



MOD RSTR (DF) 86 13979

AMENDED AND RESTATED  
DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR COURTLAND VILLAGE II

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COURTLAND VILLAGE II, made on the date hereinafter set forth, by COURTLAND HOMES, INC., an Arizona corporation, as hereinafter referred to as "Developer".

WITNESSETH

WHEREAS, the Developer, being the owner of all of the following described property, situated within the County of Maricopa, State of Arizona, to wit:

Lots 1 through 149 inclusive of Courtland Village II as it appears in the books and records of the County of Maricopa, Arizona, Book 292 of Maps, Page 3.

and desiring to establish the nature of the use and enjoyment thereof, does hereby declare said property subject to the following express covenants, conditions and restrictions, as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants, running with the title to said property and with each and every part and parcel thereof, to wit.

WHEREAS, the Real Property and Improvements, and the appurtenance, easements and rights appurtenant thereto, collectively referred to herein as the "Property" has been submitted and subjected to a Declaration of Covenants, Conditions and Restrictions; which instrument was recorded December 20, 1985, at Instrument No. 85 605496 ( the "Declaration" );

WHEREAS, Developer desires to amend and restate the Declaration in its entirety and intends this Amended and Restated Declaration of Declaration of Covenants, Conditions and Restrictions for Courtland Village II.

ARTICLE 1  
DEFINITIONS

Section 1 "Association" shall mean and refer to Courtland Village II Association, its successors and assigns.

Section 2 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including

contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3 "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4 "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: Tract A, B, C, D, E and F as shown on the Plat of Record, Book 292 of Maps, Page 3.

Section 5 "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6 "Developer" shall mean and refer to Courtland Homes, Inc., an Arizona 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.

## ARTICLE II PROPERTY RIGHTS

Section 1 Owners' Easements of Enjoyment: Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

B. the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

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 members.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2 Delegation of Use: Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

## ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1 Every owner of a lot is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2 The association shall have two classes of voting membership:

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

Class B The Class B member(s) shall be the Developer 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:

(a) when the total votes outstanding in the Class A membership equal the votes outstanding in the Class B membership, or

(b) on December 31, 1990.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1 Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such a deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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 in the Properties and for the improvement and maintenance of the Common Area.

Section 3 Maximum Annual Assessments: Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be ninety dollars (\$90.00) 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 each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(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 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 4 Special Assessments for Capitol Improvements: In addition to the annual assessments authorized above, the association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital 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 who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5 Notice and Quorum for Any 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 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6 Uniforms Rate of Assessment: Both annual and special assessments must be fixed at a rate for all Lots and may be collected on a monthly basis.

Section 7 Date of Commencement of Annual Assessments; Due Dates: The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8 Effect of Nonpayment of Assessments; Remedies of the Association: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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 Lot.

Section 9 Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lien thereof, shall extinguish the lien of such sale or transfer. No sale or transfer shall relieve such Lot from the lien thereof.

## ARTICLE V USE AND RESTRICTIONS

Section 1 All lots within the property are hereby restricted as follows:

A. Antennas: No exterior radio, television or C.B. antenna of any type shall be placed, allowed or maintained upon any lot.

B. Storage: No exterior storage of any items of any kind shall be permitted unless such exterior storage is in areas attractively screened or concealed from view from neighboring lots and streets. These provisions shall apply by way of illustration and without limitation, to woodpiles, camping trailers, boats, mobile homes and unmounted pickup camper units. Also by way of illustration and without limitation, no automobile, truck, or other vehicle, regardless of ownership, age condition or appearance, shall remain on any lot in any manner which could be construed as being stored, neglected, abandoned or otherwise not in frequent use.

C. Garbage: No garbage or trash shall be placed on a lot except in sanitary containers which adequately screened from view from any neighboring lot. All rubbish, trash and garbage shall be regularly removed from each lot and shall not be allowed to accumulate thereon.

D. Outside Speakers and Amplifiers: No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of any dwelling unit on any lot.

E. Outside Lighting: No outside lighting shall be allowed or maintained on any lot that is offensive to any neighboring lots. All rear yard lighting shall be appropriately screened from neighboring lots.

F. Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot. Provided, however, that dogs, cats, birds, or fish may be kept thereon as household pets, not to exceed three (3) in number so long as such pet is not, or does not become, a nuisance or threat to other lot owners and so long as such pet is not kept, bred or maintained for commercial purposes.

G. Re-Subdivision: No lot shall be further subdivided and no portion less than all of any such lot, or any easement shall be conveyed by any owner.

H. Disease and Insects: No owner shall permit any thing or condition to exist upon any lot which shall induce, breed or harbor plant disease or noxious insects.

I. Sidewalk Encroachments: No trees, shrub or plant of any kind on any lot shall be allowed to overhang or otherwise encroach upon any sidewalk or any other pedestrian way from ground level to a height of seven (7) feet.

J. Machinery, Fixtures and Equipment: No machinery, fixtures, or equipment of any type (except heating, air conditioning, refrigeration or solar equipment), shall be placed, allowed or maintained upon the ground on any lot except in areas attractively screened or concealed from view of neighboring lots, and streets. No such machinery, fixtures or equipment shall be placed, allowed or maintained anywhere other than on the ground (such as roof) except if screened or concealed in such a manner that the screening or concealment thereof appears to be part of the integrated architectural design of the dwelling unit and does not have the appearance of a separate piece or pieces of machinery, fixtures or equipment.

K. Burning and Incinerators: No open fires or burning shall be permitted on any lot at any time and no incinerators or like equipment shall be placed, allowed, or maintained on any lot. The foregoing shall not be deemed to preclude the use in customary fashion, of outdoor residential barbecues or grills.

L. Signs: No exterior signs or advertisements of any kind may be placed, allowed or maintained on any lot, except that mailboxes, residential nameplates and ' for sale' and ' for rent' signs may be placed and maintained in conformity with common specifications to be promulgated by the Developer, including without limitation, reasonable restrictions as to size.

**M. Repairs:** No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon any portion of any lot within view of neighboring lots and streets.

**N. Oil and Mineral Activity:** No oil exploration, drilling development or refining operations and no quarrying or mining operations of any kind, including oil wells, surface tanks, tunnels or mineral excavation or shafts shall be permitted upon or under any lot, and no derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

**O. Misuse and Mismaintenance:** No lot shall be maintained or utilized in such a manner as to present an unsightly appearance (including but not limited to clothes drying within public view), or as to unreasonably offend the moral of or as to constitute a nuisance or unreasonable annoyance to, or as to endanger the health of, other owners or residents of the lots, and no noxious or otherwise offensive condition or activity shall be allowed to exist or be conducted thereon.

**P. Violation of Statutes, Ordinances and Regulations:** No lot shall be maintained or utilized in such a manner as to violate any applicable statute, ordinance or regulator of the United States of America, the State of Arizona, the County of Maricopa, City of Phoenix or any other governmental agency or subdivision having jurisdiction in the premises.

**Q. Motor Vehicles:** Motor vehicles owned or in the custody of any owner or resident may be parked only in the garage or driveway located upon or pertaining to such person's lot. No buses, vans, motor homes, recreational vehicles or trucks having a carrying capacity in excess of one (1) ton designed for commercial purposes shall be placed, allowed or maintained upon any lot except in areas attractively screened or concealed from view of neighboring lots and streets.

**R. Prosecution of Maintenance and Repairs:** All maintenance and repair work shall be prosecuted diligently from commencement until complete and all such construction, maintenance and repair shall be of workmanship and material equal to or better than that originally employed by Developer.

**S. Fence Restriction:** No wall or fence shall be erected or maintained nearer to the front street line than a line running parallel with the front walls of the dwelling unit erected by Developer on each such lot. No side or rear fence or wall shall be more than six (6) feet in height.

**Section 2 Drainage:** Each owner agrees, by the acceptance of his deed, not to interfere with or obstruct the established drainage pattern over his lot from or to adjacent lots, except that an owner may modify the established drainage over his lot, for example, by installation of pipes or paving provided such modification is necessary for a permitted use of his lot, and provided further that the modification of drainage does not unreasonably burden or interfere with the use of the other lots or the drainage to or from other lots. For the purpose of this clause, established drainage means the drainage that exists at the time the overall grading of the lots and landscaping thereon were completed by the Developer.

**Section 3 Easements:** Easement for installation and maintenance of utilities and drainage facilities are reflected on the recorded plat and the Declaration of Easement. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the

flow of water through drainage channels in the easements if such exist. The easement area of each lot and all improvements on it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 4 Exemption for Purposes of Construction, Development and Sale: The Developer shall, during the period of construction, development and sale of homes on all lots, be exempt from these restrictions to the extent necessary for Developer to construct, develop and sell all lots, including without limitation, the right to construct sales offices, model homes, signs, parking area and outdoor lighting.

Section 5 The aesthetic quality of the subdivision shall be maintained by an Architectural Committee formed as follows and exercising its controls as herein provided:

A. The Architectural Control Committee shall be composed of Alan Hamberlin whose official address shall be 2432 West Peoria Avenue, Suite 1320, Phoenix, Arizona 85029, until the Developer is no longer a title holder of any lots in the subdivision described herein; provided, however, that the Developer shall have the right at any time during such period to remove any member of such committee and by a recorded certificate to appoint a successor to said committee. At such time as the Developer is no longer a title holder of any of such lots, the Developer shall make a reasonable effort to find three (3) of the then lot owners who are willing to be members of the Architectural Control Committee and shall appoint and designate these three (3) lot owners to be members of the Architectural Control Committee as soon as they have accepted the appointment and designation, and the Developer shall cause at that time a statement to be recorded in the records of Maricopa County, Arizona, setting forth the names and official address or addresses of the Architectural Control Committee thus appointed; provided, however, that the lot owner shall have the right and power by a written majority vote to appoint and designate new members for the Architectural Control Committee, not to exceed three (3) in number, to replace any or all of the committee members at any time after the Developer is no longer a lot owner, and a statement setting forth the names and official address or addresses of the Architectural Control Committee thus appointed by the vote of the then lot owners shall be recorded in the records of Maricopa County, Arizona. Failure to record statements concerning new appointments to the Architectural Control Committee as provided in this paragraph shall not vitiate or otherwise impair the effectiveness of such appointments.

B. Except as provided for in Section 5A hereof, in the event of the death, disability, or resignation of any member of the Architectural Control Committee, the remaining member or members shall constitute the Architectural Committee and shall exercise all of the rights and powers granted to, and have all the duties and liabilities imposed upon, the Architectural Control Committee by this Declaration and shall appoint a new member to replace and to exercise the rights, and powers of and to have all the duties and liabilities of, the deceased, disabled, or resigned member.

C. The Architectural Control Committee shall exercise the rights and powers granted to it, and shall have the duties and liabilities imposed upon it, by this Declaration, but may appoint and designate, by a majority vote, a representative who shall have authority to exercise those rights and powers and who shall have those duties and liabilities, on behalf of the Architectural Control Committee, until the Architectural Control Committee, by a majority vote, shall revoke his appointment and designation.

D. Neither the members of the Architectural Control Committee nor its representative shall be entitled to any compensation for services performed pursuant to this Declaration, and the rights, powers, duties and liabilities of the Architectural Control Committee conferred hereunder shall terminate thirty (30) years from the date of this instrument and thereafter the approval prescribed in Section 5A above, shall no longer be required unless prior to the termination date

hereof a written instrument shall have been executed by the then owners of a majority of the lots appointing a successor committee which shall thereafter exercise the same rights, and shall have the same duties and liabilities previously exercised by and imposed upon the Architectural Control Committee.

E. No building, fence, wall or other structure shall be commenced, erected, or maintained upon any lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. In the event said Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Section 5 will be deemed to have been fully complied with. This Section 5 shall not apply to the improvements in and upon the Properties by the Developer. Whether or not plans are approved by the Architectural Control Committee, they must meet all zoning laws and building requirements of the City of Phoenix.

#### ARTICLE VI PARTY FENCES

The rights and duties of owners with respect to Party Fences shall be as follows:

- (1) The owners of contiguous lots who have a Party Fence shall both equally have the right to use such fence, provided that such use by one owner does not interfere with the use and enjoyment of same by the other owner.
- (2) In the event that any Party Fence is damaged or destroyed or damaged through the act of an owner or any of his agents or guests or member of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such owner to rebuild and repair the Party Fence without cost to the other adjoining lot owner or owners.
- (3) In the event any such Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining owner, his agents, guest, or family it shall be the obligation of all owners whose lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.

#### ARTICLE VII MISCELLANEOUS

Section 1 Enforcement: If any person shall violate or attempt to violate any of the restrictions herein, it shall be lawful for the Developer and/or any person or persons owning any of the lots in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such restriction and either to prevent him or them from so doing and/or recover damages resulting from such violation. If a person is found guilty of violating any one or more of these restrictions, all costs and attorney fees assessed against him by the court shall be paid by such person. Any violation of these restrictions or any one or more of them shall not affect the lien of any mortgage or the encumbrance created by a Deed of Trust now of record or which hereinafter may be placed of record, upon said lots or any part thereof.



**Section 2 Term:** These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date that covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. At any time during the initial twenty (20) year period and during any extensions thereafter, these covenants may be amended by the recording of an instrument signed by not less than a majority of the then lot owners agreeing to change said covenants in whole or in part.

**Section 3 Severability:** Any determination by a court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

**Section 4 Change of Circumstances:** Except as otherwise expressly provided in this Declaration of Restrictions, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions hereof.

**Section 5 Reference to the Restrictions in Deeds:** Deeds to any lot may contain the restrictions herein set forth by reference to this Declaration of Restrictions, but regardless of whether any such reference is made in any Deed, each and all of the restrictions shall be binding upon the grantee-owner and his heirs, executors, administrations, successors and assigns.

**Section 6 Successors and Assigns of Developer:** Any reference in this Declaration of Restrictions to Developer shall include any assignee to whom any specific rights of the Developer hereunder are assigned.

**Section 7 Gender and Number:** Wherever the context of this Declaration of Restrictions so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the plural shall include the singular.

**Section 8 Captions and Titles:** All captions, titles and headings of the Article and Sections in this Declaration of Restrictions are for the purposes of reference and convenience only, and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

**Section 9 The Declaration:** By acceptance of a deed or by acquiring any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

**Section 10 Annexation:** Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

**Section 11 FHA/VA Approval:** As long as there is a Class B 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 of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, COURTLAND HOMES, INC. an Arizona corporation, as Developer, has caused its corporate name to be signed and its corporate seal to be affixed by the undersigned officer thereunto duly authorized this 19th day of March, 1982.

COURTLAND HOMES, INC.

By Alan Hamberlin  
Alan Hamberlin  
President

STATE OF ARIZONA     )  
                                  ) ss:  
COUNTY OF MARICOPA )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, before me, the undersigned Notary Public, personally appeared Alan Hamberlin who acknowledged himself to be the President of Courtland Homes, Inc., an Arizona corporation, and that he as such officer being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the names of the corporation by himself as President.

WITNESS my hand and official seal.

Linda Stuber  
Notary Public

My Commission Expires:  
My Commission Expires Dec. 28, 1987