



Cimarron Foothills Homeowners Association

DECLARATION OF ESTABLISHMENT OF CONDITIONS RESERVATIONS AND RESTRICTIONS FOR CIMARRON FOOTHILLS ESTATES

KNOW ALL MEN BY THESE PRESENTS:

That STEWART TITLE & TRUST of TUCSON, an Arizona corporation, as Trustee, under Trust No. 1095 being the owner of all of the following described property, situated within the County of Pima, State of Arizona, to-wit:

Lots 254-305, 373-392, 405-408, inclusive, Cimarron Foothills Estates, a subdivision of Pima County, Arizona, according to the plat of record in the office of the County Recorder of Pima County, Arizona, in Book 28 of Maps and Plats at Page 92 thereof.

does hereby declare and establish a general plan for the improvement and development of said property and does hereby establish the provisions, conditions, restrictions, and covenants upon which and subject to which all lots and portions of said lots shall be improved or sold and conveyed by the said Stewart Title & Trust of Tucson, as Trustee under Trust No. 1095, as owner thereof, each and every one of said provisions, conditions, restrictions and covenants is and all are for the benefit of each owner of land in said subdivision, or any interest therein, and shall inure to and pass with each and every parcel of said subdivision and shall bind the respective successors in interest of the present owner thereof; said provisions, conditions, restrictions and covenants are and each thereof is imposed upon said lots, all of which are to be construed as restrictive covenants running with the title to said lots and with each and every parcel thereof, to-wit:

1. Said lots, and each and everyone thereof are for single-family residential purposes only; no building or structure intended for or adapted to any multiple dwelling rental, business, professional, or so-called home occupation purposes shall be erected, placed, permitted or maintained on said property or any part thereof, and no such activities shall be permitted or conducted on said property or any part thereof; provided, however, that this paragraph shall not be construed as preventing the leasing or renting of an entire lot, together with the improvements thereon, for single-family residential purposes.

2. No improvement or structure whatever, other than a first class private dwelling house, patio walls, swimming pool and customary outbuildings, garage, carport, servants' quarters, or guest house may be erected, placed or maintained on any lot in said property.

3. The native growth of said property, including, but not limited to, cacti, mesquite and palo verde trees, shall not be, nor permitted to be, destroyed or removed from any of the lots in said property by any of the lot owners, except such native growth as it may be necessary to remove for the construction and maintenance of roads, driveways, detached single-family dwellings and necessary garages and other out-buildings related to said residence and walled-in service yards and patios. In the event such growth is removed or destroyed without approval from the reversionary owner, the



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reversionary owner may require the replanting or replacement of same, the cost thereof to be borne by the lot owner.

4. Any single-family dwelling, garage, building, swimming pool, fence, wall, coping or other structure erected or placed upon any such building site and every part thereof, including but not limited to, overhangs, shall be located not closer to any property line of said building site than thirty (30) feet; except that a fence, wall or coping may be erected on any building site to within twenty (20) feet of any property line not adjacent to any public or private Street or thoroughfare. Any fence, wall or coping located closer to the property line than thirty (30) feet may not be over four (4) feet in height and any other fence, wall or coping may not exceed six (6) feet in height. Any plantings used to form a hedge shall be subject to the same setback requirements and height limitations as apply to a fence, wall or coping. In determining the height of such fence, wall, coping or hedge, the average ground level shall be used.

5. The said first class private dwelling house erected upon any such lot shall have exterior walls constructed of stucco masonry or burnt adobe or slump block or clay brick or frame stucco or part redwood or cedar and other such masonry materials as shall be approved in writing by the reversionary owner. All roofs shall be finished with mission tile, shake, gravel or other such materials. No white or light colored roofs shall be permitted. All enclosures for patios or for concealment purposes shall consist of walls constructed of stucco masonry or burnt adobe or clay brick. All cinder block or concrete block walls for patios or other enclosures shall be finished with stucco, and in no event shall be allowed to remain without such surface treatment. The said first class private dwelling house shall have an attached or detached garage or carport or other structure for the screening from view of at least two (2) automobiles. All driveways and roads shall be surfaced with a minimum of two shot bituminous surface treatment to prevent dust, and so maintained.

6. All building plans, specifications and plot plans, including exterior color scheme, for any building, fence, wall or structure and all driveways, private roads, walkways, patios and other surfaced areas to be constructed upon or moved upon or to any part of said property, the proposed location thereof on any building site and any changes after approval thereof and any remodeling, reconstruction, alterations or additions to any building or other structure on any building site in said property, shall be subject to the approval in writing of the reversionary owner or an approving agent appointed from time to time by the reversionary owner as its representative. Before beginning the construction of any building, fence, wall, coping, driveway, walkway, patio or other structure whatsoever, or remodeling or reconstructing or altering said structure on any building site, the person or persons desiring to construct or modify the same shall submit to the approving agent two complete sets of building plans and specifications, plot plans, including exterior color scheme, for the building, fence, wall, coping, driveway, walkway, patio or other structure so desired to be erected, constructed or modified, and no structure of any kind, the plans, elevations and specifications of which have not received the written approval of said approving agent and which do not comply fully with such approved plans and specifications, shall be erected, placed or maintained upon any building site. The location of such improvements to be approved by the approving agent



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shall be staked on the site prior to such approval. Approval of such plans and specifications shall be evidenced by the written endorsement of approving agent made on said plans and specifications, a copy thereof to be delivered by said approving agent to the owner or owners of the building site upon which said prospective building or other structure is proposed to be erected, or to his agent or representative, prior to beginning said construction. One set of said plans and specifications shall be delivered to the reversionary owner to be kept permanently by it. No changes or deviations in or from said plans and specifications as approved by said approving agent insofar as the exterior design materials or colors of the proposed structure are concerned, shall be made without the written approval of said approving agent. Neither the reversionary owner nor such duly appointed approving agents for that purpose shall be responsible for any structural defects in said plans or specifications, nor in any building or structure erected according to such plans and specifications.

7. All areas of cut and/or fill which result from grading or related site work on said lot shall be landscaped or improved by the lot owner as herein set forth. The site plan to be submitted by a lot owner in connection with the proposed construction of a residence or other structure, prior to such construction, shall show in detail the areas of cut and/or fill of such lot and shall specify the degree of slopes and planned landscaping treatments or other required improvements for these areas. Site preparation shall not be planned which results in a cut and/or fill which covers a vertical distance of more than twelve (12) feet. All areas of cut and/or fill having a slope not steeper than two to one shall be covered with not less than six (6) inches of topsoil equal or better in quality to the surrounding topsoil. These areas shall then be replanted with vegetation which upon maturity will have a density of at least that existing in the natural landscape of surrounding areas. All areas of cut and/or fill having a slope steeper than two to one and not steeper than one to one shall be resurfaced with natural stones ("rip-rap") that blend in with or compliment the natural setting and may be replanted in locations terraced for that purpose. All areas of cut and/or fill having a slope steeper than one to one shall be retained by masonry retaining walls constructed and colored to blend in with or compliment the natural setting. A two to one slope is herein defined as a slope for which the horizontal distance is twice the corresponding change in vertical elevation. A one to one slope is herein defined as a slope for which the horizontal distance is equal the corresponding change in vertical elevation. Masonry retaining walls shall be burnt adobe, clay brick or slump block, or may be stucco finish over concrete block, cinder block or poured, concrete, as approved by the reversionary owner, it being understood that such masonry retaining walls shall be constructed of such material as shall be satisfactory from an engineering standpoint to serve as a retaining wall, giving due considerations to the height and other physical aspects of such retaining wall. Alternative plans for site preparation and for landscaping, resurfacing or retaining areas of cut and/or fill shall be implemented only if previously approved in writing by the reversionary owner. All landscaping of areas of cut and/or fill, including the planting and establishment of vegetation and the construction of retaining walls, shall be completed within one year following completion of construction of the residence upon the lot and shall be continuously maintained thereafter by the lot owner.

8. At the time of submission of plans for the construction of the



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primary residence upon said lot, the person or persons desiring approval of said plans shall be required to pay a fee in an amount not to exceed one hundred dollars (\$100.00) to the reversionary owner to be, in turn, paid to the reviewing architect appointed by the reversionary owner.

9. Said approving agent shall have the right and privilege to disapprove any and all plans and specifications submitted to him as aforesaid, for anyone or more of the following reasons, to-wit:

a. If said plans and specifications are not in exact accordance with each and every provision of this Declaration.

b. If, in the opinion of said approving agent, the architectural design of the proposed building or other structure as shown by said plans, specifications and plot plans, including exterior materials or color scheme, or the location of any structure, are not in harmony with the general surroundings, or with the buildings or structures, or proposed buildings or structures on any lot subject to these covenants. The decision of said approving agent upon said subject shall be final.

c. That the plans and specifications submitted are not in detail or incomplete.

d. That the roof is of either a material or style or color that in the sole judgment of the approving agent would be detrimental to the owner of any other lot.

e. That the plans and specifications do not include a garage or carport.

10. Neither the reversionary owner nor its agents or employees shall be liable in damages to anyone so submitting plans for approval, or to any owner or owners of land subject to these covenants by reason of mistake in judgment, negligence, or non-feasance of itself, its agents or employees, arising out of or in connection with the approval, or disapproval, or failure to approve any such plans; anyone submitting plans to the reversionary owner for approval, by the submitting of such plans, and any owner by acquiring title to any of the property covered hereby, waives his claim for any such damages.

11. No single family private dwelling house placed or erected upon any lot shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed, as herein required; or shall any residence, when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein and all other conditions and restrictions herein set forth; all construction shall be completed within (6) months from the start thereof. No temporary house, temporary dwelling, temporary garage, temporary out-building, mobile home, house trailer or other temporary structure shall be placed or erected upon any lot unless approved by the reversionary owner. No garage or other out-building shall be placed or erected or maintained upon any part of said property except for use in connection with a residence already constructed or



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under construction at the time that such garage or other out-building is placed or erected upon the property. Nothing herein shall be construed to prevent the incorporation and construction of a garage as a part of such dwelling house.

12. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. All electrical and other utility service, including sewer and water, for the improvements on each lot shall be taken from connections point designated by the reversionary owner.

13. No evaporative cooler, air conditioning equipment, heating equipment, cooling or heating ducts or other equipment shall be placed, installed or maintained on the roof or wall or any building or structure; all cooling and heating equipment shall be concealed.

14. No elevated tanks of any kind shall be erected, placed or permitted on any part of said property, provided that nothing herein shall prevent the reversionary owner from erecting, placing or permitting the placing of tanks and other water system apparatus on said property for the use of the water utility serving said property. Any tanks for use in connection with any residence constructed on said property, including tanks for the storage of fuels, must be buried or walled sufficiently to conceal them from the view from neighboring lots, roads or streets. All air conditioning equipment, coolers, other mechanical equipment, clotheslines, wood piles, or storage piles shall be walled to conceal them from the view of neighboring lots or streets. Gas meters shall be located adjacent to the primary dwelling structure on each lot and shall be walled in or otherwise concealed from view of neighboring lots or streets. Garbage, trash and rubbish containers shall be walled in to conceal them from view and at all times shall remain concealed from view of adjoining lots or streets and shall not at any time be placed along street rights-of-way. Plans for construction of all enclosures and walls covered by this Declaration must be approved by the reversionary owner prior to construction.

15. Boats and boat trailers, camper trucks and trailers, motor homes, recreational vehicles, other similar vehicles and other trailers and equipment shall not be placed upon any of said property unless stored within an enclosed garage or other enclosed structure approved by the reversionary owner.

16. No exposed or exterior radio transmission and/or receiving antenna shall be erected, placed on or maintained on any part of said property. Ordinary television antennas shall not be included in the meaning of this paragraph. However, such antennas shall not extend above the roof of the house more than five (5) feet unless approved by the reversionary owner.

17. No horses shall be kept or stabled on any of said lots. No animals or poultry of any kind other than domesticated pets belonging to the household of the premises shall be kept or maintained on any part of the real property subject to this Declaration. In no event, however, are more than two (2) dogs and/or cats more than ten (10) weeks old permitted. All dogs shall at all times be kept and maintained within walled or otherwise enclosed areas; provided, however, that dogs may be outside such enclosed areas when accompanied by their owner and maintained on a leash. The reversionary owner



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shall have the right to order the removal from any lot of any animals, birds or fowl which may be objectionable to any of the residents on adjacent property. The owner of said animals, birds or fowl must immediately remove the same from the premises upon receipt of notice from the reversionary owner.

18. No lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

19. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any lot or improvement thereon of this subdivision except as herein expressly permitted. A name and address sign, the design of which shall be furnished to the lot owner on request by the reversionary owner, shall be permitted; no other sign of any kind or design shall be allowed. The provisions of this paragraph may be waived by the reversionary owner only when in its discretion the same is necessary to promote the sale of property in and development of the subdivision area.

20. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of said property, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon products or minerals of any kind be produced or extracted therefrom.

21. Bermuda grass, except that of a variety recognized to be pollen free and approved in writing by the reversionary owner, shall not be grown on any lot. All trees and other vegetation, planted on any of said property shall be kept trimmed to a height which shall not materially interfere with the principal views from neighboring building sites (over such vegetation) of surrounding landscapes.

22. No unlicensed wheeled vehicles (except bicycles), including, but not limited to, motorcycles, motorbicycles or mini-bikes, shall be placed or permitted upon any part of said property without the consent of the reversionary owner, which consent can be withdrawn at any time. No licensed vehicles shall be permitted on said property if such vehicles are a disturbance to adjacent property owners because of noise or method of operation. The reversionary owner shall have the right to order the removal from any lot of any vehicle which may be objectionable to the residents of adjacent property. The owner of said vehicle must immediately remove the same from the premises upon receipt of notice from the reversionary owner.

23. Each owner of a house shall at his expense install a post light and mail box, with the location, color, size, design, lettering, standards, brackets, name signs as specified by the reversionary owner.

24. Nothing herein shall be construed to prevent the reversionary owner from erecting, placing or maintaining signs, structures and offices and office buildings as may be deemed necessary by him for the operation or development of the subdivision.



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25. Drainageways shall conform to the requirements of all lawful public authorities, including the County Engineer of Pima County, State of Arizona, to the full extent of the authority given him by law.

26. No lot subject hereof shall be resubdivided except as approved by the reversionary owner.

27. The reversionary owner, or its duly appointed agent for such purpose, shall have the right to grant variances as to any of the provisions of this Declaration or to waive any such provisions as such reversionary owner in its sole discretion shall determine upon good cause shown to such reversionary owner, and neither the reversionary owner nor such duly appointed agent shall have any liability to any lot owner or otherwise in granting any such variance or waiver. Any such variance or waiver so granted shall be in writing and shall be made prior to the time that the subject matter set forth in the written variance or waiver is acted upon or implemented unless otherwise expressly stated in such written variance or waiver. Any such variance or waiver so granted as to any particular subject matter shall not constitute a similar or dissimilar variance or waiver as to any other matter affecting the same lot or any other lot, it being deemed that any such variance or waiver so granted shall be limited solely to the variance or waiver set forth in writing by the reversionary owner or such duly appointed agent.

28. The reversionary owner herein is Cimarron Properties Corporation, an Arizona corporation, being the sole beneficiary of Stewart Title & Trust of Tucson, Trust No. 1095, or its successor or assigns; provided, however the term "successors or assigns" of the reversionary owner as used in this Declaration shall not be deemed to mean individual lot owners who have purchased individual lots or own interest therein or whose predecessors in interest have purchased individual lots or an interest therein from the owner, Stewart Title & Trust of Tucson, an Arizona corporation, as Trustee under Trust No. 1095, its successors or assigns. The duly appointed representatives and agents of the reversionary owner for all of the purposes of this Declaration are Harry H. Lynch and William W. Lynch, Jr. acting severally or such other representative and agent as may be appointed by the reversionary owner.

29. The reversionary owner shall have the right to grant and convey all its rights to enforce this Declaration to the Cimarron Foothills Community Association, a non-profit corporation, at such time as in the sole judgment of the said reversionary owner the said Community Association is ready to undertake the obligation of enforcing this Declaration. Upon such conveyance and grant, the Cimarron Foothills Community Association shall have and shall succeed to all rights and duties with the same powers as if the Association had been named as reversionary owner initially.

30. The reversionary owner and every person or entity who is the owner of the fee or of the equitable title in a lot or living unit, or who has purchased a lot or living unit under a contract pursuant to the provisions of any recorded instrument shall be a member of the Cimarron Foothills Community Association. For the purpose of determining membership, such ownership will be deemed to have vested upon delivery of a duly executed deed or contract to the grantee or vendee. The legal title retained by a



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vendor selling under a contract shall not qualify such vendor for membership. Foreclosure or forfeiture of a contract or repossession for any reason of a lot or unit sold under contract shall terminate the vendee's membership, whereupon all rights to such membership shall revert to the vendor.

31. After each lot has been sold by the owner, it shall be assessed in the amount of one hundred dollars (\$100.00) per calendar year to provide for a security patrol within the subdivision and such other uses as are approved by the Cimarron Foothills Community Association. This assessment shall be a lien against the particular lot, accruing as of the first day of each calendar year, provided that as to the assessment for the initial part of a calendar year the assessment shall accrue as of the date of the purchase of the lot. Such assessments shall be paid by the record owner of the lot by depositing the same with Stewart Title & Trust of Tucson, as Trustee for Cimarron Foothills Community Association, or in such other manner as the reversionary owner shall advise the lot owner in writing. The funds collected by reason of such assessment shall be made available to Cimarron Foothills Community Association for the purposes for which such assessments were levied. Payment in advance shall be made on January 1 of each year provided a prorated payment for the year in which the lot is purchased from the owner shall be made on the date of the initial purchase of each lot. This lien right is exercisable by the reversionary owner named herein in the event such assessment is unpaid and the reversionary owner shall have the right to foreclose such lien in the same manner as mechanics' and materialmen's liens are foreclosed as provided in Arizona Revised Statutes, Title 33, Chapter 7, Article 6, as the same may be amended from time to time or in any other manner permitted by law. The lien thus created shall be subordinate to mortgages, deeds of trust and contracts for the sale of real estate on said lot which are made in good faith for value. The amount of the annual assessment shall not be raised above one hundred dollars (\$100.00) per year without the consent of the owners of fifty one percent (51%) of the lots in the subdivision. Lot owners with delinquent assessments shall not be entitled to vote.

32. A dedicated easement and right-of-way in perpetuity is hereby reserved for the benefit of all lots herein for the erection, construction, maintenance and operation of systems for the transmission of electrical energy and for telephone lines and telegraph lines, and for the laying and maintenance of pipes, mains and conduits for the furnishing of water, gas, sewer service or for other purposes, together with the right of entry for the purpose of installing, maintaining and reading of gas, electric and water service meters, providing that the location of such easement and right-of-way and the placement of all such utilities on each lot shall be only on the approval of the reversionary owner.

33. Anything in this Declaration to the contrary notwithstanding, the owner, or its successors or assigns, shall have the right from time to time to amend or make any changes in this Declaration which the owner, or its successors or assigns may deem beneficial to the owners of a majority of all of the then owners' interests in the lots in said subdivision. Any such amendment shall be made by an instrument executed by the owner with like formalities as this Declaration specifically stating the portions of this Declaration being amended. This right shall continue as long as the owner owns any of the lots which constitutes the property described in those



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certain deeds recorded in the office of the County Recorder of Pima County, Arizona on June 8, 1971 in Docket Book 4012 at Page 783 thereof and June 6, 1972 in Docket Book 4266 at Page 722 thereof, has been subdivided (except that portion thereof, if any, subjected to a townhouse development and/or a horizontal property regime or is used for common or recreational area) and ninety percent (90%) of said lots have been sold, then the right of the owner, its successors or assigns, to amend this Declaration shall terminate. Cimarron Foothills Community Association shall then succeed to all of the rights of the owner to amend this Declaration and thereafter this Declaration may be amended upon the affirmative vote for such an amendment of the owners of seventy-five percent (75%) of all of the lots, constituting the subject property. Any amendment so made shall specifically state (a) the portions of this Declaration being amended, (b) the amendment thereto, and (c) that all owners of lots in the subject property have been given not less than ten (10) days' written notice of the proposed amendment before the vote thereon. Any amendment by last said procedure shall be executed with the same formalities as this Declaration and shall be executed by the owners of not less than seventy-five percent (75%) of all lots constituting the subject property. The term "successors or assigns" of the owner as used in this Declaration shall not be deemed to mean individual lot owners who have purchased individual lots or an interest therein or whose predecessors in interest have purchased individual lots or an interest therein from Stewart Title & Trust of Tucson, an Arizona corporation, as Trustee under Trust No. 1095, its successors or assigns.

All of the aforesaid conditions and restrictions shall continue and remain in full force and affect at all times as against the owner of any lot in said property, however his title thereto may be acquired, until the commencement of the calendar year 2006, on which date the said conditions and restrictions shall terminate and end, and thereafter be of no further legal or equitable effect on said property or any owner thereof; provided, however that said conditions and restrictions shall be automatically extended for a period of ten (10) years, and thereafter in successive ten (10) year periods, unless on or before the end of one of such extensions periods, or the base period, whichever is applicable the owners of a majority of the lots constituting the property to which this Declaration applies shall by written instrument duly recorded declare a termination of the same. Although the conditions, restrictions and covenants may expire as aforesaid, any and all reversions for breach of said conditions or restrictions committed or suffered prior to said expiration shall be absolute.

PROVIDED, that a breach of any of the provisions, conditions, restrictions, and covenants hereby established shall cause the real property upon which said breach occurs to revert to the reversionary owner, its successors or assigns and the reversionary owner, its successors and assigns shall have the right of immediate re-entry upon such real property in the event of any such breach, and as to each lot owner in said property the said provisions, conditions, restrictions and covenants shall be covenants running with the land and the breach of any thereof or the continuance of any such reach may be enjoined or remedied by appropriate proceedings by the reversionary owner, its successors or assigns or by any owner of another lot in said property, but by no other person.

PROVIDED, FURTHER, that should the reversionary owner, its successors



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or assigns employ counsel to enforce any of the foregoing provisions, conditions, restrictions, or covenants, or re-entry by reason of such breach, all costs incurred in enforcing this Declaration, including reasonable fee for counsel, shall be paid by the owner or owners of such lot or lots breaching any of the provisions of this Declaration, and the reversionary owner, its successors or assigns shall have a lien upon such lot or lots to secure payment of all such accounts.

PROVIDED, FURTHER, that the breach of any of the foregoing provisions, conditions, restrictions or covenants or any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any lot or lots or portions of lots in said property but said provisions, conditions, restrictions and covenants shall be binding upon and effective against any such mortgagee or trustee or owner thereof, whose title thereto or whose grantor's title is or was acquired by foreclosure, trustee's sale or otherwise.

PROVIDED, FURTHER, that no delay or omission on the part of the reversionary owner, its successors or assigns, or the owners of other lots in said property in exercising any rights, power or remedy herein provided, in the event of any breach of the conditions, restrictions, covenants or reservations herein contained shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the reversionary owner, its successors or assigns, for or on account of its failure to bring any action on account of any breach of said provisions, conditions, restrictions or covenants or for imposing restrictions herein which may be unenforceable by the reversionary owner.

PROVIDED, FURTHER, that in the event any one or more of the conditions, restrictions, covenants and reservations hereinbefore set forth shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall not nullify any of said conditions and restrictions not so declared to be void, but all of the remaining restrictions not so expressly held to be void shall continue unimpaired and in full force and effect, and

PROVIDED, FURTHER, that in the event the provisions hereunder are declared void by a court or competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event said term shall be reduced to a period of time which will not render the provisions hereof void and which shall not violate the rule against perpetuities as set forth in the laws of the State of Arizona.

PROVIDED, FURTHER, that said property shall be subject to any and all rights and privileges which the City of Tucson or the County of Pima, Arizona, may have acquired through dedication or the filing or recording of maps or plats of said property, as authorized by law, and provided further, that no conditions, restrictions, or privileges or acts performed shall be in conflict with any County Zoning Ordinance or Law.

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**FIRST AMENDMENT
TO
DECLARATION OF ESTABLISHMENT OF
CONDITIONS, RESERVATIONS AND RESTRICTIONS
FOR
CIMARRON FOOTHILLS ESTATES, LOTS 254-305, 373-392, 405-408
INCLUSIVE**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, STEWART TITLE & TRUST OF TUCSON, an Arizona corporation, as Trustee under Trust No. 1095 (hereinafter referred to as the "Declarant"), as the then owner of all of the following described property situate within the County of Pima, state of Arizona, to-wit:

Lots 254-305, 373-392, 405-408, inclusive, CIMARRON FOOTHILLS ESTATES, a subdivision of Pima County, Arizona, according to the map of record in the office of the County Recorder of Pima County, Arizona, in Book 28 of Maps and Plats at page 92 thereof,

did cause to be recorded in the office of the County Recorder of Pima County, Arizona, a Declaration of Establishment of Conditions, Reservations and Restrictions recorded in said office on May 31, 1978, in Docket 5787 at page 497 (hereinafter referred to as "said Declarant")

That it is the desire of the Declarant to amend said Declaration in the manner hereinafter set forth; that the amendments hereinafter set forth are made pursuant to the provisions of Paragraph 33 of said Declaration and, in accordance with such paragraph 33, the undersigned, as the "owner" under said Declaration, has not sold 90% or more of the lots into which the real property described in those certain deeds recorded in said office on June 8, 1971, in Docket 4012 at page 783, and June 6, 1972, in Docket 4266 at page 722, has been subdivided; that, pursuant to such Paragraph 33 of said Declaration, the undersigned hereby deems that the amendments hereinafter set forth are beneficial to the owners of a majority of all of the present owners' interests in the lots in the subdivision to which said Declaration applies;

NOW, THEREFORE, anything in said Declaration to the contrary notwithstanding, said Declaration is hereby amended as follows:

1. Paragraph 6 of said Declaration is hereby amended by adding at the end of the last sentence thereof, a new paragraph as follows:

"The reversionary owner or approving agent shall have the right to disapprove any building plans, specifications and plot plans submitted pursuant to this paragraph 6 if the reversionary owner or approving agent determines that the building, fence, wall or other structure which is the subject matter thereof, or remodeling, reconstruction, alteration or addition to any existing building, fence, wall or other structure will, by reason of the proposed location thereof on the lot and/or the proposed height thereof obstruct or interfere with the views, either day or night, from other lots located within the subdivision; provided, however, that the foregoing shall not be the exclusive basis upon which



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the reversionary owner or approving agent may disapprove of any such building plans, specifications and plot plans, and the reversionary owner or approving agent shall have the right to disapprove of any such building plans, specifications and plot plans which are not otherwise in compliance with the provisions of this Declaration or which are not otherwise in harmony with the general building standards and guidelines adopted by the reversionary owner or approving agent from time to time.

No single family dwelling, garage, building or other structure constructed or placed upon any lot shall exceed fourteen feet in height, unless first approved in writing by the reversionary owner or approving agent. The foregoing shall not alter, modify or diminish the provisions set forth above to the effect that the reversionary owner or approving agent shall have the right to disapprove of any building or other structure proposed to be built if the same will obstruct or interfere with the views from other lots within the subdivision.

No building plans, specifications or plot plans submitted pursuant to this paragraph 6 which pertain to a single family dwelling proposed to be constructed upon any of the lots described in Exhibit '1', attached hereto and incorporated herein by reference, shall be acceptable unless the same shall have been prepared by an architect registered and licensed under the laws of the State of Arizona, and any such building plans, specifications and plot plans so submitted which are not prepared by an architect so registered and licensed shall be disapproved by the reversionary owner or approving agent.

No building plans, specifications or plot plans submitted pursuant to this paragraph 6 which pertain to a single family dwelling to be constructed upon any of the lots described in Exhibit '2', attached hereto and incorporated herein by reference, shall be acceptable unless they are in conformity with and based upon the conceptual drawings therefore which, as to each such lot, the reversionary owner provided to the first owner thereof.

Each single family dwelling constructed upon those lots described in Exhibit '3', attached hereto and incorporated herein by reference, shall be multi-level so that such dwelling 'steps down' the lot upon which such dwelling is constructed. By way of clarification of the foregoing, a dwelling that 'steps down' a lot is one where the footings thereof are built to conform to the existing topography of the lot upon which such dwelling is constructed.

Each single family dwelling constructed on any given lot shall be located only within the circled area designated on such lot as shown on the site plan attached hereto as Exhibit '4' and incorporated herein by reference."

2. Paragraph 31 of said Declaration is amended by deleting the last two sentences thereof and substituting the following therefor:

"The amount of the annual assessment shall not be raised above \$100.00 per year, except upon a majority vote therefore by members of the Cimarron Foothills Community Association who are present in



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person or by proxy at a duly constituted and convened meeting of the members of such Association (which members will include owners of lots in other phases of Cimarron Foothills Estates). Lot owners with delinquent assessments shall not be entitled to vote at any meeting of the members of Cimarron Foothills Community Association. Solely by way of clarification of the immediately preceding sentence, the fact that the reversionary owner is not required to pay assessments shall not in any manner, be construed to mean that the reversionary owner is delinquent in paying assessments as to lots owned by it."

3. Paragraph 33 of said Declaration is amended by deleting all of such paragraphs and substituting therefor the following:

"33. Anything in this Declaration to the contrary notwithstanding, the owner, or its successors or assigns, shall have the right from time to time to amend or make any changes in this Declaration which the owner, or its successors or assigns, may deem beneficial to the owners of a majority of all of the then owners' interests in the lots in said subdivision. Any such amendments shall be made by an instrument executed by the owner with like formality as this Declaration being amended. This right shall continue until the first to occur of either of the following

(a) The owner no longer owns any of the lots which constitute the property to which this Declaration applies; or

(b) The reversionary owner has granted and conveyed all its rights to enforce this Declaration to the Cimarron Foothills Community Association, a nonprofit corporation, pursuant to paragraph 29 of this Declaration.

Upon the first to occur of any of the events specified in (a) or (b) above, Cimarron Foothills Community Association shall then succeed to all of the rights of the owner to amend this Declaration, and thereafter, this Declaration may be amended upon the consent thereto by not less than 75% of the then members of the Cimarron Foothills Community Association (which members will include owners of the lots in other phases of Cimarron Foothills Estates). Any such amendment shall specifically state: (1) the portions of this Declaration being amended, and (2) the amendment or amendments thereto. Any amendments by last said procedure shall be executed with the same formalities as this Declaration; provided, however, that it shall not be necessary that a meeting of the members of the Cimarron Foothills Community Association be held and a formal vote taken at such meeting in order for this Declaration to be amended by last said procedure, so long as any such amendment is executed by not less than 75% of the then members of the Cimarron Foothills Community Association. The term "successors or assigns" of the owner, as used in this Declaration, shall not be deemed to mean individual lot owners who have purchased individual lots or an interest therein. Or whose predecessors in interest have purchased individual lots or an interest therein from Stewart Title & Trust of Tucson, an Arizona



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corporation, as Trustee under Trust No. 1095, its successors or assigns.”

4. Except as herein amended, the provisions of said Declaration shall remain in full force and effect in accordance with the terms thereof.

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