

NOBLE MOUNTAIN ESTATES - AMENDED

A SUBDIVISION OF A PORTION OF THE EAST 1/2 EAST 1/2, SECTION 7, T6N, R30E G&SRB&M APACHE COUNTY, ARIZONA

SYMBOL	DESCRIPTION
—	SECTION BOUNDARY LINE
- - -	PROPERTY BOUNDARY LINE
---	CONTRIBUTION OF 20 FEET EASE, SHEETS 3 OF 4 AND 4 OF 4.
---	REVERSE DRAINAGE AREA
▶	DETERMINED SIDE OF LOT TO BE USED FOR ACCESS

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—	SECTION BOUNDARY LINE
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LEGEND

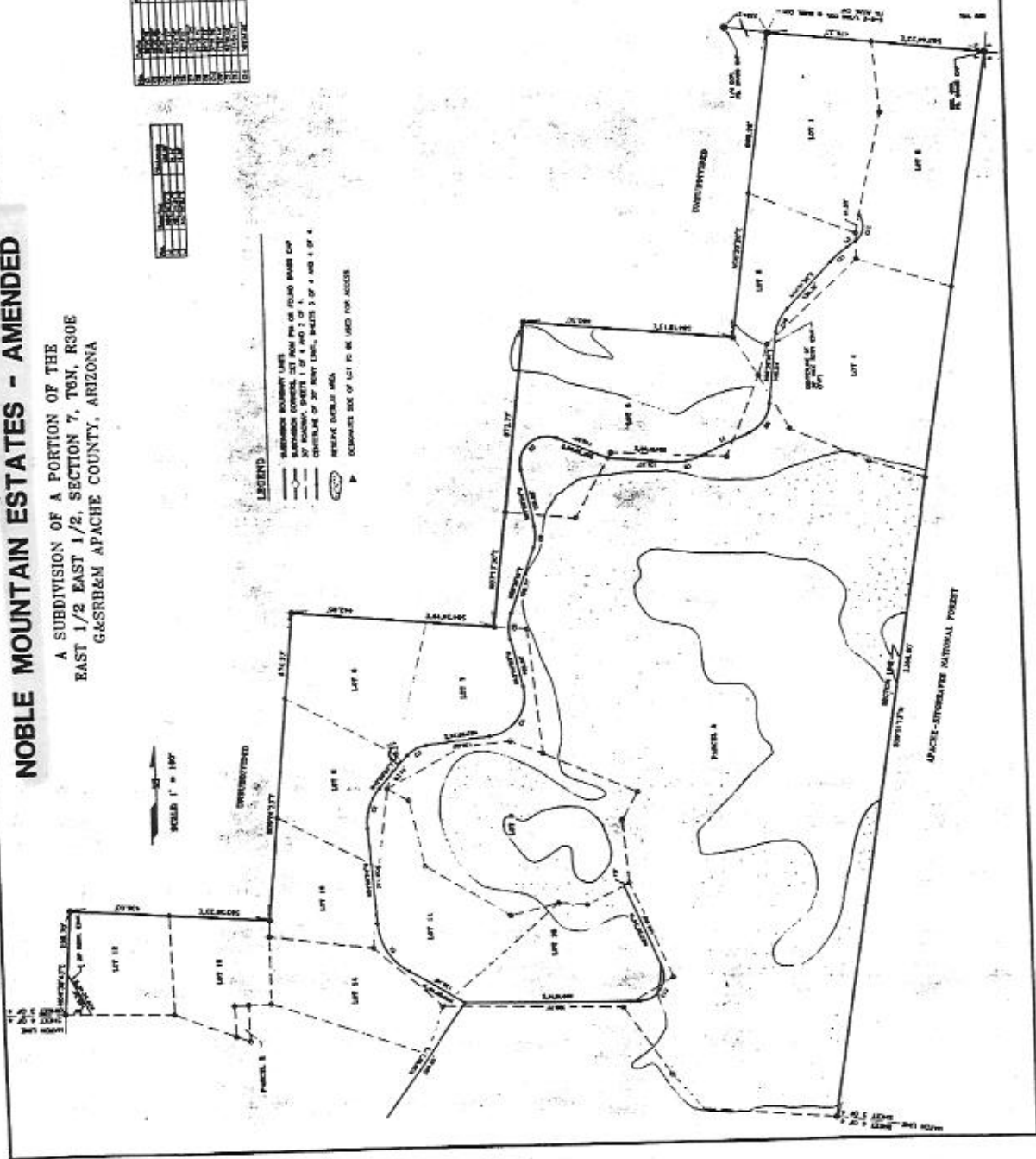
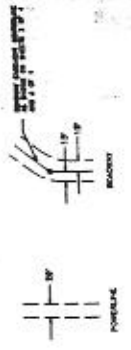
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PROPERTY BOUNDARY LINE

CONTRIBUTION OF 20 FEET EASE, SHEETS 3 OF 4 AND 4 OF 4.

REVERSE DRAINAGE AREA

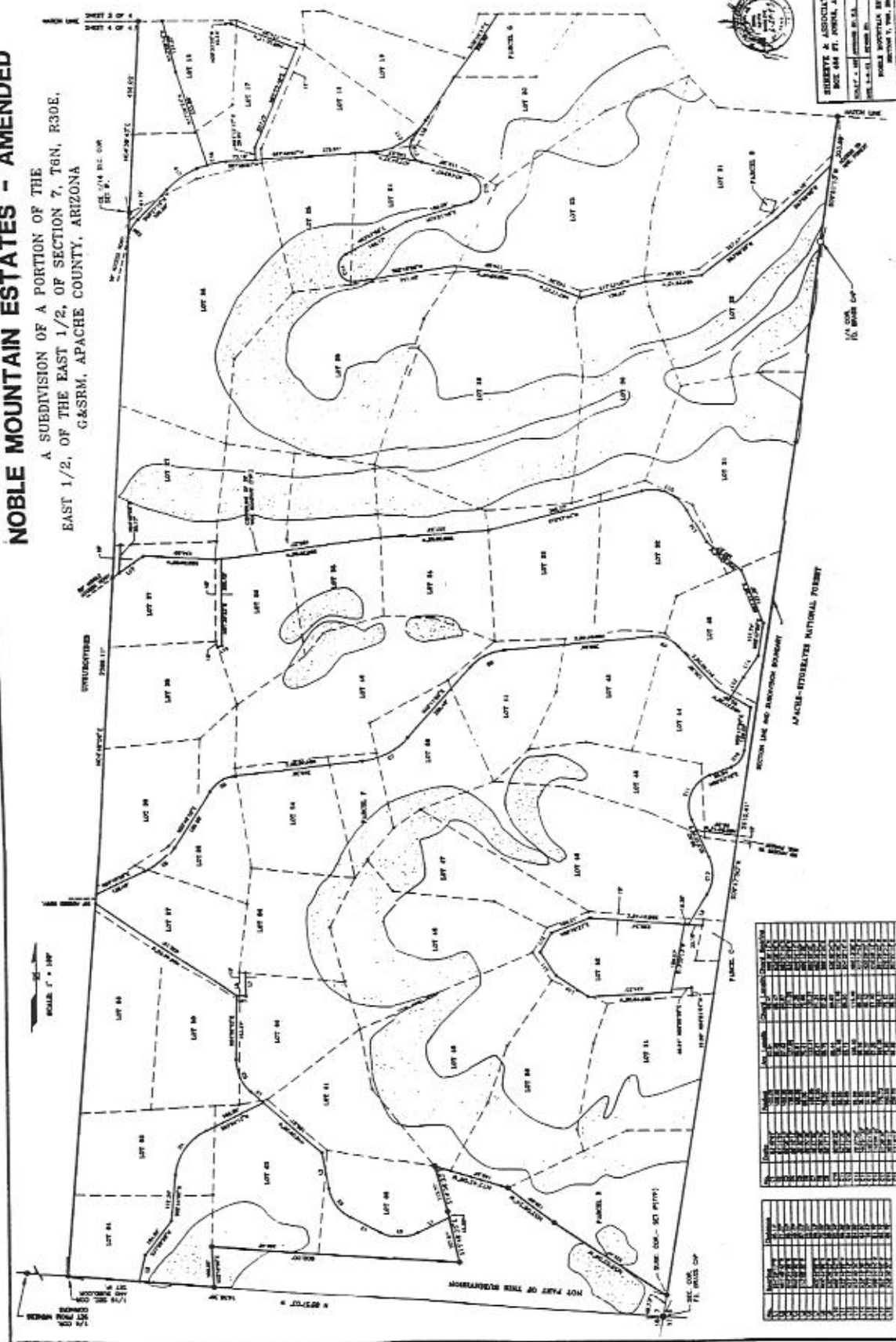
DETERMINED SIDE OF LOT TO BE USED FOR ACCESS



ROBERTS & ASSOCIATES, INC.
 500 W. 1ST AVENUE, SUITE 200
 PHOENIX, ARIZONA 85001
 REGISTERED SURVEYOR
 LICENSE NO. 12345
 SECTION 7, T6N, R30E

NOBLE MOUNTAIN ESTATES - AMENDED

A SUBDIVISION OF A PORTION OF THE
EAST 1/2, OF THE EAST 1/2, OF SECTION 7, T6N, R30E,
G&SRM, APACHE COUNTY, ARIZONA



SHIBERT & ASSOCIATES, INC.
302 444 ST. AVENUE, A.L. 88888
PHOENIX, ARIZONA 85018
TEL. 2-2-11

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INSTRUMENT # 95003879
 OFFICIAL RECORDS OF
 APACHE COUNTY
 JEANNE UDALL

REQUEST OF:
 J. HARRIS CROSBY
 DATE: 06/08/95 TIME: 11:30 AM
 BOOK: 788 PAGE: 18

AMENDMENT TO THE
 AMENDED AND RESTATED
 DECLARATION
 COVENANTS, CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That whereas ESCUDILLA CATTLE COMPANY, ("Declarant")
 under the amended and restated "Declaration of Covenants,
 Conditions and Restrictions" recorded in Apache County,
 Arizona in Docket 752 pages 131 through 165 that Declarant:

HEREBY ADDS THIS AMENDMENT AND DOES HEREBY DECLARE:
 that under the easement rights of the reciprocal easement
 agreements recorded in Docket 725 pages 219 - 232, Apache
 County: that the Declarant, Escudilla Cattle Company is now
responsible for the ongoing maintenance of only those roads
 in the West 1/2 of the East 1/2 of Section 7 T6N R31 East of
 the Gila and Salt River Base and Meridian which directly
 access the subdivision titled "Noble Mountain Estates".

Declarant further states that "Noble Mountain Community
 Association is also now responsible for, and will continue to
be responsible for the ongoing maintenance of only those
 roads within the West 1/2 of the East 1/2 of Section 7 T6N
 R31 East 6 and Gila Salt River Base and Meridian which
 directly access the subdivision titled "Noble Mountain
 Estates".

Declarant states that this Amendment is made for the
 purpose of establishing with the purchasers, owners of the
 lots within Noble Mountain Estates a continuing, ongoing
 maintenance of the roads leading to Noble Mountain Estates.

Escudilla Cattle Company
 an Arizona Limited Partnership.
 By it's General Partner,
 Escudilla Management Corp.,
 An Arizona Corporation.

By: J. Harris Crosby
 J. Harris Crosby

its President

BAD/JSJ
JSJ-1 051993



INSTRUMENT # 94003359
OFFICIAL RECORDS OF
APACHE COUNTY
JEANNE UDALL

REQUEST OF:
J HARRIS CROSBY
DATE: 06/03/94 TIME: 02:00 PM
BOOK: 752 PAGE: 131 - 165

AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That whereas, ESCUDILLA CATTLE COMPANY, an Arizona Limited Partnership ("Declarant") has heretofore caused a certain "Declaration of Covenants, Conditions and Restrictions" regarding a subdivision known as "Noble Mountain Estates" to be recorded in Docket 502, page 365-372 of the records of Apache County, Arizona, Declarant HEREBY SUPERSEDES THOSE CCR'S OF DOCKET 502 with this Amended and Restated Declaration and, as the owner of the property described below, DOES HEREBY DECLARE that the following Covenants, Conditions and Restrictions are hereby established for the following described real property (the "Property"), namely, Noble Mountain Estates, Amended, per plat recorded in 8 TM. pages 37, 38, 39, 40 records of Apache County, Arizona (the "Noble Mountain Estates Amended Plat").

A. DECLARATION: The Declarant desiring to establish the nature of the use and enjoyment of the Property which have been carefully and thoughtfully laid out, does hereby declare said Property subject to the following 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 the Property and with each and every parcel and lot thereof, and with all conveyance of the Property or any portion thereof hereafter made, to-wit:

B. RESTRICTIONS AND OTHER MATTERS OF RECORD: Conditions, reservations and restrictions that run with the land including zoning restrictions should be investigated by any purchaser. Copies of recorded items may be inspected at the office of the Apache County Recorder. Information about zoning may be obtained at the office of the Planning and Zoning Commission.

C. WARNING TO PURCHASERS: Prospective purchasers should satisfy themselves as to what effect, if any, these Covenants, Conditions and Restrictions may have on the use of the land.

D. COMMUNITY ASSOCIATION: Declarant desires to form a nonprofit corporation, the Noble Mountain Community Association, which will (1) own, manage and maintain the Common Areas within Noble Mountain Estates; (2) levy, collect and disburse the Assessments and other charges imposed hereunder; and (3) as the

agent and representative of the Noble Mountain Community Association, enforce the use restrictions and other provisions of this Declaration.

ARTICLE I

DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

1.1 "Annual Assessment" shall mean the charge levied and assessed each year against each Lot and Owner pursuant to Section 7.2 hereof.

1.2 "Articles" shall mean the Articles of Incorporation of the Association as amended from time to time.

1.3 "Assessable Property" shall mean any Lot except such part or parts thereof as may from time to time constitute Exempt Property.

1.4 "Assessment" shall mean an Annual Assessment, Special Assessment, transfer fee (as provided in Section 6.6) Maintenance Charge, Special Use Fee, or any other fees, fines or charges assessed hereunder.

1.5 "Assessment Lien" shall mean the lien created and imposed by Article VII.

1.6 "Assessment Period" shall mean the term set forth in Section 7.7.

1.7 "Association" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, and its successors and assigns. Declarant intends to name the Association "NOBLE MOUNTAIN COMMUNITY ASSOCIATION".

1.8 "Association Land" shall mean such part or parts of Noble Mountain Estates, together with the buildings, structures and improvements thereon, and other real property which the Association now or hereafter owns in fee or in which the Association now or hereafter has a leasehold or easement interest, for as long as the Association is the owner of the fee, leasehold or easement interest. From time to time, Declarant may convey easements, leaseholds or fee title to property within Noble Mountain Estates to

the Association and upon such conveyance or dedication to the Association, such property shall be deemed accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

1.9 "Board" shall mean the Board of Directors of the Association.

1.10 "Builder" shall mean any entity constructing or installing improvement(s) on any Lot in connection with the original development of such Lot. "Builder" shall not include any entities constructing improvements on any Lot after the original development of such Lot is completed.

1.11 "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

1.12 "Common Area and Common Areas" shall mean (1) all Association Land; (2) all land within Noble Mountain Estates which the Declarant, by this Declaration or other written instrument, makes available for use exclusively by Members of the Association; (3) all right-of-way easements within Noble Mountain Estates; and (4) any other areas with respect to which the Association has assumed in writing administrative or maintenance responsibilities, whether or not such areas are located on a Lot or Parcel.

1.13 "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges servitudes, liens, reservations, and easements set forth herein.

1.14 "Declarant" shall mean Escudilla Cattle Company, an Arizona Limited Partnership, and the successors and assigns of Declarant's rights and powers hereunder. Any assignment of all or any portion of the Declarant's rights and powers shall be made by a recorded instrument executed by the assignor Declarant.

1.15 "Declaration" shall mean this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NOBLE MOUNTAIN ESTATES, as amended or supplemented from time to time.

1.16 "Design Guidelines and Rules" shall mean the design guidelines and standards and the review and approval procedures established by the Design Review Committee for the appearance and development of property in Noble Mountain Estates.

1.17 "Design Review Committee" shall mean the Design Review Committee of the Association to be created pursuant to Article XII.

1.18 "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

1.19 "Exempt Property" shall mean all Association Land, for as long as the Association is the owner thereof. All Exempt Property shall be exempt from assessments and membership in the Association and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of this Declaration, including but not limited to, the use restrictions and design controls.

1.20 "Lot" shall mean and refer to each numbered Lot shown upon the Noble Mountain Estates Amended Plat.

1.21 "Maintenance Charges" shall mean any and all costs assessed pursuant to Sections 10.2 and 10.3.

1.22 "Member" shall mean any person holding a Membership in the Association pursuant to this Declaration.

1.23 "Membership" shall mean a Membership in the Association and the rights granted herein to the Owners and Declarant with respect to the Association.

1.24 "Owner" (when so capitalized) shall mean the record holder of legal, beneficial or equitable title to the fee simple interest of any Lot including, without limitation, one who is buying a Lot under a recorded contract, but excluding others who hold such title merely as security. Owner shall not include a lessee or tenant of a Lot. In the case of Lots, the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the Trustor. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar trust, the beneficiary of any such trust entitled to possession shall be deemed to be the Owner. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided fee interest in any Lot.

1.25 "Parcel" shall mean and refer to Parcels A, B, C, D, E, F, G as shown on the Noble Mountain Estates Amended Plat.

1.26 "Visible From Neighboring Lot" shall mean with respect to any given object that object is or would be visible to a person six feet tall standing on the level of the base of the object being viewed.

ARTICLE II
PERMITTED USES AND RESTRICTIONS

2.1 Single Family Use: Except as otherwise specifically provided herein, all Lots shall be used only for single family residential purposes. Only a private Dwelling Unit and garage for not more than three (3) cars shall be erected, placed or permitted to remain on any of the Lots.

2.2 No Commercial Use: No trade, business, or other type of commercial activity shall be carried on upon any Lot covered by these restrictions, except for individual professional and artistic endeavors. Prohibited uses, include without limitation, the following: No store, office or other place of business of any kind, and no hospital, sanitarium, or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theater, saloon, or other place of entertainment, nor any church, shall ever be erected or permitted upon any of the Lots.

2.3 No Division of Lots: No Lot shall be resubdivided into smaller lots nor be conveyed or encumbered in less than the full original dimension of the Lot as shown by the Noble Mt. Plat, except for public utilities.

2.4 Parking: Automobiles of the private passenger class and pickup trucks not exceeding three-quarter ton may be parked on the side of any Lot; provided that any such parking area shall comply with the same setback requirements as the residential dwellings. Campers, horse trailers, motor homes and boats may be parked on the back of any Lot; provided that any such parking area shall be attractively screened or concealed from neighboring Lots, roads or streets. All other trucks, vehicles and equipment shall not be kept on any Lot or street except in a private garage. No motor vehicle which is under repair or not in operating condition shall be kept on any Lot or unit.

2.5 Signs: No sign in excess of 60 square inches shall be used on any Lot. Exceptions to this restriction will be the Declarant's signs during construction and sale of property.

2.6 Nuisances: No Lot shall be used in whole or in part for the storage of rubbish or any character whatsoever, (including, but not limited to, household garbage), 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 surrounding property. Each Lot shall be kept and maintained free from weeds, underbrush, or other unsightly growths.

2.7 Fires: No incinerators shall be kept or maintained on any Lot. Open fires or brush burning of any kind are expressly prohibited. Lot owners shall be individually, jointly and severally liable and fully responsible for any and all damages resulting within Noble Mountain Estates from any violation thereof.

2.8 Tanks: Any tank for use in connection with any Dwelling Unit on the Lots, including tanks for storage of gas, fuel oil, gasoline, or oil, must be screened to conceal the tank or tanks from neighboring Lots or streets. No Lot Owner shall in any way permit any fluids, solvents or other toxic liquids or solids to enter into the water table, nor shall any such be disposed of on any Lot.

2.9 Native Growth and Terrain: Excepting for the purposes of actual construction upon a Lot, no stone, sand, gravel, soil, or natural growth shall be removed from any Lot; provided, however, that the Declarant, its successors or assigns, in carrying out the improvement and development of Noble Mountain Estates shall have the right of ingress and egress upon all Lots for the purpose of grading and excavating thereon, constructing and completing street improvements, installation of public utilities, to provide ditching along property lines if any surface waters need to be rerouted, and to do any and all things necessary to complete the Declarant's general plan of improvement. Unless suitable retaining walls are constructed to support the earth, the natural angle of repose of the ground shall not be altered by excavation within seven (7) feet of any boundary line or any Lot by other than a slope of one and one-half (1-1/2) feet horizontal to one (1) foot vertical; provided, however, that nothing in this paragraph shall be construed to prevent any such alteration in any manner with or without retaining walls, by the Declarant, its successors or assigns, in carrying out the development and improvement of Noble Mountain Estates.

2.10 Two-Story Dwellings: Two-story dwellings may be constructed, but must be designed in such a manner as to not interfere with the view of another homesite.

2.11 Roofs: No metal or shiny reflective types of roofs will be permitted. Shake shingles, slate, tile, or dark stone, but no light color roofs of any of the above-mentioned will be allowed. All metal flashings as roof accessories must be painted or stained to blend with roof materials.

2.12 Drainage: Final grades shall not be disturbed in any manner which may adversely affect any other Lot or property whether within Noble Mountain Estates or elsewhere; nor shall any Owner divert or cause diversion of the surface water from the street adjacent to his property onto any other property. All surface waters shall be left free to their natural flow unless lawfully diverted to a drainage ditch. The provisions of this paragraph shall be subordinate to the Apache County subdivision regulations governing such drainage.

2.13 Diseases and Insects: No Owner shall permit any thing or condition to exist upon any property within Noble Mountain Estates which shall induce, breed or harbor infectious plant diseases or noxious insects.

2.14 Air-Conditioning Equipment--Satellites: No heating (except solar heating) and no air conditioning or refrigeration equipment, or satellite television receiver dish, shall be placed, allowed or maintained anywhere other than on the ground. If solar heating is utilized, it must strictly keep the specifications of Section 2.11 Roofs.

2.15 Firearms: No target practice, no shooting, and no hunting shall be allowed on any Lot. No discharge or use of any firearms or weapons shall be permitted.

2.16 Compliance With Ordinances: No building or structure shall be erected or permitted on any Lot in any manner contrary to the planning and zoning ordinances of Apache County, Arizona, except as may be allowed by the Apache County Board of Supervisors.

2.17 No Structure on Easements: No structure of any kind or nature shall be erected, permitted or maintained on, over or across the easements or reservations for roadways, utilities and/or drainage as shown on the Noble Mt. Plat except by written permission of the Declarant or the Design Review Committee.

2.18 Setback Requirements: No portion of any building or structure shall be erected within twenty (20) feet of any front lot line or within twenty (20) feet of the private road network shown on the Noble Mt. Plat, within twenty (20) feet of any rear lot line or within twenty (20) feet of any side lot line, except that where one person shall own two or more contiguous Lots, the Lots may be considered as one Lot, in which event the aforesaid setback lines shall be measured from the external rather than internal lot lines of the two or more contiguous Lots and the easement reservation shall apply to the external lot lines.

2.19 Water Conservation: No water service to gardens, horticulture, green houses, or glass hot houses, or lawns, or landscaping is permitted. Only culinary, sanitary, and domestic water will be furnished through any future water company or water services or water system. This covenant and limitation is made to conserve water as a vital resource.

2.20 Minimum Size--Limit on Trailers:

(a) All Dwelling Units shall have a minimum of eight hundred (800) square feet living space area excluding storage, and also exclusive of any portion thereof used for open porches, pergolas, patio, carports or garages, whether or not they are attached to, or adjacent to, a Dwelling Unit.

(b) Travel trailers or campers may occupy Lots only during the actual period of home or cabin construction, not to exceed six (6) months.

2.21 New Construction--Height Limit: All structures within the subdivision shall be of new construction not exceeding forty (40) feet in height, and shall have concrete foundations and hardwood or concrete floorings. Any alternate flooring must be approved by the Design Review Committee.

2.22 Temporary Buildings: No temporary buildings may be moved onto or constructed on any Lot in said development, with the exception of temporary shop or office structures erected by contractors or builders during actual bona fide construction of a permitted structure, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities on the premises.

2.23 Moveable Buildings: No buildings shall be moved from any other location or any Lot with the exception of new pre-fabricated or new pre-erected dwellings. Any pre-fabricated or pre-erected homes must receive written approval of the Design Review Committee.

2.24 No Mobile Homes: The Property is expressly restricted against the use of mobile homes or house trailers for residences and cannot be used for a trailer park.

2.25 Sewage Facilities: None of the Lots shall be used for residential purposes prior to the installation thereon of water flush toilets, and all bathroom, toilet, or sanitary convenience shall be connected to a septic tank or sewer system.

2.26 No Mineral Exploration: No Lot shall be used in any manner to explore for or to remove oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance.

2.27 Design Review: Except as otherwise expressly provided in this Declaration (a) no improvements (whether temporary or permanent), alterations, repairs, excavation, grading, lighting, landscaping (except landscaping within an enclosed back yard which is not Visible From Neighboring Lot) or other work which in any way alters the exterior appearance of any Lot within Noble Mountain Estates or improvements thereon from its natural or improved state existing on the date this Declaration was recorded shall be made or done, and (b) no building, fence, exterior wall, residence, or other structure or grading shall be commenced, erected, maintained, improved, altered or made on any Lot, at any time, unless and until the Design Review Committee has, in each such case, reviewed and approved the nature of the proposed structure, work, improvement, alteration, or landscaping and the plans and specifications therefor. No changes or deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. Notwithstanding anything to the contrary contained herein, the Design Review Committee may, in its sole and absolute discretion, upon written request from an Owner who has violated this Section 2.27, elect to retroactively approve work done or an alteration made without prior written approval. The Declarant shall be exempt from the requirements of this Section 2.27 and therefore all structures, improvements, alterations, or landscaping or other work performed, constructed or installed by the Declarant shall be deemed approved by the Design Review Committee.

2.28 Lot 26--Sherwood Lodge: A multi-family lodge is in existence and may be maintained and used as such on Lot 26. Travel trailers and campers are permitted on Lot 26 for not to exceed five (5) days and four (4) nights once each calendar year.

2.29 Repair of Structures: No structure or improvement in Noble Mountain Estates shall be permitted to fall into disrepair and each such structure and improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished, as required by the Design Review Committee. In the event any structure or improvement is damaged or destroyed, then, subject to the approvals required by Section 2.27 above, such building or structure shall be promptly repaired, rebuilt or demolished. In the event an Owner fails to comply with this provision, the Board may give notice to the offending Owner, and may then proceed to repair the building or improvement and charge the Owner therefor as permitted in Section 10.3

2.30 Right of Entry: During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Design Review Committee, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the improvements constructed or being constructed thereon (except for the interior portions of any completed and occupied Dwelling Unit) to determine compliance with this Declaration, the Design Guidelines and Rules and/or any approval stipulations required by the Design Review Committee, or to perform repairs and maintenance as provided in Section 10.3, and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the Association shall have an easement and right of entry upon any Lot at any time or times without notice in order to perform emergency repairs.

2.31 Declarant's Exemption: Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or by its agents, of structures, improvements or signs necessary or convenient (in the Declarant's sole discretion) to the development or sale of Property within Noble Mountain Estates.

ARTICLE III

VARIANCES--EASEMENT RESERVATION

3.1 Variances: The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in Article II of this Declaration, if the Board determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner or (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction impractical or obsolete and (b) that the activity permitted under the variance will not have any substantial adverse affect on the Owners and Residents of Noble Mountain Estates and is consistent with the quality of life intended for the Residents and Owners of Noble Mountain Estates. The request for a variance must be made in writing and be accompanied by adequate supporting documentation. The Board, in writing, shall approve or disapprove the request as promptly as possible under the particular circumstances. All decisions of the Board shall be final and nonappealable.

3.2 Utility Easements: There is hereby created a blanket easement upon, across, over and under Noble Mountain Estates for ingress to, egress from, and the installation, replacing,

repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewer, gas, telephone, electricity, television cable or communication lines and other systems, as such utilities are installed in connection with the initial development of the Property. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, telephone lines or other utilities or service lines may be installed or relocated on any area in Noble Mountain Estates except as approved by the Declarant or the Design Review Committee.

ARTICLE IV

COMMON AREAS

4.1 Private Road System--No Maintenance by Apache County: As set forth in the *Noble Mt. Plat, a network of private roads, thirty (30) feet in width has been dedicated to provide access to each Lot. If any Lot is not crossed by and is not adjacent to that network, an easement thirty (30) feet in width from that road network to such Lot at a location hereafter established by Declarant is hereby reserved for the benefit of such Lot. That network of roads shall be considered to be a Common Area owned by the Association and shall be maintained by the Association. Apache County shall have no duty to maintain that network of private roads.

4.2 Gate--Signs: The entrance to Noble Mountain Estates shall be controlled by a gate maintained by the Association with one or more signs advising that the road network is privately owned and maintained.

4.3 Open Space Parcels: Parcels A and B shall be Common Areas owned by the Association and shall be preserved as open space for the benefit of the Owners.

4.4 Water Facility Parcels: Parcels C, D, E shall be Common Areas owned by the Association for the installation and operation of springs, tanks and/or equipment to provide a system of water delivery to the Lots. Neither Declarant nor the Association represents nor guarantees that a functional water delivery system will always exist or be maintained, but it is intended that reasonable efforts will be made to establish a water source and delivery system to be owned by the Association for the benefit of the Lots. To the extent that water is available from time to time, the Association will maintain and operate such a water delivery system. The Board of the Association shall establish an equitable fee system for water usage or for the availability of water whether or not water is actually used.

*NOBLE MOUNTAIN ESTATES AMENDED PLAT

4.5 Leaching Field Parcels: Parcels F and G shall be Common Areas owned and maintained by the Association. A sewage leaching field shall be established and maintained within Parcel F for the benefit of Lots 47, 48, 49, 50, 51 and 52, and those six Lots shall each bear an equal assessment to pay the cost of maintaining the leaching field in Parcel F. Likewise, a sewage leaching field shall be established and maintained within Parcel G for the benefit of Lots 20, 21, 22, 23, 28, 29, 30, and these 7 lots shall each bear an equal assessment to pay the cost of maintaining the leaching field in Parcel G.

ARTICLE V

ORGANIZATION OF ASSOCIATION

5.1 Formation of Association: The Association shall be a nonprofit Arizona corporation. Upon incorporation, the Association shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 Board of Directors and Officers: The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and may contract with a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager and any employees of the Association.

5.3 The Noble Mountain Rules: 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 concerning all aspects of the Association's rights, activities and duties to be known as the Noble Mountain Rules. Those Rules shall not discriminate among Members and Residents except to reflect their different rights as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. A copy of the Noble Mountain Rules as adopted or amended shall be available for inspection at the office of the Association during reasonable business hours.

5.4 Personal Liability: No Board member, committee member, employee or officer of the Association shall be personally liable to any Member or to any other person or entity, including the

Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence; provided, however, the limitations set forth in this Section 5.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct. The Association shall indemnify its committee members, directors, and officers when acting on behalf of the Association, to the full extent permitted by law.

ARTICLE VI

MEMBERSHIPS AND VOTING

6.1 Owners of Lots: Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Each such Owner shall have one Membership for each Lot.

6.2 Declarant: The Declarant shall be a Member of the Association for so long as the Declarant owns any land in Noble Mountain Estates.

6.3 Voting: The Association shall have two classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships except the Class B Memberships. An Owner shall be entitled to one vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the Owner's voting rights for violations of this Declaration as provided herein.

Class B. The Class B Memberships shall be all Memberships held by the Declarant. Except as otherwise provided in this Declaration, the Declarant shall be entitled to three (3) votes for each Class B Membership owned. The Class B Memberships shall cease and be automatically converted to Class A Memberships when the first of the following events occurs:

(a) One Hundred and Twenty days after the date when the total votes outstanding in the Class A Memberships equal the total votes outstanding in the Class B Memberships.

(b) When the Declarant notifies the Association in writing that it relinquishes its Class B Membership.

6.4 Right to Vote: No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit; fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such 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 Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed that he was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made to the Board, in writing, at or prior to the time the vote is cast. In the event more than one vote is cast for a particular Membership, all such votes shall be deemed void.

6.5 Membership Rights: Each Member shall have the rights, duties and obligations set forth in this Declaration, and in the Articles, Dylaws and Noble Mountain Rules, as the same may be amended from time to time.

6.6 Transfer of Membership: The rights and obligations of the Owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot and then only to the transferee thereof. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as permitted by Arizona law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner. Upon the transfer of ownership of any Lot (excluding the initial sale by the Declarant) the Board, in its sole discretion, may assess a reasonable transfer fee to cover the Association's administrative costs associated with said transfer of ownership.

ARTICLE VII

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Lien and Personal Obligation for Assessments and Maintenance Charges: The Declarant, for each Lot, hereby covenants and agrees, and each Owner by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to accept and be subject to mandatory Membership in the Association, and to pay to the Association the following: (1) Annual Assessments, (2) Special Assessments, (3) Maintenance Charges, and (4) Special Use Fees (including, but not

limited to fees for water use or availability for water use) incurred by the Owner or any Resident occupying the Owner's Lot or any portion thereof. The Annual Assessments, Special Assessments, Maintenance Charges, Special Use Fees and any other fees, fines and charges which are the obligation of an Owner hereunder, together with interest, costs, collection agency fees, and reasonable attorneys' fees of the Association incurred in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot against which such Annual or Special Assessment, Maintenance Charge or other charge is made and against the Lot of an Owner liable for a Special Use Fee or other charge and, in addition, shall be the personal obligation of the Owner of such Lot at the time when such payment becomes due and payable. The Annual and Special Assessments against each Lot shall be based on the number of Memberships appurtenant to the Lot. The personal obligation for delinquent Assessments and other charges shall not pass to the successors in title of the Owner unless expressly assumed by them; however, the Lot shall remain subject to the lien of the delinquent Assessment except as provided in Section 8.3 below. Maintenance Charges may be assessed against any property initially covered by this Declaration. No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including, but not limited to, by non-use of Common Areas or abandonment of his Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution, abatement or set-off shall be allowed by reason of any action or failure to act of the Board or Association.

7.2 Annual Assessments: In order to provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, the Board in each year, shall prepare and adopt a budget and shall assess against each Lot an Annual Assessment. Subject to the provisions of Section 7.4 hereof, the amount of the Annual Assessment shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article IX.

7.3 Uniform Rate of Assessment: The amount of any Annual or Special Assessment against each Lot shall be fixed at a uniform rate per Membership, except as specified hereafter with respect to the Declarant. Declarant shall pay only twenty-five percent (25%) of the Annual or Special Assessments otherwise attributable to undeveloped property owned by the Declarant. For purposes of this paragraph, a Lot owned by the Declarant shall be deemed to be "undeveloped" until a certificate of occupancy has been issued with respect to that Lot. Notwithstanding the foregoing, so long as the Declarant is paying reduced Annual and Special

Assessments, the Declarant shall pay to the Association any deficiency in funds resulting from Declarant's decreased Assessment and necessary for the Association to be able to timely pay its expenses. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials or a combination of these.

7.4 Maximum Annual Assessment: The Annual Assessment to be established by the Board may not exceed a certain amount hereinafter referred to as the "Maximum Annual Assessment", which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until December 31st, 1993, the Maximum Annual Assessment against each Owner shall be Sixty dollars (\$60.00) per each Membership, which is equivalent to Five dollars (\$5.00) per month.

(b) From and after December 31st, 1993, the Maximum Annual Assessment shall be automatically increased effective January 1 of each year without a vote of the Members by an amount which is equal to the greater of:

(i) Twenty percent (20%) of the Maximum Annual Assessment for the year just ended; or

(ii) the increase during the twelve month period measured from the preceding September to September, of the Consumer Price Index published in the Monthly Labor Review by the United States Department of Labor, Bureau of Labor Statistics and designated "Consumer Price Index--U.S. City Average for All Urban Consumers, 1967 Equals 100, All Items".

In the event the Bureau of Labor Statistics shall cease to publish the Consumer Price Index and such information is not available from any other source, public or private, then a new formula for determining the automatic annual increase of the Maximum Annual Assessment pursuant to subparagraph (b)(ii) shall be adopted by the Board.

(c) From and after December 31, 1993, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subsection (b) above 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 such purpose.

(d) Notwithstanding the foregoing limitations described in (a), (b) and (c) above, the Maximum Annual Assessment may be increased as required by increased utilities and water costs charged to the Association.

7.5 Special Assessments for Capital Improvements and Extraordinary Expenses: In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon Association Land, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, 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 such purpose. Owners qualifying for paying a reduced Annual Assessment attributable to their Memberships pursuant to 7.3 above shall also be permitted to pay a reduced (at the same rate) Special Assessment otherwise attributable to each such Membership unless such Owner is determined by the Board to be directly benefited by the capital improvement financed in whole or in part by such Special Assessment, in which event the Owner shall pay the full amount of the Special Assessment attributable to his Membership. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

7.6 Notice and Quorum for Any Action Authorized Under 7.4 and 7.5: Written notice of any meeting called for the purpose of taking any action authorized under 7.4 or 7.5 shall be sent to all Members no fewer than thirty (30) days nor more than sixty (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 (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. 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.