. "Common Area" or "Common Areas" shall mean all real property now or hereafter owned by the Association for the common use and enjoyment of the Owners, including without limitation, such Common Area as may from time to time be annexed in accordance with Article XI, Section 3. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

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Common Areas C through I of SUNTRAILS III, as recorded in Book 231 of Maps, page 40, records of Maricopa County, Arizona.

Section 7. "Declarant" shall mean and refer to Cardon Homes Corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Declaration" shall mean this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNTRAILS III, as the same may be amended from time to time.

Section 9. "First Mortgage" shall mean any mortgage, deed of trust or agreement for sale made in good faith for value and duly executed and recorded so as to create a lien that is prior to the lien of any other mortgage, deed of trust, agreement for sale or encumbrance (except ad valorem taxes and improvement lien assessments) against any Lot. A mortgagee, beneficiary or vendor under any such mortgage, deed of trust or agreement for sale, respectively, shall be referred to as a "First Mortgagee."

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Section 10. "Foreclosure" shall mean and refer to any procedure or process whereby a mortgage, deed of trust or agreement for sale may be enforced against property subject to its lien, including judicial foreclosure, non-judicial trustee's sale, forfeiture by notice proceedings, forfeiture by judicial proceedings, or the acceptance of a deed in lieu of foreclosure.

Section 11. "Lot" shall mean and refer to the separate parcels of real property described as Lots 64 through 185, inclusive, as shown upon the recorded subdivision map of the Property and such additional parcels as may from time to time be annexed in accordance with Article XI, Section 3.

Section 12. "Owner" shall mean and refer to the holder of record, whether one or more persons or entities, of a fee simple title to any Lot, including contract buyers, and their successors and assigns, but excluding those possessing any such interest merely as security for the performance of an obligation.

Section 13. "Property" shall mean and refer to that certain real property hereinbefore described on page 1, and such additional real property as may from time to time be annexed in accordance with Article XI, Section 3.

Section 14. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintains a common household in a dwelling.

Section 14. "Single Family Residence" shall mean a townhome or townhouse used as a residence for a Single Family.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Each Owner shall have a right and easement of enjoyment in common with every other Owner in and to the Common Area, and such right shall be appurtenant to and pass with the title to such Owner's Lot, subject to:

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(a) The right of the Association to establish non-discriminatory rules and regulations for the use of the Common Area, including without limitation, charging reasonable admission or other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend an Owner's voting rights in the Association and right and easement of enjoyment and to the Common Area (i) for any period during which an assessment against such Owner's Lot remains unpaid; and (ii) for a period not to exceed sixty (60) days for any other infraction of this Declaration.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an Unofficial Document instrument signed by two-thirds (2/3) of each class of voting memberships agreeing to such dedication or transfer has been duly recorded with the Maricopa County Recorder's office.

(d) The right of Declarant and its sales agents and representatives to the non-exclusive use, without extra charge, of the Common Area for maintenance of sales, display and exhibit facilities in connection with development of the Property and sale of Lots.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with this Declaration, his right of enjoyment to the Common Area and facilities to the members of his or her family, his or her tenants, or his or her guests or invitees.

Section 3. Title to Common Area. Declarant covenants that it will convey fee simple title to the Common Area to the Association after all improvements thereon planned by Declarant are fully installed, completed and in operation for use by the Owners, unencumbered, except for any easements granted for public utilities or other public purposes consistent with the intended use of such Common Area by the Association and the Owners. The

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- conveyance shall be made to the Association prior to the conveyance of the first Lot to a purchaser from Declarant.

Section 4. Right to Encumber. Any Owner may encumber his lot with or by a First Mortgage (and with or by other liens and mortgages although the provisions hereof with respect to a First Mortgage shall not apply to such other liens and mortgages). It shall be the duty of each Owner whose Lot is encumbered by a First Mortgage promptly to notify the Association of the name and address of the First Mortgagee, and the Association shall maintain a record of such First Mortgages and First Mortgagees. Each Owner shall likewise promptly notify the Association as to the release or discharge of any First Mortgage on such Owner's lot.

ARTICLE III

ASSOCIATION

Section 1. The Association is a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and as set forth in the Articles of Incorporation and the Bylaws of the Association and in this 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 provisions of this Declaration shall control in the event of any conflict with the Articles, the Bylaws or any rules adopted by the Association, but such instruments may contain any provision not inconsistent with law or with this Declaration relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members.

Section 2. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint in accordance with the Articles and the Bylaws, as the same may be amended from time to time.

Section 3. By a majority vote of the Board, the Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations

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to be known as "Association Rules". The Association Rules may restrict and govern the use of the Common Area and any other area within the Property, except as to the interior of any dwelling unit of an Owner. The Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner, and may be recorded. Upon such mailing or delivery, said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4. No member of the Board or any committee of the Association, or any officer of the Association, shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, any ^{Unofficial Document} officer representative or employee of the Association, or the Architectural Committee, or any other committee, provided that such person has, upon the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct.

Section 5. The Association may enter into agreements for professional management of the Property or any other contract with the Declarant providing for management or maintenance services; provided, however, that any such contract may not have a term exceeding (3) years and must provide for termination by either party upon thirty (30) days' prior written notice without cause and without payment of a termination fee.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. 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. The rights and

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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, or such other legal process as is now in effect or as may hereinafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void.

Section 2. Voting Classes. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners (with the exception of the Declarant so long as Declarant is the Class B member) and shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or (2) on January 1, 1988.

Section 3. Votes of Joint Owners. When more than one person holds an interest in a Lot, all such persons shall be members, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall fractional votes or more than one (1) vote be cast with respect to such Lot. In the event 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 any Owner or Owners cast a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or they were acting with the authority and consent of all other Owners of the same Lot.

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Section 4. Other Rights of Members. Each member shall have such other rights, duties, and obligations as are set forth in the Articles and the Bylaws, as the same may be amended from time to time.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the annual and special assessments and other charges 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 a continuing lien upon each Lot against which each assessment is made, and shall also be the personal debt and obligation of the Owner against whose Lot the same is assessed, but the personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by such successors. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his or her lot.

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Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property, all in accordance with the Articles and this Declaration. The annual assessments must include a charge to create an adequate reserve fund for the maintenance and repair, and where necessary or desirable, the periodic replacement of the improvements in the Common Area, and if necessary, annual assessments shall be increased, as provided herein, to provide for the continuity or replacement of the reserve fund.

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Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall not exceed TWO HUNDRED FIFTY Dollars (\$ 250.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding year and at the end of each one year period thereafter, Provided that and such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment payable by the end of the year in which the assessment was made for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital

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improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members voting in person or by proxy at a meeting duly called for such purpose. Special assessments shall be in addition to, and not in place of, the reserve fund for maintenance, repairs and replacement as required above in Section 2.

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

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Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed by the Board at a uniform rate for all Lots. Annual assessments shall be due and payable and collected on a monthly basis. The Board shall determine when an assessment is due and payable and when the payment of an assessment shall be deemed delinquent.

Section 7. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association. 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.

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Section 8. Enforcement of Assessments. In the event of default in the payment of any assessment or other charge when due, the assessment or charge shall be deemed delinquent and if not paid within thirty (30) days thereafter, the Association may enforce such obligation in any manner provided by law or in equity, including without limiting the generality of the foregoing, by bringing a suit at law against the Owner to enforce the delinquent obligation, and the judgment rendered in such action shall include a sum for reasonable attorneys' fees in such amount as the court may adjudge against the defaulting Owner, plus interest and all other costs and necessary expenses and accounting fees incurred by the Association, and/or by foreclosing the assessment lien in the manner provided by law for a mortgage. Delinquent assessments shall bear interest at the maximum legal contract rate (or twelve percent (12%) per annum if no maximum exists) from the date delinquent until paid in full.

Section 9. Notification. ^{Unofficial Document} The Association may in the discretion of the Board notify Owners and First Mortgagees of the names of Owners who have defaulted in the payment of any assessment or charge when due and the amount thereof.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. All rights and powers regarding architectural control granted to the Board or the Architectural Committee in this Declaration may be exercised by the Board or may, in the discretion of the Board, be delegated to an Architectural Committee. All decisions of the Board or the Architectural Committee, if one is established, shall be final, and no Owner or other person shall have recourse against the Board or the Architectural Committee for its approval of or refusal to approve any proposed improvement or alteration.

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Section 2. The Architectural Committee, if established by the Board, shall consist of such regular members and alternate members as may be determined by the Board. Members of the Architectural Committee need not be a member of the Association or an architect or meet any other particular qualifications for membership on the committee. Members of the Board and officers of the Association may serve as members of the Architectural Committee. The Board shall have the right to establish such rules and regulations governing the activities and procedures of the Architectural Committee as the Board deems appropriate, including, but not limited to, determining the requirement for a quorum and the required vote for approval or disapproval of any item. The Board shall have the right to appoint and remove all regular and alternate members of the Architectural Committee at any time for any reason, and to fill any vacancies on the Architectural Committee however caused. Members of the Architectural Committee shall not be entitled to compensation for their services.

Section 3. The Board shall establish a procedure for the preparation, submission, and review of applications for any improvement or alteration. The Board may, from time to time and in its sole and absolute discretion, adopt, amend and repeal by majority vote or written consent, rules and regulations which shall interpret and implement the provisions contained in this Article VI and set forth the standards and procedures for architectural design, placement of buildings, landscaping, color schemes, exterior finishes, use of materials, and similar features and items in accordance with this Declaration. The Board, or the Architectural Committee, as the case may be, shall keep and maintain a written record of all actions taken in connection with architectural control.

Section 4. In the event the Board, or the Architectural Committee, as the case may be, fails to approve or disapprove an application for improvement or alteration within thirty (30) days after submission of said application, duly prepared in accordance with the rules promulgated by the Board or the Architectural Committee, the application will be deemed to have been approved.

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Section 5. The approval of the Board or the Architectural Committee, as the case may be, of any plans, drawings or specifications for any work done or proposals for any other matter requiring prior written approval by virtue of this declaration shall not be deemed to constitute a waiver of the right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 6. Anything to the contrary notwithstanding contained in this Declaration or otherwise, the Board shall have the right at any time and from time to time to promulgate, adopt, amend and repeal reasonable rules and regulations concerning the landscaping, color scheme, and other related matters affecting the exterior appearance of improvements located upon the Premises.

ARTICLE VII

MAINTENANCE

Section 1. Maintenance By The Association.

A. The Association will ^{Unofficial Document} care for and maintain the lawns and plantings on the front yard of each Lot and shall keep all shrubs, trees, grass, plantings and ground coverings of every kind thereon neatly trimmed, properly cultivated and free of weeds. No Owner shall remove, alter, injure or interfere in any way with any shrubs, trees, grass, plantings or ground coverings placed upon the Property by Declarant or the Association without the written consent of the Architectural Committee first having been obtained. As used in this subparagraph, the term "front yard" shall mean that portion of a Lot situated between a public right-of-way and the main front entry door of the dwelling unit thereon not enclosed by any fence concealing such portion from view from the public right-of-way or other portions of the Property (and with respect to corner lots, shall include side yards not enclosed by any fence concealing such side yard from view from the public right-of-way or other portions of the Property). In addition to the foregoing, the Association shall have the right but not the obligation at any time in its sole discretion to undertake the repair and maintenance (including painting) of all or any portion of the

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exterior of the improvements located on the Lots and to establish and collect assessments therefore in the manner provided in Article V. The Declarant and any authorized representative of the Association, or the manager or managing agent of the Property, and all contractors and repairmen employed or engaged by Declarant, the Association or such manager or managing agent, shall be entitled to reasonable access at reasonable times to each of the Lots as may be required to perform the repair and maintenance rights and obligations of the Association.

B. The Association shall maintain the Common Area and may, at any time, without any approval of the Owners being required:

(1) Construct, reconstruct, repair, replace or refinish any improvement or portion thereof in accordance with (a) the last plans thereof approved by the Board, (b) the original plans for the improvements, or (c) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance ^{Unofficial Document} with the original design, finish or standard of construction of such improvement as same existed;

(2) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, driveway or parking area;

(3) Replace dead, injured and diseased trees or other vegetation, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(4) Place and maintain such signs as the Board deems necessary to preserve and protect the Common Area and the Property in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Common Area. No improvements, excavation or work which in any way alters the Common Area from its natural or existing state on the date such Common Area is

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conveyed by Declarant to the Association shall be made or done by any person other than the Association or its duly authorized agents nor shall any person other than the Association or its duly authorized agents alter any portion of the Common Area or any landscaping thereon. In the event any Common Area is damaged or destroyed by an Owner or any of his or her guests, tenants, licensees, agents or family members, the Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association, and the cost of such repairs shall be the responsibility of said Owner in accordance with Arizona State Law. The Association may enforce collection in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

Section 2. Maintenance By Owner.

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A. Each Owner shall keep all shrubs, trees, grass and plantings of every kind located on his or her Lot neatly trimmed, properly cultivated, and free of trash, weeds, and other unsightly material; except that such Owner shall not be responsible for maintenance of any area for which the Association has assumed maintenance responsibility. Each Owner shall be responsible for the upkeep and maintenance of the interior of his or her dwelling unit and for the upkeep and maintenance of his or her Lot and the exterior of the dwelling unit thereon if not otherwise maintained by the Association, including but not limited to, painting of the exterior of the dwelling unit in a color scheme approved by the Architectural Committee. All fixtures and equipment installed within a dwelling unit located on a Lot shall be maintained, repaired and replaced by the Owner thereof. Termite control shall be the responsibility of the Owner. An Owner shall do no act nor any work that will impair the structural soundness or integrity

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of a dwelling unit or impair any easement nor shall an Owner do any act or allow any condition to exist which will adversely effect other lots or Owners.

ARTICLE VIII

INSURANCE

Section 1. Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance and may in its sole discretion obtain certain additional insurance coverage, all as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to transact insurance business in the State of Arizona with a rating in Best's Insurance Guide of Class VI or better. Carriers are unacceptable where (i) under the carrier's charter, bylaws or policy, contributions may be required from or assessments made against the Association, an Owner, ^{Unofficial Document} any First Mortgagee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent a First Mortgagee, the Association or any Owner from collecting insurance proceeds. The Association shall review all such insurance at least annually and increase the amounts thereof as it deems necessary or appropriate. To the extent possible, all insurance shall:

- (1) Provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents and against each Owner and each Owner's employees, agents and invitees, and against each First Mortgagee of all or any part of the Property or of any lot, and any other person for whom the Association, any Owner or First Mortgagee may be responsible;

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(2) Provide that the insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees and agents or of any Owner or such Owner's employees, agents or invitees, or of any First Mortgagee of all or any part of the Property or of any Lot or any other person for whom the Association, any Owner or First Mortgagee may be responsible;

(3) Provide that any "no other insurance" clause in the insurance policy shall exclude policies of insurance separately maintained by an Owner or First Mortgagee of all or any part of the Property or any Lot and that the insurance policy shall not be brought into contribution with insurance maintained by an Owner or First Mortgagee of all or any part of the Property or any Lot;

(4) Contain a standard mortgagee clause (without contribution) endorsement Unofficial Document in favor of the First Mortgagee of any Lot or all or any part of the Property and Common Area; and

(5) Provide that the policy of insurance shall not be terminated, cancelled or reduced in coverage as to amount or terms without at least thirty (30) days' prior written notice to the Association and each First Mortgagee covered by any standard mortgagee clause endorsement.

(6) Provide for coverage of any cross-liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Certificates of insurance coverage or copies of insurance policies shall be issued to and at the expense of each Owner and First Mortgagee who makes or on whose behalf written request is made to the Association for any such certificate or copy. The cost and expense of all insurance obtained by the Association shall be a cost of each Owner under the annual assessments on a proportionate basis, except that the cost of any insurance

covering additions, alterations or improvements made to a Lot by an Owner after the initial improvements made by Declarant or other insurance obtained as provided hereinbelow specifically benefitting a particular Lot shall be a cost of the Owner of the Lot benefitted, and the Association may enforce collection of the same in the manner as provided elsewhere in this Declaration for the collection and enforcement of assessments.

Section 2. Casualty and Hazard Insurance.

A. By the Association. The Association shall obtain and maintain casualty and hazard insurance covering the Common Area and all improvements thereon against loss or damage from fire and other hazards covered by a standard extended coverage endorsement for the full 100% insurable replacement cost of all insurable property in the Common Area. The policy or policies may contain a reasonable deductible clause applicable either to fire or extended coverage or both at the option of the Association. In addition, if the Property is located in an area identified by the United States Secretary of Housing and Urban Development as having special flood hazards, and a National Flood Insurance Association Standard Flood Insurance Policy is available, flood insurance shall be maintained as to the Common Area in an amount equal to the lowest of (i) the full insurable 100% replacement cost of the insurable improvements or (ii) the maximum amount of flood insurance available under the National Flood Insurance Act of 1968, as amended, for such improvements. All insurance for the Common Area shall name the Association as insured for the benefit of the Owners. The Association may, but shall not be obligated to, obtain a master or blanket policy of property insurance providing coverage for the improvements on the Lots (excluding personal property or additions, alterations or improvements made by an Owner) in an amount not less than 80% of the full insurable value (but in an amount not less than that necessary to comply with any co-insurance percentage

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stipulations in the policy). The policy shall include an agreed amount endorsement or its equivalent for each Lot and such other endorsements as the Association may deem desirable.

B. By the Owners. Unless and until the Association elects to obtain a master or blanket policy, each Owner shall be responsible for obtaining and maintaining casualty and hazard insurance covering his or her Lot and the improvements thereon insured against loss or damage by fire and extended coverage policies in an amount not less than 80% of the full insurable value (but in an amount not less than that necessary to comply with any co-insurance percentage stipulations in the policy) of the improvements on his or her Lot. Any insurance policy obtained by an Owner must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies obtained by the Association and must contain a waiver of subrogation rights by the insurer with respect to any claim against (i) the Association, its officers, directors, agents and employees, (ii) other Owners, their employees, agents and invitees, and (iii) any First Mortgagee under a standard mortgagee clause and must provide for all insurance proceeds to be paid to the Association to be held in trust for the Owner to repair and reconstruct the improvements on such Owner's Lot.

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Section 3. Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage liability and automobile bodily injury and property damage liability covering all of the Common Area and such other portions of the Property or adjoining public right-of-ways as the Association may elect. Any such insurance must contain a "severability of interest" clause or endorsement precluding the insurer from denying the claim of an Owner because of negligent acts of the Association or another Owner. Insurance coverage under such policy shall be for at least One Million Dollars (\$1,000,000.00) per occurrence for personal injury and/or property damage (single limit coverage).

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Section 4. Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

Section 5. Fidelity Bonding. The Association shall obtain and maintain bonds providing fidelity coverage for all persons or entities handling funds of the Association, insuring against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling such funds, in amounts not less than one hundred fifty percent (150%) of the estimated annual operating expenses and reserves of the Association from time to time. Such fidelity bonds shall name the Association as the named insured and to the extent possible, shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 6. Other Insurance by Owners. Except to the extent coverage therefore may be obtained by the Association and be satisfactory to an Owner, each Owner shall be free to obtain and be responsible for obtaining such additional or other insurance as is deemed desirable, including insurance covering furnishings and personal property and covering personal liability of an Owner and any employees, agents and invitees and any other person for whom such Owner may be responsible. Any insurance policy obtained by an Owner must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and must contain a waiver of subrogation rights by the insurer with respect to any claim against (i) the Association, its officers, directors, agents and employees, (ii) against other Owners and their employees, agents and invitees, and (iii) any First Mortgagee.

Section 7. Other Insurance by the Association. The Association shall also have the power or authority to obtain and maintain other and additional insurance coverage, including but not

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limited to, casualty insurance covering personal property of the Association, or other fidelity bonds or other insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

Section 8. Receipt and Application of Insurance Proceeds.

Nothing in this Declaration shall be construed to give an Owner or the Association, or any other person, priority over the rights of a First Mortgagee under its First Mortgage in and to the insurance proceeds from the encumbered Lot, and the lien priority of a First Mortgagee shall not be disturbed by any loss, damage or destruction and shall continue in any insurance proceeds payable with respect to encumbered property.

ARTICLE IX

EASEMENTS

Section 1. There is hereby created a blanket, nonexclusive easement upon, across, over and ^{Unofficial Document} the Common Area for ingress, egress, installation, replacing, repairing, and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television cable, antenna and other communication and security lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on, in, above, across and under the roofs and exterior walls of dwelling units; provided, however, that in no event shall entry to the interior of any residence be authorized hereby. This easement shall be limited to improvements as originally constructed by Declarant, or as subsequently approved by the Board, and notwithstanding anything to the contrary contained in this section, no sewer, electrical line, water line, or other utility or service line may be installed or relocated on any Lot except as initially planned and approved by the Declarant or as thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Property.

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Section 2. There is hereby created and each Lot and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs of improvements as designed or constructed by Declarant and for the maintenance, repair and reconstruction of same. Anything herein to the contrary notwithstanding, said easement and any such encroachment shall not extend more than one (1) foot onto an adjacent Lot or Common Area.

ARTICLE X

RIGHTS OF FIRST MORTGAGEES

Section 1. Notwithstanding and prevailing over any other provision of this Declaration, the following rights are granted to all First Mortgagees.

Section 2. Priority of First Mortgages. Each and every lien created by or pursuant to this Declaration, including but not limited to the liens described in Article V, is and shall be subordinate, inferior and subject to the lien and charge of any First Mortgage. ^{Unofficial Document} Sale or transfer of a Lot shall not affect the assessment lien, but the sale or transfer of the Lot pursuant to Foreclosure shall extinguish the assessment lien as to payments which became due prior to such sale or transfer and during any period of redemption. Except as herein provided, no First Mortgagee shall be personally liable for the payment of any assessment or charge or for the observance or performance of any obligations of an Owner until such holder shall become record owner of a Lot and any period of redemption shall have expired, whereupon such holder shall be subject to all terms and conditions of the Declaration in the same manner as any Owner and liable for payments which thereafter become due. During the pendency of any Foreclosure on a Lot, including any period of redemption, the First Mortgagee (or any receiver appointed in any such proceeding) may, at its option, exercise any or all of the rights and privileges of the Owner of said Lot, including without limitation, the right to vote in the Association, to the exclusion of the Owner's exercise of such rights and privileges if a court competent jurisdiction so orders or the Owner consents in writing.

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Section 3. Limitations on Actions. Unless at least two-thirds (2/3) of the First Mortgagees holding First Mortgages on Lots (based upon one approval right for each First Mortgage owned) have given their prior written approval, neither the Association, the Declarant nor the Owners shall not be entitled to:

A. Abandon, partition, subdivide, encumber, sell or transfer the Common Area as owned by the Association for the benefit of all Owners, except for the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association and Owners;

B. Change the method of determining the obligation, assessments, dues or other charges which may be levied against a Lot except as is expressly provided in Article V;

C. Change, waive or abandon the provisions in Article VI pertaining to the architectural design or the exterior appearance of improvements on the Lots, the exterior maintenance of such improvements, and the maintenance of the Common Area (including without limitation, all sidewalks, walkways, common fences and driveways and the upkeep of lawns, plantings, and recreational equipment and facilities);

D. Fail to maintain fire and extended coverage insurance on insurable property within the Common Area on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement costs); or

E. Use any hazard insurance proceeds for losses of any property in the Common Area for other than the repair, replacement or reconstruction of such property.

F. Terminate this Declaration.

Section 4. Payment of Charges. Any First Mortgagee holding a First Mortgage against a Lot may (but shall not be required to) pay delinquent assessments on such Lot or delinquent taxes or other charges or liens against the Common Area and may (but need not) pay overdue premiums on hazard insurance policies or secure new hazard

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insurance coverage upon the lapse of any such policy insuring the Common Area or any Lot encumbered by such First Mortgagee's First Mortgage.

Section 5. Notification. Each First Mortgagee shall be entitled upon request to written notification from the Association of any default by the Owner of a Lot in the performance of such Owner's obligations under this Declaration not cured within sixty (60) days. All First Mortgagees shall be entitled to written notification by the Association upon the commencement of any condemnation proceedings against all or any part of the Property or upon any substantial damage to or destruction of any part of the Property. Upon written request, a First Mortgagee shall have the right: (i) to examine all books and records of the Association during normal business hours; (ii) to receive annual financial reports from the Association when available; and (iii) to receive written notice of all meetings of the Association or Owners and to designate a representative to attend all such meetings.

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Section 6. Changes to Article X. No change in any of the provisions set forth in this Article X shall be effective without the written consent of all First Mortgagees.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Severability. Invalidation, illegality, or unenforceability by reason of statute, judgment, court order or otherwise of any provision shall in no way affect any other provision of this Declaration, all of which other provisions shall remain in full force and effect.

Section 2. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land until January 1, 2035, after which time they shall automatically extend for successive periods of ten (10) years unless, subject to Article X, an instrument declaring this Declaration terminated is signed by the Owners of not

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less than seventy-five percent (75%) of the Lots and duly recorded, and in such event this Declaration shall terminate at the expiration of the period in which said instrument is recorded. Subject to Sections 3 and 8 hereinbelow and the rights of First Mortgagees as set forth herein, this Declaration may be amended only by a recorded instrument signed by the Owners of not less than two-thirds (2/3) of the Lots.

Section 3. Annexation. Additional residential property and common area may be annexed to the Property only with the consent of two-thirds (2/3) of each class of members. Notwithstanding anything to the contrary herein, additional real property within the area described in and burdened by that certain Declaration of Use Restrictions for Suntrails III Lots 64 through 185 and Common Areas C through K recorded in Book 231, page 40 (Maricopa County Recorder, Arizona) may be annexed from time to time by Declarant without the consent of members within three (3) years of the date of recordation of this Declaration provided that the annexation is approved in accordance with Section 8 hereinbelow.

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Section 4. Violation of Law. Violation of any state, municipal, or local law, ordinance or regulation, including zoning laws, pertaining to the ownership, occupation or use of the Property shall be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 5. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 6. Delivery of Notices and Documents. Any written notice or other document relating to or required to be made or given by this Declaration may be delivered either personally or by mail. If by mail, delivery shall be deemed to have been made 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, to Cardon Homes Corporation, 1819 East Southern, Suite C-10, Mesa, Arizona 85204;

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if to the Architectural Committee, to Cardon Homes Corporation, 1819 East Southern, Suite C-10, Mesa, Arizona 85204; if to an Owner, to the address of any Lot owned, in whole or in part, by such Owner or to any other address last furnished by the Owner to the Association; and if to Declarant, to Cardon Homes Corporation, 1819 East Southern, Suite C-10, Mesa, Arizona 85204. Any such address may be changed at any time by the person concerned giving written notice of change of address to the Association. Each Owner shall upon acquisition of a Lot file his or her correct mailing address with the Association.

Section 7. Binding Effect of Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the Property, each person, for himself, herself or itself and for each person's heirs, personal representatives, successors, transferees and assigns, consents and agrees to all of the covenants, conditions, restrictions, easements, changes and other provisions now or hereafter imposed by this Declaration and any amendments or supplements 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 Property and thereby conclusively agrees that all such covenants, conditions, restrictions, easements, changes and other provisions shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof.

Section 8. As long as there is a Class 3 membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 14th day of July, 1983.

CARDON HOMES CORPORATION

By 
Wynn W. Call
Its Vice President

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STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me
this 14th day of July, 1983, by Wynn W. Call,
the Vice President of CARDON HOMES CORPCRATION, an Arizona
corporation, on behalf of the corporation.

Barbara J. Hess
Notary Public

My Commission Expires:

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DECLARATION
OF USE RESTRICTIONS
FOR SUNTRAILS III
LOTS 64 THROUGH 185
AND COMMON AREAS C THROUGH K

THIS DECLARATION is made on the date hereinafter set forth by Cardon Homes Corporation, an Arizona corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property in the City of Mesa, County of Maricopa, State of Arizona, more particularly described as:

Lots 64 through 185, inclusive, and Common Areas C through K, inclusive, of SUNTRAILS III, as recorded in Book 231 of Maps, page 40, records of Maricopa County, Arizona.

WHEREAS, Declarant ~~de~~^{Unofficial Document} ~~o~~ impose upon the above described property certain use restrictions as well as covenants respecting party walls under a general plan of improvement for the mutual benefit of said property and the owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, all of which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all persons having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Architectural Committee" shall mean the committee which may be created in accordance with the Declaration of Covenants, Conditions and Restrictions for Suntrails III. If no such committee is created, "Architectural Committee" shall mean and refer to the Board.

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Section 2. "Board" shall mean the Board of Directors of the SUNTRAILS III HOMEOWNERS' ASSOCIATION, INC., an Arizona non-profit corporation, its successors and assigns.

Section 3. "Common Area" or "Common Areas" shall mean all real property now or hereafter owned by the Association for the common use and enjoyment of the Owners, including without limitation, such Common Area as may from time to time be annexed in accordance with Article XI, Section 3, of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNTRAILS III. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Common Areas C through K of SUNTRAILS III,
as recorded in Book 231 of Maps, page 40,
records of Maricopa County, Arizona.

Section 4. "Declarant" shall mean and refer to Cardon Homes Corporation, its successors and assigns, if such successors or assigns should acquire two or more Lots from the Declarant for the purpose of development.

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Section 5. "Declaration" shall mean the DECLARATION OF USE RESTRICTIONS FOR SUNTRAILS III LOTS 64 THROUGH 185 AND COMMON AREAS C THROUGH K, as the same may be amended from time to time.

Section 6. "First Mortgage" shall mean any mortgage, deed of trust or agreement for sale made in good faith for value and duly executed and recorded so as to create a lien that is prior to the lien of any other mortgage, deed of trust, agreement for sale or other encumbrance (except ad valorem taxes and improvement lien assessments) against a Lot. A mortgagee, beneficiary or vendor under any such mortgage, deed of trust or agreement for sale, respectively, shall be referred to as a "First Mortgagee".

Section 7. "Lot" shall mean and refer to the separate parcels of real property described as Lots 64 through 185, inclusive, as shown upon the recorded subdivision map of the Property and such additional parcels as may from time to time be annexed in accordance with Article XI, Section 3, of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNTRAILS III.

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Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title of a Lot, including contract buyers, and their successors and assigns, but excluding those having such interest merely as security for the performance of an obligation; provided, however, for purposes of Article II, Section 4, only, "Owner" shall also mean and refer to the record owner of the Common Area.

Section 9. "Property" shall mean and refer to that certain real property hereinbefore described on page 1.

Section 10. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintains a common household in a Single Family Residence.

Section 11. "Single Family Residence" shall mean a home or house used as a residence for a Single Family.

Section 12. "Single Family Residential Use" shall mean the occupation or use of a Single Family Residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

Section 13. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six (6) 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.

ARTICLE II

USE RESTRICTIONS

Section 1. Each Lot shall be used and occupied subject to the following restrictions:

A. Use. Each Lot shall be used only for Single Family Residential Use. No business, trade or manufacturing of any nature or description shall be carried on or transacted on any portion of a Lot nor shall any part of a Lot be used as a hospital,

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sanitarium or other place for hire for the care or entertainment of persons suffering from any disease or disability whatsoever.

B. Maintenance. The exterior of all structures and improvements and all lawns, ground coverings and other landscaping on a Lot shall at all times be neatly maintained, properly cultivated and free of trash, garbage, weeds, and other unsightly materials and refuse.

C. Improvements and Alterations. No building or other structure shall be erected, altered, placed or permitted to remain on a Lot other than a Single Family Residence not exceeding two (2) stories in height with an attached, private two (2) car garage or two (2) car carport. The floor area of any Single Family Residence, exclusive of porches, patios and garage or carport, shall not be less than eight hundred (800) square feet unless otherwise approved by the Architectural Committee. Each dwelling unit on a Lot shall be setback at least twenty (20) feet from the front property line as shown on the recorded plat of the Property, and rear yards shall be as required by the ordinances of the City of Mesa. With respect to Lots situated at the intersection of public roadways, no structure, plant or other item of any kind which obstructs sight lines between two (2) feet and six (6) feet above the adjoining roadways shall be placed within the triangular area formed by the public right-of-way boundary lines adjacent to any such Lot and a line connecting points located on each such boundary line twenty (20) feet from the intersection thereof (or in the case of a curved corner, from the intersection of such lines as extended). For purposes of determining compliance with setback requirements, eaves, steps, and open porches shall not be considered part of a dwelling unit. No improvement, alteration, repair, painting, excavation, landscaping or other work (collectively referred to as "improvements") which in any way alters a Lot or the exterior appearance of the improvements located thereon from its natural or improved state existing on the date such Lot is first conveyed in fee by Declarant to a purchaser shall be made or done without the prior approval of

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the Architectural Committee. The Architectural Committee shall establish a procedure for the preparation, submission and review of applications for improvements. The Architectural Committee shall have the right to refuse to approve any improvement which is not suitable or desirable, in the Committee's opinion, for aesthetic or other reasons, and in so passing upon any such proposed improvement, and without limitation of the foregoing, the Architectural Committee shall have the right to take into consideration, among other factors, the suitability of the proposed improvement, the materials of which the improvement is to be constructed or made, the site upon which it is proposed to construct or make the same, the harmony of the proposed improvement with the surroundings and the effect of the improvement on the view from adjacent or neighboring property. No changes or deviations in or from a proposed improvement once approved shall be made without the prior written approval of the Architectural Committee, and once work on an approved improvement has commenced, it shall be diligently pursued to completion except for delay caused by an act of God, strikes, unavailability of necessary materials or equipment, or interference by other persons or forces beyond the control of the Owner to prevent (financial inability of the Owner or his contractor, or other workmen, to obtain labor or materials, or to discharge liens or attachments, shall not be deemed a cause beyond the Owner's control). All decisions of the Architectural Committee shall be final and no Owner or other party shall have recourse against the Architectural Committee for its approval of or refusal to approve any proposed improvement.

E. Temporary Structures. No structure of a temporary character, including without limitation, trailer, tent, garage, storage shed or other outbuilding, shall be used at any time as a residence, either temporary or permanent, except that a trailer or other temporary shelter may be maintained on a lot during construction of a dwelling unit on such lot so long as it is not used for overnight occupancy but shall be removed immediately after completion of construction.

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E. Further Subdivision and Leasing. No Lot shall be further subdivided or separated into smaller lots or parcels, and no portion less than all of any such Lot, nor any easement or other interest therein, shall ever be conveyed or transferred without the prior written approval of the Board. No portion of a Lot but for the entire Lot, together with the improvements thereon, may be rented, and then may be rented only to a Single Family.

F. Animals. No animals of any kind, including without limitation, dogs, cats, livestock, birds (including poultry), fish, amphibians and reptiles, shall be raised, bred or kept on any lot, except that a reasonable number of dogs, cats, or other generally recognized household pets may be maintained provided they are not kept, bred or raised for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible from Neighboring Property. Upon the written request of an Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph F, (1) a particular animal is a generally recognized household pet, (2) a particular animal constitutes a nuisance, or (3) whether the number of animals on any particular Lot is reasonable. Any decision of the Board shall be final and enforceable in the same manner as other restrictions contained herein, and no Owner or other party shall have recourse against the Board with respect to any such decision.

G. Signs. No sign of any kind Visible from Neighboring Property shall be erected or maintained on any Lot except:

- (1) Such signs as may be required by legal proceedings;
- (2) A residential identification sign showing the street address and/or the name of the occupant of the Lot;
- (3) One sign of not more than five (5) square feet advertising the Lot for sale or rent;

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(4) Such signs as Declarant may desire during the original development and sale of the Property and the Lots;

(5) Such other signs, the nature, number and location of which may be approved in advance by the Board.

H. Garbage and Refuse Disposal. Trash, garbage, and other refuse shall be kept only in suitable containers maintained so as not to be Visible from Neighboring Property except for such times when trash containers are to be placed for collection on the public right-of-way immediately adjoining a Lot. All trash containers shall be kept in a clean and sanitary condition.

I. Trailers and Motor Vehicles. No abandoned or inoperable vehicle of any kind Visible from Neighboring Property shall be stored or kept on a Lot, or any adjoining public street or right-of-way; provided, however, that the foregoing provision shall not apply to a temporarily disabled vehicle parked on a Lot or adjoining street or right-of-way for a period not exceeding forty-eight (48) hours. Garages and carports shall be maintained and used for parking vehicles and storage purposes only and shall not be converted into living space.

J. Drilling and Mining Operations. No oil or water drilling, oil development operations, oil refining, quarrying, or other drilling or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in drilling or boring for oil, natural gas or water shall be erected, maintained or permitted upon any Lot.

K. Nuisances. No noxious or offensive object or activity shall be maintained or conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other portion of the Property or its occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (except security devices used exclusively for security purposes) and no transmitting facilities or antennae of any kind shall be located

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used or placed on a Lot or dwelling unit thereon. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.

Section 2. The Common Area shall be reserved for the common use and enjoyment of the Owners and permitted occupants of each Owner's Lot subject to such further covenants, conditions and restrictions as Declarant may impose by a duly recorded instrument and to such reasonable, non-discriminatory rules and regulations as may be established by the Board.

Section 3. Declarant is undertaking the work of constructing Single Family Residences and incidental improvements on the Lots, and the completion of that work and the sale, rental or other disposal of the residences are 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 prevent Declarant, its contractors or agents from doing on the Property or any Lot whatever Declarant may deem reasonable or desirable in connection with the completion of said work and disposing of the Property and Lots by sale or otherwise, including without limitation, preventing Declarant from erecting, constructing and maintaining on the Property such structures as Declarant may deem reasonable or desirable for the conduct of its business of constructing improvements and selling improved Lots or preventing Declarant from maintaining such signs on the Property as may be desired for the sale, lease or disposition thereof.

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Section 4. The rights and duties of Owners, and future Owners, their heirs and assigns forever, with respect to party walls (as defined below) shall be as follows:

(1) Each wall, including perimeter walls and fences constructed as part of the original construction of any structure, any part of which is situated on a property boundary line between Lots or between a Lot and a Common Area, shall constitute a party wall. With respect to any

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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.

(2) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(3) Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing ^{Unofficial Document} the necessary protection against such elements.

(4) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(5) In the event any party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his or her guests, tenants, licensees, agents or family members (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 wall to the same specifications and as good condition as formerly at their joint and equal expense.

(6) Except as provided hereinabove for repair or rebuilding a damaged or destroyed party wall, no party wall shall be altered, modified, extended, breached or in any other manner changed from its original condition as constructed by Declarant, including without limitation, closing up or

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obstructing any drainage passageways through or under a party wall, without the consent and approval of both adjoining Owners and the Architectural Committee.

(7) Each Owner shall permit the Owners of adjoining Lots, or their representatives, when reasonably required, to enter upon his or her Lot for the purpose of repairing or maintaining a party wall or for the purpose of performing installation, 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 whose Lot is being entered upon.

(8) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall, or the cost thereof, such adjoining Owners shall submit the dispute to the Architectural Committee. The Architectural Committee's decision shall be final and binding, and no Owner or other person shall have recourse against the Architectural Committee with respect to any such decision.

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ARTICLE III

GENERAL PROVISIONS

Section 1. Enforcement. The Board, any First Mortgagee, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all covenants, conditions and restrictions now or hereafter imposed by the provisions of this Declaration. Every act or omission whereby any provision of the 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 the Board, any First Mortgagee or any Owner. Violation of any state, municipal, or local law, ordinance or regulation, including zoning laws, pertaining to the ownership, occupation or use of the Property or any Lot shall be a violation of this Declaration and subject to any or all of the

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enforcement procedures set forth herein. Failure of the Architectural Committee, any First Mortgagee, or any Owner to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. Each remedy provided by this Declaration or at law or in equity is cumulative and not exclusive. Notwithstanding the foregoing, the covenants, conditions and restrictions now and hereafter imposed by the provisions of this Declaration with respect to any portion or portions of the Property subsequently encumbered from time to time by Declarant under a duly recorded instrument or supplements thereto forming and establishing a homeowners' association shall be enforced in accordance with the enforcement procedures set forth in such subsequent instrument establishing the homeowners' association.

Section 2. Severability. Invalidation, illegality, or unenforceability of any provision of this Declaration by statute, judgment, court order or otherwise shall in no way affect any other provision herein, all of which ^{Unofficial Document} provisions shall remain in full force and effect.

Section 3. Termination and Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land until January 1, 2023, after which time they shall automatically extend for successive periods of ten (10) years unless an instrument declaring this Declaration terminated is signed by the Owners of not less than seventy-five percent (75%) of the Lots and duly recorded, and in such event, this Declaration shall terminate at the expiration of the period in which said instrument is recorded. This Declaration may be amended only by a duly recorded instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots, and by Declarant so long as Declarant owns any Lots.

Section 4. Delivery of Notices and Documents. Any written notice or other documents relating to or required to be made or given by this Declaration may be delivered either personally or by mail. If by mail, delivery shall be deemed to have been made forty-eight (48) hours after a copy of same has been deposited in the United

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States mail, postage prepaid, addressed as follows: If to the Declarant, to Cardon Homes Corporation, 1819 E. Southern, Suite #C-10, Mesa, AZ 85204; if to an Owner, to the address of any Lot owned, in whole or in part, by such Owner or to any other address last furnished by such Owner to the Board; provided, however, that any such address may be changed at any time by the person concerned by recording a written notice of change of address and delivering a copy thereof to the Board.

Section 5. Binding Effect of Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the Property, each person, for himself, herself or itself, and each person's heirs, personal representatives, successors, transferees and assigns, consents and agrees to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments or supplements 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 Property and thereby conclusively agrees that all the provisions, 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.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 14th day of July, 1983.

CARDON HOMES CORPORATION

BY: *Wynn W. Call*
ITS Vice President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 14th day of July, 1983, by Wynn W. Call, the Vice President of CARDON HOMES CORPORATION, an Arizona corporation, on behalf of the corporation.

Barbara J. Hess
Notary Public

My commission expires: 1/21/86