

2010-20938

Page 1 of 5

Requested By: PIONEER TITLE AGENCY

Christina Rhodes - Recorder

Cochise County, AZ

09-14-2010 12:07 PM Recording Fee \$14.00

When Recorded Return to:
Tanis A. Duncan
548 E. Speedway Blvd.
Tucson, AZ 85705

THIRD AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
RED HAWK AT J-6 RANCH

This Third Amendment is to the Declaration of Covenants, Conditions and Restrictions for Red Hawk at J-6 Ranch and was approved by the Declarant, Title Security Agency of Arizona, an Arizona Corporation, as Trustee under Trust Number 963 in accordance with Section 13.11 of the Declaration of Covenants, Conditions and Restrictions for Red Hawk at J-6 Ranch ("Original Declaration") recorded, on March 7, 2001, in the Office of the County Recorder, Cochise County, Arizona, in Fee #010306235.

Whereas, Section 13.11 of the Original Declaration provides, that if the Declarant owns a single Lot, then it may amend the Original Declaration, if, in the Declarant's sole discretion, such amendment is necessary to eliminate ambiguities, correct errors, clarify the scope and intent of the provisions of the Original Declaration, or to better enable the Association to administer the Properties.

Whereas, the Declarant has determined, in its sole discretion that it is appropriate that Article X of the Original Declaration pertaining to the Equestrian Center be amended.

Now therefore, Article X of the Original Declaration is stricken and the following new Article X is substituted in its place:

ARTICLE X
EQUESTRIAN CENTER

Section 10.1. Establishment. Certain portions of the Properties are intended to be suitable for horses, subject to applicable zoning, and to such additional limitations as the Declarant or the Red Hawk at J-6 Ranch Equestrian Operator may establish. It is acknowledged that typical sights, sounds, smells, equipment, trailers, and all other aspects associated with and incident to equestrian use will be evident on the Properties.

- 10.1.1. The Red Hawk at J-6 Ranch Equestrian Center was established on Tract "A" shown on the Amended Final Plat of Red Hawk II Subdivision Units 1 and 3, Lots 97-288 and Tract "A", Book 15 of Maps and Plats at Page

92. Tract "A" is designated as the Storage Tank Site on the Plat.
- 10.1.2. The Equestrian Center will be operated by the Red Hawk at J-6 Ranch Equestrian Operator upon such terms as the Declarant in its discretion permits. The Declarant may permit the installation of certain equipment and facilities, which may be removed by the Red Hawk at J-6 Ranch Equestrian Operator and/or Declarant pursuant to any agreement between the Operator and the Declarant. The Declarant is expressly permitted to control the affairs and governance of the Red Hawk at J-6 Ranch Equestrian Center and may have a financial interest in operating such Equestrian Center. The Declarant has the right, in its sole discretion to sell Tract "A" to a bona fide purchaser for value and to enter into any agreement with the purchaser permitting such purchaser to serve as the Red Hawk at J-6 Ranch Equestrian Operator.
- 10.1.3. In view of the ordinarily expected risks associated with equine facilities and in view of the reasonably foreseeable and predictable nature of accidents that sometimes can and will occur in connection with equine activities, each Owner, for the Owner and all family members, guests and invitees, fully releases and discharges the Association, Declarant, its assigns, the Red Hawk at J-6 Ranch Equestrian Operator, and all of their agents, affiliates, representatives and employees from and against any and all liability, cost, demand, responsibility, or obligation relating in any way to or arising out of any act, omission, accident, mishap, injury or death in connection with the Equestrian Center or any service performed at the Equestrian Center or by the Red Hawk at J-6 Ranch Equestrian Operator.

Section 10.2. Use and Operation. Contingent upon available capacity and boarding space, the Owners, and their family members, Lessees, guests and invitees may board their horses at the Equestrian Center, with boarding rates and terms to be established by the Red Hawk at J-6 Ranch Equestrian Operator which may establish rules governing the Equestrian Center, such as minimum length of boarding time, rates being charges, services being provided and any other rules pertinent to boarding and riding horses at the Equestrian Center. It is intended that all operational expenses of the Equestrian Center will be funded from fees charged to the persons who are using the services provided by the Equestrian Center. The Red Hawk at J-6 Ranch Equestrian Operator may, at any time, subject to the terms of its agreement with Declarant, elect to cease operating the Equestrian Center, at which time the Declarant may elect to either operate the Equestrian Center, itself or contract with another operator. Under no circumstances is Declarant or any other person required to actually to operate the Equestrian Center, as it is understood that economic and other considerations will govern the manner in which the Equestrian Center is operated, if at all, and by whom.

Section 10.3. Other Uses. Nothing set forth in this Article X prohibits Tract "A" from being used for other purposes, including, but not limited to a recreational and/or other type of vehicle storage facility, if agreed to by the Declarant and the owner of Tract "A", if sold by the Declarant.

Effective Date. This instrument is effective as of the date of the Original Declaration.

Conflict. In the event of a conflict between the provisions of this Third Amendment and the provisions of the Original Declaration, the provisions of this Third Amendment will prevail.

EXECUTED on August 23rd, 2010.

Title Security Agency of Arizona, an Arizona corporation, as Trustee under Trust Number 963, as Trustee only and not in its corporate capacity

By: [Signature]
Its: Trust officer

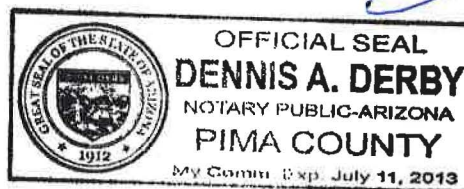
STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 23rd day of July, 2010 by Dennis A. Derby, the trust officer of Title Security Agency of Arizona, an Arizona corporation, as Trustee under Trust Number 963, as Trustee only and not in its corporate capacity.

[Signature]
Notary Public

My Commission Expires:

7-11-2013

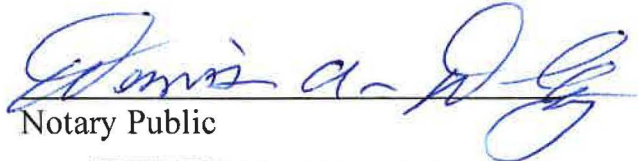


AGREED AND ACCEPTED by the beneficiaries of Trust Number 963:

Thunder Ranch Estates Unit II, LLC	Thunder Ranch Estates Unit III, LLC
By: <u>[Signature]</u>	By: <u>[Signature]</u>
Its: <u>CO-Managing member</u>	Its: <u>CO-Managing member</u>

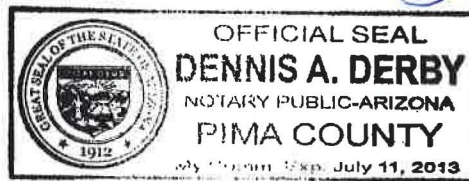
STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 23rd ^{August} day of July, 2010 by James Vermilgen, the Co Managing Member of Thunder Ranch Estates Unit II, LLC, an Arizona limited liability company.


Notary Public

My Commission Expires:

7-11-2013



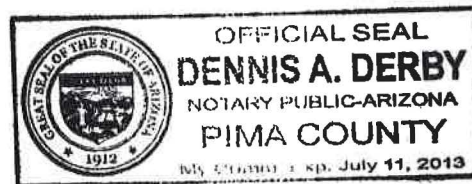
STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 23rd ^{Aug} day of July, 2010 by James Vermilgen, the Co Managing Member of Thunder Ranch Estates Unit III, LLC, an Arizona limited liability company.


Notary Public

My Commission Expires:

7-11-2013





FEE # 070310480
OFFICIAL RECORDS
COCHISE COUNTY
DATE 03/27/07 HOUR 2

REQUEST OF
HAWKINS & E-Z MESSENGER
CHRISTINE RHODES-RECORDER
FEE : 21.00 PAGES : 13

When recorded mail to:

John F. Mungor
Munger Chadwick, PLC
333 N. Wilmot Rd., Ste. 300
Tucson, Arizona 85711

SECOND AMENDMENT OF CC&RS
AND
ANNEXATION OF LANDS INTO CC&RS

This Second Amendment of Declaration of Covenants, Conditions and Restrictions and Amendment to Annexation of Lands into the Declaration of Covenants, Conditions and Restrictions for Redhawk at Jay-Six Ranch is hereby made by the undersigned as of the 1 day of March, 2006 ~~2007~~.

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions for Redhawk at Jay-Six Ranch was recorded March 7, 2001, as Fee No. 010306235, in the office of the Cochise County Recorder ("Original General CC&Rs");

WHEREAS, the Original General CC&R's were amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Redhawk at Jay-Six Ranch, recorded September 18, 2003, as Fee No. 030933571 ("First Amendment to General CC&Rs") (the Original General CC&Rs and the First Amendment to General CC&Rs are collectively herein referred to as the "General CC&Rs");

WHEREAS, by document recorded on January 28, 2005, as Fee No. 050103036 Parcel C and Parcel F (as described in said recorded document) were annexed to the General CC&Rs by a certain Annexation of Lands into CC&Rs.

WHEREAS, the undersigned also contemplated and agreed that upon sale of certain lands described on Exhibit A hereto by Jay-Six Ranch, Ltd. and/or Empirion Ranch Limited Partnership, such lands would be encumbered by the General CC&Rs; and such lands were, in fact, sold on or about June 30, 2005 and by this document are intended to be annexed into, and encumbered by the General CC&Rs;

WHEREAS, the undersigned also agree that the General CC&Rs, as they apply to all lands described on Exhibit B hereto, should be amended hereby as stated below:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

070310480

1. Annexation of Lands into General CC&Rs. The undersigned hereby annex those certain lands legally described in Exhibit "A" as Parcel B, attached hereto and incorporated herein by this referenced ("Amended Annexed Lands") into the General CC&Rs and encumber the Amended Annexed Lands with, and subject the Amended Annexed Lands to, the General CC&Rs, as further amended hereby, to run with the lands shown on Exhibit A hereto

2. Amendment of General CC&Rs. The undersigned hereby amend the General CC&R's, as they apply to lands legally described by Exhibit B, as follows:

2.1. The Design Guidelines attached to the First Amendment To General CC&Rs as Exhibit C thereto (the "Design Guidelines") are hereby amended as follows:

After the last sentence of paragraph 2 on page 3 of said Design Guidelines, add the following:

"In its sole discretion, the Design Review Committee may, from time to time, add or subtract requirements and/or specifications to roof designs and fixtures which may be placed on roofs, recognizing that some lots will look down on the roofs of other lots and that adjustments to roof requirements and specifications may therefore be deemed appropriate by the Design Review Committee. Nothing herein shall require the Design Review Committee to modify any roof requirements or specifications in any particular situation; and the decision of the Committee to modify requirements or specifications in one circumstance, pertaining to one roof, shall not require the Committee to make similar (or any) such modifications to requirements or specifications which apply to any other roof, no matter how similar the situation."

After the last sentence of paragraph 4 on page 4 of the Design Guidelines, add the following:

"Arcs enclosed by walls, fences, or non-residential buildings on any lot (as determined by the Design Review Committee in its sole discretion) including without limitation arcs irrigated and/or non-residential improvements, shall not exceed 2 times the size of the residential improvements (as determined by the Design Review Committee in its sole discretion)."

On the third line of the 5th paragraph on page 4 of the Design Guidelines, the number "forty (40)" shall be deleted and replaced with the number "forty-five (45)" except for residential buildings on which actual physical construction was commenced, as established by the date of the building permit applicable thereto; prior the filing of this document.

At the end of paragraph 6 on page 4 of the Design Guidelines, add the following sentence:

"No pools or water features shall exceed a maximum size of 15,000 gallons of water."

070310480

At the end of paragraph 7 on page 4 of the Design Guidelines, add the following sentence:

"No lot owner shall at any time drill, build, maintain, or use a water well of any nature on any lands subject to these Design Guidelines, and the restrictions hereon, shall not be waived or modified except by duly adopted amendment to these Design Guidelines; provided that this sentence and the restrictions hereon shall not apply to Etiopia Water Company LLC, Declarant, Thunder Ranch Estates LLC or Thunder Ranch Estates II, III, or IV, LLC (collectively "Predecessors in Interest"), or to the successors or assigns of any of them who have expressly accepted the rights of exclusion from this sentence (as stated in this proviso) by the written statement of the applicable Predecessor in Interest."

In paragraph 2 on page 6 of the Design Guidelines, strike the sentence that states: "At the time Final Plans are submitted to the Design Review Committee, the Owner shall deposit the sum of \$2,000 (the "Deposit") with the DRC." In lieu of said stricken language add the following:

"At the time Final Plans are submitted to the Design Review Committee, the Owner shall deposit with the Design Review Committee the non-refundable sum determined from time to time by the Design Review Committee (the "Design Review Fee") to pay for the costs of review of the Plans by the Design Review Committee and its architect. At the time this document is executed, the Design Review Fee is \$400.00, but said Design Review Fee may be modified up or down at any time by the Design Review Committee in its sole discretion."

Strike the following language at the beginning of paragraph 3 on page 6 of the Design Guidelines: "The Deposit shall be held by the Design Review Committee, in a non-interest bearing account and may be utilized or disbursed by the DRC for;" and add, in lieu of the above stricken language the following: "The Landowner shall be solely responsible for, and shall pay for;"

Strike the last paragraph on page 6 of the Design Guidelines.

2.2 Paragraph 4 (Horse-Related Provisions) of the First Amendment to the CC&Rs is hereby amended to add the following subparagraph (g):

"(g) The Declarant may, at any time, in Declarant's sole discretion, designate certain lots in the lands described in Exhibit B to the Second Amendment to CC&Rs and Annexation Of Lands into CC&Rs (i.e., this very document by which these amendments are hereby adopted) as "horse lots" which would be subject to all terms of paragraph 5 (Horse Related Provisions) of the First Amendment to CC&Rs; provided that the lots which might be so designated must be immediately adjacent to, and have a common boundary with the Equestrian Center."

070310480

3. Ratification of General CC&Rs. The General CC&Rs, as amended hereby, and as annexed to, and made applicable to, and encumbering, all the lands described on Exhibit B hereto, are hereby ratified as amended hereby, and shall run with the lands described in Exhibit B.

EXECUTED as of the day and year first written above.

JAY-SIX RANCH LTD., an Arizona limited partnership
By: Jay-Six Ranch, Inc., an Arizona corporation, its General Partner

By: Neal T. Simonson
Neal T. Simonson, President

EMPIRITA RANCH LIMITED, an Arizona limited partnership
By: Empirita Ranch, Inc., an Arizona Corporation, its General Partner

By: Neal T. Simonson
Neal T. Simonson, President

EASTER MOUNTAIN RANCH, L.L.C., an Arizona limited liability company

By: The Hughes Company, Manager
By: [Signature]
Its Manager

By: [Signature]
Its Manager

SWC RIVER/CRAYCROFT, L.L.C., an Arizona limited liability company

By: [Signature]
By: [Signature]
Its Manager

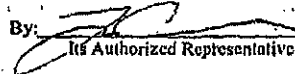
By: NA
Its Manager

THUNDER RANCH ESTATES, L.L.C.,
an Arizona limited liability company

By: James Vermilyea
James Vermilyea
Its Co-Manager

070310480


MSR Associates, Inc., as Co-Manager

By: 
Its Authorized Representative

THUNDER RANCH ESTATES, UNIT II, L.L.C.,
an Arizona limited liability company

By: 
James Vermilyea
Its Co-Manager

MSR Associates, Inc., as Co-Manager

By: 
Its Authorized Representative

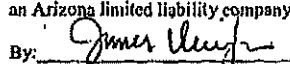
THUNDER RANCH ESTATES, UNIT III,
an Arizona limited liability company

By: 
James Vermilyea
Its Co-Manager

MSR Associates, Inc., as Co-Manager

By: 
Its Authorized Representative

THUNDER RANCH ESTATES, UNIT IV, L.L.C.,
an Arizona limited liability company

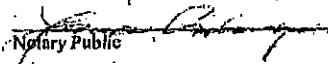
By: 
James Vermilyea
Its Co-Manager

MSR Associates, Inc., as Co-Manager.

By  His Authorized Representative

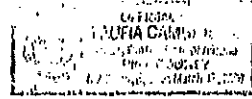
STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED AND SWORN to before me this 2 day of March
2006, by Neal Simonson, as President of Jay-Six Ranch, Inc., as General Partner of Jay-Six Ranch, Ltd., an Arizona limited partnership.

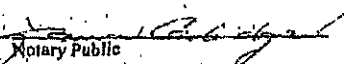

Notary Public

My Commission Expires:

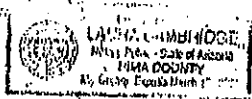
STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)



SUBSCRIBED AND SWORN to before me this 2 day of March
2006, by Neal Simonson, as President of Empirita Ranch, Inc., as General Partner of Empirita Ranch Limited Partnership, an Arizona limited partnership.


Notary Public

My Commission Expires:



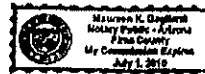
6 070310480

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

my 7 SUBSCRIBED AND SWORN to before me this 5th day of March,
2009, by STEPHEN J. LONINAN, OF Manager of Easter Mountain Ranch, L.L.C., an
Arizona limited liability company.
Maureen K. England
Notary Public

My Commission Expires:
July 1, 2010

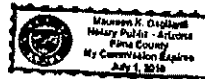
STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)



my 7 SUBSCRIBED AND SWORN to before me this 5th day of March,
2009, by DUFF C. HARRON, OF Manager of Easter Mountain Ranch, L.L.C., an
Arizona limited liability company.
Maureen K. England
Notary Public

My Commission Expires:
July 1, 2010

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)



my 7 SUBSCRIBED AND SWORN to before me this 5th day of March,
2009, by DUFF C. HARRON, OF Manager of SWC River/Craycroft, L.L.C., an Arizona
limited liability company.
Maureen K. England
Notary Public

My Commission Expires:
July 1, 2010



070310480

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED AND SWORN to before me this _____ day of _____,
2006, by _____, Manager of SWC River/Craycroft, L.L.C., an Arizona
limited liability company.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

~~2006~~ SUBSCRIBED AND SWORN to before me this 7 day of March,
2006, by James Vermilyea, as Co-Manager of Thunder Ranch Estates, L.L.C., an Arizona
limited liability company.

Michelle L. Wilson
Notary Public

My Commission Expires:
3/19/09



STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

~~2006~~ SUBSCRIBED AND SWORN to before me this 7 day of March,
2006, by Louis B. Christensen, as authorized representative of MSR Associates,
Inc., Co-Manager of Thunder Ranch Estates, L.L.C., an Arizona limited liability
company.

Michelle L. Wilson
Notary Public

My Commission Expires:

3/19/09

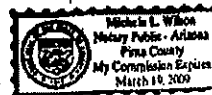


STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

2007 SUBSCRIBED AND SWORN to before me this 7 day of March,
2006, by James Vermilyea, as Co-Manager of Thunder Ranch Estates Unit II, L.L.C., an
Arizona limited liability company.

Michelle L. Wilson
Notary Public

My Commission Expires:
3/19/09

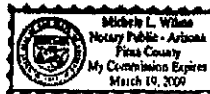


STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

2007 SUBSCRIBED AND SWORN to before me this 7 day of March,
2006, by Louis B. Christensen, as authorized representative of MSR Associates,
Inc., Co-Manager of Thunder Ranch Estates Unit II, L.L.C., an Arizona limited liability
company.

Michelle L. Wilson
Notary Public

My Commission Expires:
3/19/09



STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

2007 SUBSCRIBED AND SWORN to before me this 7 day of March,
2006, by James Vermilyea, as Co-Manager of Thunder Ranch Estates Unit III, L.L.C., an
Arizona limited liability company.

Michelle L. Wilson
Notary Public

My Commission Expires:
3/19/09



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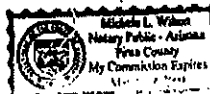
STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

2007 SUBSCRIBED AND SWORN to before me this 7 day of March
2006, by Louis B. Christensen, as authorized representative of MSR Associates,
Inc., Co-Manager of Thunder Ranch Estates Unit III, L.L.C., an Arizona limited liability
company.

Michelle L. Wilson
Notary Public

My Commission Expires:

3/19/07



STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

2007 SUBSCRIBED AND SWORN to before me this 7 day of March
2006, by James Vermilyea, as Co-Manager of Thunder Ranch Estates Unit IV, L.L.C., an
Arizona limited liability company.

Michelle L. Wilson
Notary Public

My Commission Expires:

3/19/07



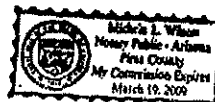
STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

2007 SUBSCRIBED AND SWORN to before me this 7 day of March
2006, by Louis B. Christensen, as authorized representative of MSR Associates,
Inc., Co-Manager of Thunder Ranch Estates Unit IV, L.L.C., an Arizona limited liability
company.

Michelle L. Wilson
Notary Public

My Commission Expires:

3/19/07



10

070310480

EXHIBIT "A"

PARCEL B

The north half of Section 30, Township 17 South, Range 19 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

EXCEPT all coal and other minerals as reserved in Patent from the United States of America.

Exhibit "B"

Parcel A

Lots 1, and 2;
The East half of the Northwest quarter; and
The Northeast quarter of Section 19, Township 17 South, Range 19 East of the Gila and
Salt River Base and Meridian, Cochise County, Arizona;

EXCEPT all the oil, gas and minerals as reserved in Deed recorded in Book 105, Deeds
of Real Estate, page 492, records of Cochise County, Arizona;

Parcel C

Lots 3 and 4;
The East half of the Southwest quarter; and
The Southeast quarter of Section 19, Township 17 South, Range 19 East of the Gila and
Salt River Base and Meridian, Cochise County, Arizona;

EXCEPT all the oil, gas and minerals as reserved in Deed recorded in Book 105, Deeds
of Real Estate, page 492, records of Cochise County, Arizona

Parcel E

Lots 1 and 2; the East half of the Northwest quarter; and the Northeast quarter of
Section 30, township 17 South, Range 19 East of the Gila and Salt River Base and
Meridian, Cochise County, Arizona.

EXCEPT all coal and other minerals as reserved in Patent from the United States of
America.

Exhibit "B" (continued)

Parcel F

A portion of SECTIONS 20 and 29, TOWNSHIP 17 South, RANGE 19 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of Section 20;
Thence North 89° 29' 59" East, along the North line of said Section 20, a distance of 1,074.53 feet;
Thence South 23° 44' 53" East, a distance of 480.75 feet;
Thence South 19° 10' 38" East, a distance of 167.07 feet to the Point of Beginning;
Thence South 19° 10' 38" East, a distance of 126.25 feet;
Thence South 16° 57' 38" West, a distance of 426.47 feet;
Thence South 23° 34' 28" West, a distance of 382.36 feet;
Thence South 18° 23' 40" East, a distance of 515.59 feet;
Thence South 67° 48' 50" East, a distance of 521.72 feet;
Thence South 33° 43' 25" East, a distance of 525.27 feet;
Thence South 30° 43' 02" East, a distance of 549.56 feet;
Thence South 30° 53' 48" East, a distance of 770.32 feet;
Thence South 30° 55' 53" East, a distance of 433.65 feet;
Thence South 40° 40' 51" East, a distance of 634.90 feet;
Thence South 30° 03' 35" East, a distance of 479.36 feet;
Thence South 17° 44' 20" East, a distance of 292.37 feet;
Thence North 89° 20' 30" East, a distance of 320.50 feet to a point on the South line of said Section 20, said point being ACP, RLS 7599;
Thence South 00° 00' 20" East, a distance of 1,324.43 feet to a point in the North half of said Section 29, said point being ACP, RLS 7599;
Thence South 89° 11' 23" West, a distance of approximately 3,891.77 feet to a point on the West line of the Northwest quarter of said Section 29, said point calculated;
Thence North 00° 35' 34" West, along a calculated line, to a found 1" steel pin, a distance of 1,324.43 feet;
Thence North 00° 35' 34" West, a distance of 2,632.45 feet to a stone with a mound of rocks marking the West quarter corner of said Section 20;
Thence North 01° 01' 27", a distance of 2,075.34 feet;
Thence North 89° 29' 49" East, a distance of 1,312.30 feet to the Point of beginning.

EXCEPT all oil, gas and minerals as reserved in Book 105 of Deeds, page 492, records of Cochise County, Arizona.

When recorded return to:
THE LENIHAN LAW FIRM
1050 East River Road, Suite 300
Tucson, Arizona 85718
Attn: Stephen J. Lenihan, Esq.



FEE # 030933571
OFFICIAL RECORD
COCHISE COUNTY
DATE 09/18/03 HOUR 9

REQUEST OF
LENIHAN LAW FIRM
CHRISTINE RHODES-RECORDER
FEE : 24.00 PAGES : 1

**FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR RED HAWK AT J-6 RANCH**

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RED HAWK AT J-6 RANCH is made as of the Effective Date (as defined below) by TITLE SECURITY AGENCY OF ARIZONA, an Arizona corporation, as Trustee under Trust Number 711, as Declarant, and as the holder of not less than two-thirds (2/3rds) of the Lots.

WITNESSETH:

WHEREAS, Declarant executed and caused to be recorded, on March 7, 2001, in the Office of the County Recorder, Cochise County, Arizona, a Declaration of Covenants, Conditions and Restrictions for Red Hawk at J-6 Ranch ("Original Declaration") as Fee #010306235, official records of Cochise County, Arizona pertaining to the property described on Exhibit D hereto and any other property hereafter annexed thereto by written notice of Declarant;

WHEREAS, Section 13.11 of the Original Declaration provides, at any time Declarant owns a single Lot, that the Original Declaration may be amended by Declarant in its sole discretion;

WHEREAS, Declarant is the Owner of not less than two-thirds (2/3rds) of the Lots;

WHEREAS, the Declarant desires that the Declaration be amended;

NOW, THEREFORE, the Declarant hereby amends the Declaration as follows:

1. **Effective Date.** This instrument is effective as of the date of the Original Declaration.

2. **Conflict.** In the event of a conflict between the provisions of this First Amendment and the provisions of the Original Declaration, the provisions of this First Amendment shall prevail.

3. **Defined Terms.** To the extent a term is not defined in this First Amendment, the definition assigned in the Original Declaration shall apply.

4. **Horse-Related Provisions.** The Original Declaration is hereby amended by deleting the first paragraph of Section 11.4 in its entirety and adding the following provision in its place:

“The keeping of horses on Lots or any portion of the Project or Properties is strictly prohibited, except as provided below:

(a) Horses shall be allowed in the Equestrian Center subject to the provisions of this Section 11 and to the other provisions of the Original Declaration (as amended hereby and as amended from time-to-time).

(b) An equestrian easement (“Equestrian Easement”) may be established along the north twenty (20) feet of Lots 2 through 6 and 8 through 18 of all the Red Hawk at J-6 Ranch. In addition, a 20 foot wide equestrian easement may be established on the Lots described below, running generally from north to south on and between Lots 10 and 11 and on and between Lots 41 through 49 and 62 on the west and Lots 63 through 72 on the east, including any necessary road crossings to connect to the pedestrian easement on the north portion of Lots 2 through 6 and 8 through 18.

(c) There shall be no equestrian use (except for the Equestrian Easement) on any other Lot within Red Hawk at J-6 Ranch except for Lots 2 through 6 and 8 through 18.

(d) The following provisions shall apply to any equestrian-related use of Lots 2 through 6 and 8 through 18:

i. Any exterior fencing enclosing equestrian activity shall be composed of brown or earth tone vinyl (PVC) fencing with a minimum set back of ten (10) feet from the east and west

property lines and twenty-five (25) feet from the northern property line. See attached example diagram (Exhibit "B").

ii. Interior fencing shall be composed of galvanized steel or painted pipe, or heavy duty portable panels and maintained to acceptable standards.

iii. Owners are required to build barns and stalls which must match the same construction and design as that of the Owner's Residence and which must be placed to the rear of the home and must be completed before horses are permitted on the Lot.

iv. All feed, tack and related equipment must be stored in a barn or architecturally-approved attached structure.

v. No horse or horse-related activity shall occur more than two hundred twenty-five (225) feet from the northern boundary of the Lot ("Equestrian Area"), and all related activity shall occur to the rear of the Residence.

vi. Nor more than two (2) horses owned by any one Owner shall be allowed to reside in the Equestrian Area on a permanent basis, except for unweaned foals. Visiting horses may stay at the Owner's Lot for no longer than a 24-hour period.

vii. Riding in the Project will be in restricted Equestrian Easements only, and all riding within the Project is at the risk of the rider and/or horse-owner.

viii. Waste removal shall be required on a regular basis and acceptable fly prevention treatment will be required and enforced. Trash removal shall comply with those standards as set forth in the Original Declaration (as amended hereby and as amended from time-to-time).

ix. Access to the Equestrian Area shall be over constructed paved driveways only and all related vehicles or trailers must be parked in a garage, storage facility or the common area storage, if any, of the Project.

(f) The provisions of this Section 11.4 shall be enforced by the Association and may be enforced by any Owner of 100 acres or more of the Benefited Lands. In the event any of the aforementioned persons pursue legal action to enforce the provisions of this Section 11.4, the Owner(s) of the Lot(s), or if the violation is not on a Lot, then the Owner responsible for such violation shall be responsible for paying the legal fees and costs, court costs and other costs and expenses reasonably incurred by the person enforcing the provisions of this Section 11.4."

“Pima County Benefited Lands” and “Cochise County Benefited Lands” shall mean those certain properties legally described in Exhibit “A” attached hereto and incorporated herein by this reference. In determining whether an Amendment is approved by two-thirds of the owners, acreage owned by governmental authorities shall not be counted in either the numerator or the denominator.

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forth above, is agreed by the signatories hereto as satisfying the provisions relating to Exhibit L set forth in Section 8.3.2 of that certain Amended and Restated Real Estate Sale and Purchase Agreement and Escrow Instructions dated effective as of June 29, 2000, by and between Jay-Six Ranch, Ltd., an Arizona limited partnership, and Empirita Ranch Limited Partnership, an Arizona limited partnership as Sellers, and Thunder Ranch Estates, L.L.C., an Arizona limited liability company as Purchaser, and it is further agreed by the signatories hereto that the provisions of Exhibit L set forth in Section 8.3.2 are of no further force and effect.

EXECUTED as of the Effective Date by the Declarant, who is also the sole Owner.

Title Security Agency of Arizona, an Arizona corporation,
as Trustee under Trust Number 711,
as Trustee only and not in its corporate capacity

By: Leslie D. Hogg

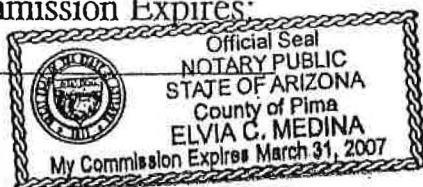
Its: Trust Officer

STATE OF ARIZONA)
) SS
COUNTY OF Pima)

The foregoing instrument was acknowledged before me this 12th day of September, 2003, by Leslie D. Hogg, the Trust Officer of Title Security Agency of Arizona, an Arizona corporation, as Trustee under Trust Number 711.

[Signature]
Notary Public

My Commission Expires:




AGREED AND ACCEPTED:

SELLER:

JAY-SIX RANCH LTD., an Arizona
limited partnership

By: Jay-Six Ranch, Inc., an
Arizona corporation, its General
Partner

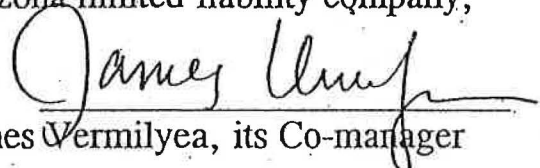
By: 
(Neal T. Simonson, President

EMPIRITA RANCH LIMITED
PARTNERSHIP, an Arizona limited
partnership

By: Empirita Ranch, Inc., an
Arizona corporation, its General
Partner

By: 
Neal T. Simonson, President

THUNDER RANCH ESTATES, an
Arizona limited liability company,

By: 
James Vermilyea, its Co-manager

and

M.S.R. ASSOCIATES, INC. an
Arizona corporation, Co-Manager

By: 
Its: Vice President

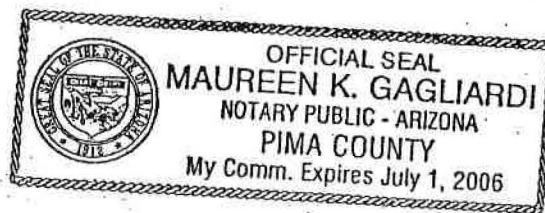
STATE OF Arizona)
) ss
COUNTY OF Pima)

The foregoing instrument was acknowledged before me this 27th day of June, 2003, by Neil Senonson, the President of Jay-Six Ranch Ltd., an Arizona limited partnership.

Maureen K. Gagliardi
Notary Public

My Commission Expires:

July 1, 2006



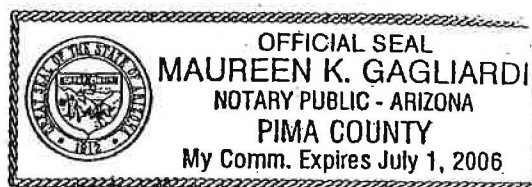
STATE OF Arizona)
COUNTY OF Pima) SS

The foregoing instrument was acknowledged before me this 27th day of June, 2003, by Neil Simonson, the President of Empirita Ranch Limited Partnership, an Arizona limited partnership.

Maureen K. Gagliardi
Notary Public

My Commission Expires:

July 1, 2006

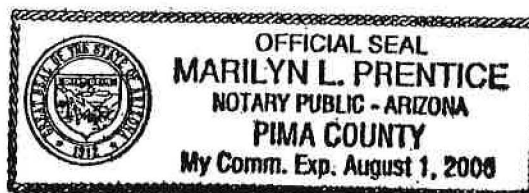


STATE OF Arizona)
COUNTY OF Pima) SS

The foregoing instrument was acknowledged before me this 22nd day of August, 2003, by James Vermilyea, the Co-Managers of Thunder Ranch Estates, an Arizona limited liability company.

Marilyn L. Prentice
Notary Public

My Commission Expires:

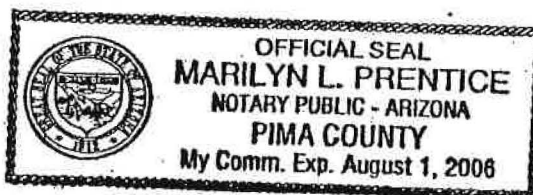


STATE OF Arizona)
COUNTY OF Pima) ss

The foregoing instrument was acknowledged before me this 22nd day of August, 2003, by Louis B. Christensen, the Vice President of M.S.R. Associates, Inc., an Arizona corporation.

Marilyn L. Prentice
Notary Public

My Commission Expires:



030933571

EXHIBIT "A"

BENEFITED LANDS

"Pima County Benefited Lands"

The East Half of Section 24, Township 17 South, Range 18 East,
G&SRB&M, Pima County, Arizona

"Cochise County Benefited Lands"

The West Half of Section 20, Township 17 South, Range 19 East,
G&SRB&M, Cochise County, Arizona

and

The North Half of Section 30, Township 17 South, Range 19 East,
G&SRB&M, Cochise County, Arizona

and

The Southeast Quarter of the Northwest Quarter; the East Half of the
Southwest Quarter, and the Southwest Quarter of the Southwest Quarter of
Section 29, Township 17 South, Range 19 East, of the Gila and Salt River
Base and Meridian, Cochise County, Arizona

and

Lot 4; the Southeast Quarter of the Southwest Quarter, and the South Half
of the Southeast Quarter of Section 30, Township 17 South, Range 19
East, of the Gila and Salt River Base and Meridian, Cochise County,
Arizona

and

The Northeast Quarter of the Northeast Quarter; the East Half of the
Northwest Quarter of the Northeast Quarter; the Southeast Quarter of the
Northeast Quarter; and the North Half of the Southeast Quarter of Section

31, Township 17 South, Range 19 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona

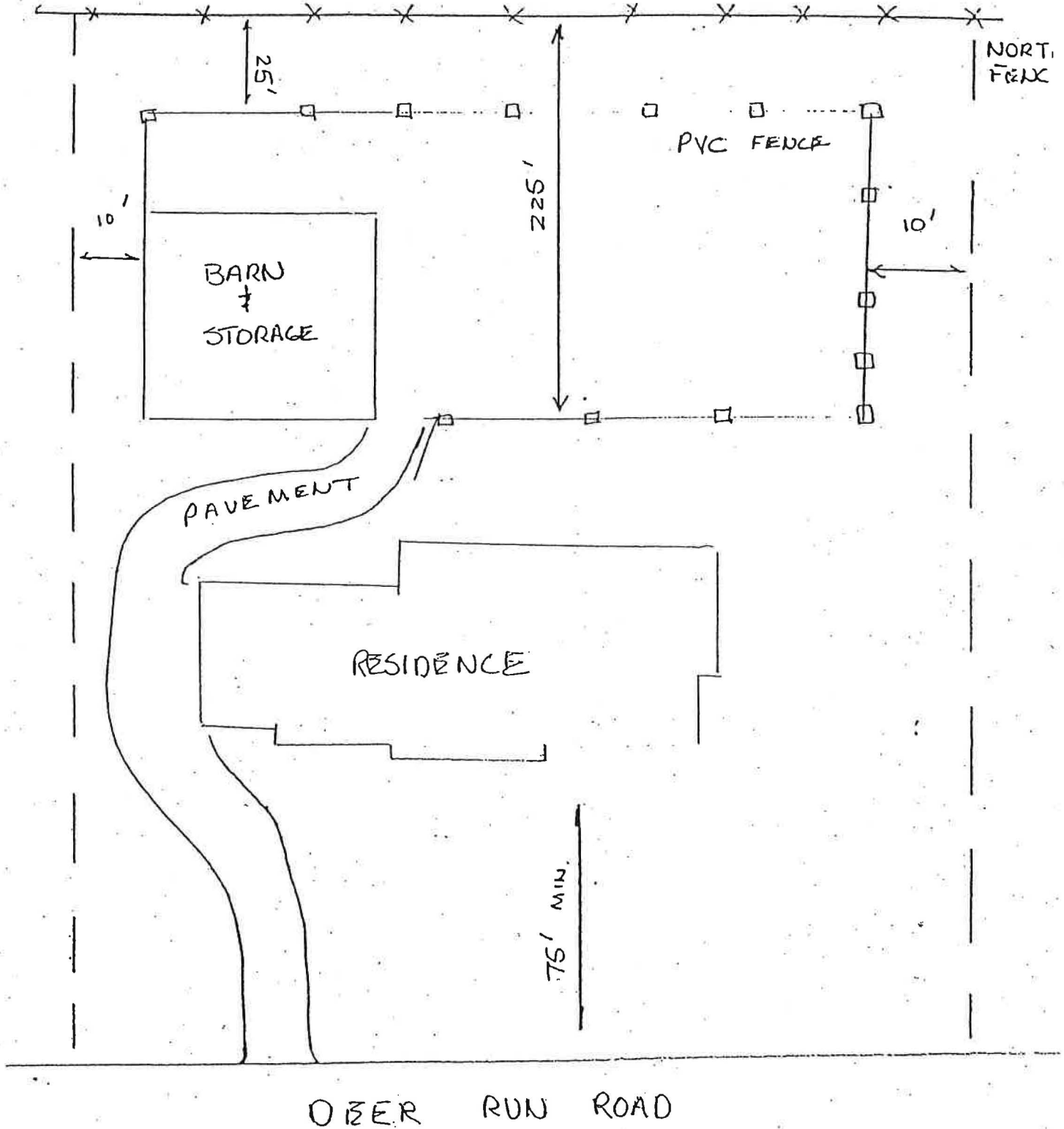
and

The Southwest Quarter of the Northwest Quarter and the West Half of the Northwest Quarter of the Northwest Quarter of Section 32, Township 17 South, Range 19 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona

030933571

EXHIBIT "B"

J-6 RANCHETTES



4.

MAR 07 2001



FEE # 010306235
OFFICIAL RECORDS
COCHISE COUNTY
DATE 03/07/01 HOUR 4

REQUEST OF
THUNDER RANCH ESTATES
CHRISTINE RHODES-RECORDER
FEE : 63.00 PAGES : 59

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
RED HAWK AT J-6 RANCH**

010306235

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
RED HAWK AT J-6 RANCH**

Title Security Agency of Arizona as Trustee under Trust Number 711 (the "Declarant"), is the owner of the following described real property situated in the County of Cochise, State of Arizona:

Lots 1, and 2; the East half of the Northwest quarter; and the
Northeast quarter of Section 19, Township 17 South, Range
19 East of the Gila and Salt River Base and Meridian,
Cochise County, Arizona;

NOW, THEREFORE, Declarant hereby declares that the above described real property hereinafter described as the Properties, together with any property annexed hereunder, shall be held, sold and conveyed subject to the following covenants, conditions, charges, liens, restrictions, easements and reservations (hereinafter collectively referred to as this "Declaration"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property, and all of which are hereby declared to be for the benefit of and binding upon all of the property described herein and the owners thereof, their heirs, successors, grantees and assigns. These restrictions shall run with the title to such property, and each and every part and parcel thereof, shall be binding on all parties having or acquiring any right, title or interest therein, and shall inure to the benefit of each owner thereof.

This Declaration is declared to and does hereby establish a general plan for the development of the Properties and the individual ownership of real property estates therein. Every conveyance of any single family Residence, Lot or other portion of the subject Properties shall be subject to the provisions of this Declaration.

ARTICLE I

DEFINITIONS

As used herein, unless the context otherwise requires:

- | | |
|--|--|
| Section 1.1
Articles | "Articles" shall mean the Articles of Incorporation for the Association, which are to be filed in the office of the Corporation Commission of the State of Arizona, as the same may be amended from time to time. |
| Section 1.2
Assessments | "Assessments" shall mean the Regular, Special and Individual Assessments levied and assessed pursuant to this Declaration. |
| Section 1.3
Assessment Lien | "Assessment Lien" shall mean the lien imposed against any Lot for collection of the sums described in Article VII of this Declaration. |

Section 1.4
Association

"Association" shall mean and refer to RED HAWK AT J-6 RANCH PROPERTY OWNERS ASSOCIATION, an Arizona non-profit corporation, and its successors and assigns.

Section 1.5
Association Rules

"Association Rules" shall mean the rules and regulations (including the Design Guidelines) adopted by the Board of the Association or the Design Review Committee pursuant to the provisions of this Declaration, as such rules and regulations may be amended from time to time.

Section 1.6
Board

"Board" shall mean and refer to the Board of Directors of the Association.

Section 1.7
Building Setbacks

"Building Setbacks" shall mean those areas within a Lot on which no Improvements may be constructed or maintained; and shall be those areas within 70 feet of a street or road and within 45 feet of all other property lines on a Lot.

Section 1.8
Bylaws

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

Section 1.9
Common Areas

"Common Areas" shall mean the Common Areas shown on the Plat, and real property and Improvements located thereon, and all other real property now or hereafter owned by the Association or existing for the common use and enjoyment of the Members of the Association and under the control of the Association. Common Areas include pedestrian paths, pavements, private streets, parking areas, and all easement areas and private streets and private roads providing legal access to each Lot, and shall also include any gated entry and guardhouse facilities and related equipment (if any).

Common Area shall also include common areas designated as such on any plat of land annexed hereunder and subject to a Declaration of Annexation, and which is described therein as Common Area.

Section 1.10
Common Expenses

"Common Expenses" shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Areas and the improvements thereon; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers and other employees, accountants, attorneys and agents; the costs of utilities, street maintenance and repair; gardening; landscaping; costs of entry gate personnel, if any, and any other such systems, including without limitation, perimeter fences or any other fences installed by the Declarant or by the Association for the benefit of the Properties and other services benefitting the Properties; the cost of fire, casualty, liability, worker's compensation and other insurance covering the Common Areas or other Association property and other insurance costs

authorized herein; reasonable reserves as deemed appropriate by the Board; the cost of insurance binders for the members of the Board, officers of the Association and members of any committee established by the Board pursuant to the terms hereof; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof and to pay ad valorem real property taxes; and the cost of any other item or items designated by, or incidental to other expenses incurred by the Association for any reason whatsoever which in the good faith judgment of the Board are incurred in connection with the Common Areas, pursuant to the Articles or the Bylaws, in the furtherance of the purposes of the Association, or in the discharge of any obligations imposed on the Association by this Declaration.

***Section 1.11
Declarant***

"Declarant" shall mean the Title Security Agency of Arizona as Trustee under Trust Number 711, the beneficiary of which is Thunder Ranch Estates, LLC, an Arizona Limited Liability Company, or its successors or assigns who have, in writing, been designated as an assignee of all or a part of the Declarant rights hereunder.

***Section 1.12
Declaration***

"Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for RED HAWK AT J-6 RANCH PROPERTY OWNERS ASSOCIATION, as the same may be amended or supplemented from time to time.

***Section 1.13
Default Rate***

"Default Rate " shall mean twelve percent (12%) per annum.

***Section 1.14
Design Review
Committee***

"Design Review Committee" shall mean the committee established by the Board of Directors of the Association pursuant to Section 4.6 hereof.

***Section 1.15
Design Guidelines***

"Design Guidelines" shall mean the design standards, restrictions, review process, submittal requirements, and construction regulations adopted by the Declarant or Association as may be amended or supplemented from time to time.

***Section 1.16
Equestrian Center***

"Equestrian Center" or "Red Hawk at J-6 Ranch Equestrian Center" shall mean the equestrian center referred to in Article X hereof.

***Section 1.17
Red Hawk at J-6
Ranch Property
Owners Association
Equestrian Operator***

"Red Hawk at J-6 Ranch Equestrian Operator" shall mean the entity organized to operate Red Hawk at J-6 Ranch Equestrian Center, as authorized by the Declarant or its successors and assigns.

Section 1.18
Excavation

"Excavation" shall mean any disturbance of the surface of the land including any grading, trenching, grubbing, or clearing which results in the relocation, removal, or addition of earth, rock or other substance of the surface of the land.

Section 1.19
Improvement

"Improvement" shall mean any changes, alterations, or additions to a Lot, including any excavation or landscaping and any structure or other improvement of any type or kind. Solely for purposes of clarification, the term "Improvement" shall include any Residence, building, outbuilding, building projection, patio, swimming pool, wall, driveway, radio antennae, television antennae, satellite stations or dishes, awnings, sunshades, flagpoles, or any similar structures.

Section 1.20
Individual
Assessment

"Individual Assessment" shall mean any assessment levied against an individual owner pursuant to Section 7.5 and any other charges, fines, penalties, costs or other amounts assessed against an individual owner pursuant to the terms of this Declaration, the Design Guidelines or the Association Rules other than Regular Assessments and Special Assessments.

Section 1.21
Lot

"Lot" shall mean and refer to the separately designated and numbered plots of land shown upon the recorded subdivision Plat of the Properties, or the subdivision plat of any parcel of land annexed within the purview of this Declaration, together with the Improvements thereon.

Section 1.22
Member

"Member" shall mean and refer to every person or entity who holds a membership interest in the Association.

Section 1.23
Natural Area

"Natural Area" shall mean that portion of each Lot which lies within the Building Setbacks for each Lot. Such areas must remain as undisturbed natural desert, unless the Design Review Committee shall in writing approve of changes thereto.

Section 1.24
Owner

"Owner" shall mean the record holder (including Declarant) of legal title to the fee interest in any Lot regardless of whether such owner actually resides therein, or the equitable Owner of record under a contract of sale. "Owner" shall also include each person who owns title to a Lot in joint tenancy, tenancy in common, as community property, or any other form of joint ownership. "Owner" is not intended to include persons who hold an interest in any Lot merely as security for the performance of an obligation, the seller under a contract of sale, or a lessee or tenant of a Dwelling Unit.

Section 1.25
Plat

"Plat" shall mean that certain Plat of Red Hawk at J-6 Ranch Lots 1 through 91 and Common Areas a subdivision of Cochise County, Arizona, as the same may be modified or amended from time to time, and any plat of any additional land annexed under the purview hereof.

- Section 1.26**
Project or Properties
- Project" or "Properties"** shall mean Lot 1 through 91, and Common Areas of Red Hawk at J-6 Ranch subdivision, as shown on the Plat, including all Improvements thereon, and any property hereafter annexed within the purview of this Declaration as a part of the Properties.
- Section 1.27**
Regular Assessment
- "Regular Assessment"** shall mean the charge levied and assessed each year against each Lot pursuant to Section 7.3 hereof.
- Section 1.28**
Residence
- "Residence"** shall mean any portion of a building situated upon a Lot, and any Improvements constructed in connection therewith, that is intended for use and occupancy as a single-family residence.
- Section 1.29**
Restrictions
- "Restrictions"** shall mean the covenants, conditions, restrictions, assessments, easements and liens set forth in this Declaration.
- Section 1.30**
Special Assessment
- "Special Assessment"** shall mean any assessment levied and assessed pursuant to Section 7.4 hereof.
- Section 1.31**
Turnover Date
- "Turnover Date"** shall be the first to occur of (i) the day on which title to greater than ninety percent (90%) Lots in the Properties (including Lots then annexed to the original Properties) is conveyed to third party purchasers (other than Declarant) for value other than as security for performance of an obligation (and other than an assignee of Declarant so designated in writing, or an affiliate or partner of Declarant or an entity in which Declarant or its members or partners are affiliated as partners, shareholders or members) or (ii) such date as Declarant by written instrument allows the Class A members to succeed to voting rights. Declarant shall have the right, however, to allow the Class A members to cast votes, while at the same time reserving unto the Declarant, so long as it owns more than ten percent (10%) of the Lots, the exclusive right to appoint or remove the Board of the Association and the Design Review Committee, and may further reserve the right to amend this Declaration. Regardless of whether Declarant has allowed the Class A members to cast votes, so long as Declarant owns a single Lot, either of the original 91 Lots or if Lots annexed hereto, Declarant shall continue to have and may enjoy all other rights and privileges of the Declarant hereunder, including but not limited to the right to amend these Declarations.
- Section 1.32**
Visible from Neighboring Property
- "Visible from Neighboring Property"** means that a given object or activity on a Lot is reasonably visible without artificial sight aids, from six feet above any portion of any other Lot or Common Area with an elevation equal to that portion of the Lot upon which such object or activity is located.

ARTICLE II

ASSOCIATION

Section 2.1 General

The Association is a non-profit corporation organized under the laws of the State of Arizona for the general welfare and benefit of the owners. The Association, through its Board, officers and committees, shall take appropriate action to manage, maintain, repair, replace and improve the Common Areas together with all Improvements located thereon (except as otherwise provided herein), to pay ad valorem taxes thereon, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration, by the Articles or Bylaws, or properly delegated to it by its Members.

Section 2.2 Membership

Membership in the Association, shall consist of Owners of Lots within the Properties, including Declarant. Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under any agreement of sale, or each person at any time owning or acquiring any interest in any Lot, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights powers and privileges created or reserved by this Declaration, and all impositions and obligations hereby imposed, and shall be a member of the Association subject to the Articles, Bylaws, and Association Rules.

Every Owner of a Lot, including Declarant, shall automatically, upon becoming the Owner of the Lot, be a Member of the Association, and shall remain a Member of the Association until such time as his or her ownership for any reason ceases, at which time his or her membership in the Association shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of any Lot. A membership in the Association shall not be transferred, pledged or alienated in any way except on the sale or conveyance of such Lot and then only to such purchaser.

The record Owner of a Lot shall be entitled to one membership in the Association, and there shall be no more than one membership for each Lot. In the event any Lot is owned by two or more persons or entities, the single membership for that Lot shall be joint and shall be issued in the names of all Owners. The Owners shall designate to the Association, in writing, the Owner who shall have the power to cast the vote associated with said membership, and in the absence of such designation, the Board may designate the Owner who shall have the power to cast such vote.

In the event any Owner casts a ballot representing a certain Lot, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Lot. In the event more

than one ballot is cast for a particular Lot, none of said votes shall be counted. Said votes shall be deemed void, and said Lot will not be counted for purposes of determining whether the voting requirements hereunder have been met.

At the discretion of the Board, certificates of membership may be issued, but if certificates are not issued, membership shall be evidenced solely by an official list of Members kept by the Secretary of the Association or such other person designated by the Board.

Section 2.3 **Voting Rights**

The Association shall have two classes of membership.

Class A. Class A Members shall be all Owners of Lots, other than Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned, except that notwithstanding any other provision hereof, no Class A Member shall have any votes or be entitled to exercise any voting rights until the Turnover Date, and no meetings of Class A Members shall be required until that time.

Class B. The Class B Member shall be the Declarant who shall hold one Class B membership for each Lot owned and shall be entitled (both before and after the Turnover Date) to seven (7) votes for each such Class B membership. Class B Membership is assignable only by an instrument, in writing, expressly assigning such rights. Class B membership is not assignable, however, with respect to any Lot improved with a completed Residence. The Owner of any such Lot shall possess a Class A Membership with respect thereto, and any Class B Membership with respect to a Lot improved with a completed Residence shall convert to Class A. The Declarant may cast votes in such proportions on any matter as they determine.

In addition, notwithstanding the occurrence of the Turnover Date, so long as Declarant owns at least ten percent (10%) of the Lots, Declarant shall have the right, without obligation, to maintain absolute control over the Association by appointing or removing the Board without the necessity of a vote or meeting of Members, appointing or removing the officers of the Association, appointing or removing the members of the Design Review Committee, and amending this Declaration subject to the provisions hereof. In connection with the assignment of the rights of the Declarant to any successor or assignee of Declarant, if such be the case, it shall be permissible for Declarant to retain or to assign, at its sole election, the rights and privileges of the Class B Member, including the rights of appointment of the Board possessed by the Declarant.

Section 2.4
Board of Directors

The affairs of the Association shall be conducted by the Board and such officers and committees as the Board may elect or appoint in accordance with this Declaration or the Articles and Bylaws. The Board shall consist of not less than three (3) members and not more than seven (7) members, but never an even number, who shall be elected at each annual meeting of the Members of the Association or at any special meeting of the Members of the Association called for such purpose, all as more particularly set forth in the Articles and Bylaws.

Members of the Board who are appointed by Declarant pursuant to the reserved rights of the Declarant hereunder need not be Owners; however, all members of the Board elected after the Turnover Date (if Declarant has then relinquished its right of appointment) shall be Owners (or the spouses of Owners, or an officer, director, partner, agent, trustee or beneficiary of an Owner that is a corporation, partnership or trust) unless a sufficient number of owners (or related persons as described in the foregoing parenthetical) are unable or unwilling to serve as directors, in which event individuals who are not Owners (or related persons) may be elected as directors.

Section 2.5
Suspension of
Voting Rights

In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of fifteen (15) days after the date specified on the billing therefor, or shall be in default in the performance of any of the terms of the Declaration for a period of fifteen (15) days after notice from the Association thereof, said Owner's right to vote as a Member of the Association, if any such right exists, shall be automatically suspended and shall remain suspended until all payments are brought extent and all defaults cured.

Section 2.6
Association Rules

Subject to the provision of this Declaration, the Board may adopt, amend and repeal the Association Rules which shall have the same force and effect as if set forth herein. The Association Rules may restrict and otherwise govern the use of any area or Common Areas by any Owner, or the Owner's family members, guests, invitees, licensees or lessees; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or the Bylaws.

Without limiting the generality of the foregoing, the Association Rules may establish and fix fines to be levied for failure to comply with this Declaration or the Association Rules, and any fines levied shall constitute Individual Assessments hereunder subject to the Assessment Lien. Any such fine shall only be imposed after the offending Owner has been given written notice of the default in question, and has further been given an opportunity to meet with the directors, or their representative, to discuss the matter in question. No fine shall exceed \$500.00 for any single infraction, except that a continuing violation shall be subject to additional incremental fines of not

more than \$500.00 (depending upon the Board's evaluation of the seriousness of the violation) for each thirty days the violation continues, and interest at the Default Rate shall accrue thereon. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be available for inspection by the Members at reasonable times. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

***Section 2.7
Availability of
Property
Documents***

The Association shall maintain current copies of this Declaration, the Articles, Bylaws, Association Rules, Design Guidelines, the Association's own books, records, and income and expense reports available for inspection during normal business hours by an Owner or any holder of a first mortgage or deed of trust on any Lot.

ARTICLE III

COMMON AREA PROPERTY RIGHTS

***Section 3.1
Perpetual
Easement***

Declarant hereby grants to the Association, and to each and every Owner, a nonexclusive perpetual easement of use and enjoyment in and to the Common Areas, which easement is appurtenant to and shall run with the title to each and every Lot for the mutual benefit and protection of all Owners of the Lots. Such right and easement of use and enjoyment shall nevertheless be subject to the provisions hereof and to the Association Rules.

Except as otherwise provided herein, no use or disturbance of any of the Common Areas shall be made, other than for ingress and egress over streets and roads constructed within the Properties and approved by the Design Review Committee, or for utilities. The Association shall have the sole right to construct, operate, maintain and repair the Common Areas and the easements or improvements thereon; and no Owner shall undertake any such construction, operation, maintenance or repair except with the prior written approval of the Association.

***Section 3.2
Delegation
of Use;
Rental of
Residence***

Any Owner may delegate, in accordance with the Association Rules, his or her right of enjoyment of the Common Areas and facilities to the members of his or her family, his or her tenants, guests or contract purchasers who reside in his or her Residence. However, the Owner, members of the Owner's family, and the Owner's guests, employees, and invitees shall not be entitled to use and enjoy any of such rights in the Common Areas while the Owner's Residence is occupied by a tenant to which the Owner has leased or rented his or her residence. Instead, the tenant, while occupying such residence, shall be entitled to use, enjoy and delegate such rights in the same manner as if such tenant were an Owner. Each Owner or tenant shall notify the Association in writing of the names of all persons to whom such Owner or

tenant has delegated any rights of use and enjoyment and the relationship that each such person bears to the Owner or tenant.

Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of Assessments or performance of the provisions contained in this Declaration.

***Section 3.3
Title to Common
Areas***

At such time as improvements to the Common Areas have been completed and the Association has been formed, Declarant shall convey title to the Common Areas to the Association. The method of conveyance shall be by Deed and Declarant shall not be required to purchase a title insurance policy upon transfer.

***Section 3.4
Rights of the
Association and
Declarant Relating
to Common Area***

The Common Areas and the rights of the Members therein shall at all times be subject to:

- A. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and, with written consent of Declarant or the Members entitled to vote two-thirds (2/3) of the votes of each class of Membership, to mortgage said property as security for any such loan;
- B. The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;
- C. The right of the Association to promulgate and publish rules and regulations with which each Member shall strictly comply;
- D. The right of the Association, as provided herein or in its Articles and Bylaws, to levy reasonable monetary fines and to suspend a Member's voting rights and the right to the use of the recreational components of the Common Area, if any, for any period during which any assessment against his or her Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;
- E. The right of the Association with the written consent of the Declarant to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as it may determine, provided that after the occurrence of the Turnover

Date, any such dedication must be approved with the written consent of the Members entitled to vote two-thirds (2/3) of the votes of each class of Membership.

Notwithstanding the foregoing, the granting of permits, licenses, and easements for roads, ingress and egress or for public utilities and/or for other purposes, including purposes deemed proper by the Board, shall not be denied a transfer within the meaning of this Subsection and, provided further, that this provision shall in no way limit Declarant's reserved rights hereunder;

- F. The right of the Association, without any abatement of assessments, to close or limit the use of the Common Area while maintaining, repairing, and making replacements in the Common Area;
- G. Easements for ingress, egress and utilities reserved hereby;
- H. Perpetual easements for ingress, egress, and utilities reserved hereby, or granted hereafter by the Declarant or the Association in favor of Declarant over and across all Common Areas in favor of all portions of the land Declarant has the right to annex as provided herein, regardless whether such land is actually annexed. The provisions of this paragraph may not be amended without the written consent of Declarant.
- I. The right of the Association to sell and convey all or part of the Common Area, provided that after the occurrence of the Turnover Date, any such dedication must have the written consent of the Members entitled to vote two-thirds (2/3) of the votes of the Membership, and provided that the Association Board determines that the transfer is consistent with the general scheme of development of the Properties.

Notwithstanding the foregoing, and without limitation, the Association may transfer or quit-claim minor or insignificant portions of the Common Area necessitated by incidental construction encroachments or scrivener's error without any vote or consent of the Members.

ARTICLE IV

RESIDENCE CONSTRUCTION, ARCHITECTURAL CONTROL

Section 4.1 Residence Construction

All Improvements, shall be consistent in quality of design and construction with the Design Guidelines and with the provisions hereof. It is expressly understood that no contractor constructing Improvements within the Properties shall in any way be deemed an agent, partner, or representative of Declarant. Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that neither Declarant nor its members, agents, partners, representatives nor employees shall have any responsibility, obligation or liability whatsoever relating in any way to or arising out of the construction of Improvements upon any portion of the Properties. Such matters, and any liability relating thereto, shall be solely between the Owner and the contractor.

Section 4.2 Architectural Review

No Improvements, alterations, repairs, excavations, grading, landscaping or other work which in any way alters the exterior appearance of the Properties or a Lot, or the improvements thereon, from its natural or improved state shall be made or done without the prior approval, in writing, of the Design Review Committee. No Improvement of any nature whatsoever shall be commenced, erected, improved, altered, modified, placed or made on any portion of the Properties without prior written consent of the Design Review Committee.

In connection therewith, any Owner requesting such approval shall follow the submittal and approval process outlined in the Design Guidelines, as from time to time amended, including, without limitation, detailed plans and specifications showing all construction details, including the nature, shape, height, color, materials, floor plans, location, and such other matters as may be requested by the Design Review Committee. All subsequent additions to or changes or alterations in any Improvement shall be subject to the submittal and approval process outlined in the Design Guidelines, as from time to time amended, including, without limitation, the exterior color scheme of a Residence and all changes in the grade of Lots. No changes or deviations in or from the plans and specifications, once approved by the Design Review Committee, may be made without the prior written approval of the Design Review Committee, and all construction must be completed in accordance with the approved plans and specifications. In no event shall any exterior colors ("paint, block, tile, stucco, or otherwise) be used without submittal to the Design Review Committee at least sixty (60) days in advance of the date of intended application, and approval must be obtained before any work may commence.

***Section 4.3
Setbacks***

Each Owner prior to constructing any Improvements on the Owner's Lot, must verify and confirm the location and size of the applicable Building Setback from the Design Review Committee. All portions of each Lot inside the designated Building Setback shall be considered Natural Area which may not be disturbed.

Notwithstanding the foregoing, Declarant shall not be required to obtain Design Review Committee approval with respect to the building of a Residence or any other Improvements, alterations, repairs, excavations, grading, landscaping, additions or changes installed or made by Declarant with respect to the Properties or any Lot.

***Section 4.4
Declarant
Exemption***

As more particularly set out in the Design Guidelines, incorporated herein by reference and as from time to time amended, the Design Review Committee shall have the right to deny approval of any plans or specifically, whether for the construction of original Improvement or the subsequent alteration thereof, which are not, in its opinion, suitable or desirable for aesthetic or any other reasons, and shall have the right to take into consideration the harmony and conformity of the proposed Improvements with the surrounding buildings, the materials to be used and the compatibility of the same with the surrounding area, and the effect of such proposed Improvements as seen from adjacent or neighboring properties.

***Section 4.5
Discretion of
Design Review
Committee***

The Design Review Committee may, but need not, elicit the opinion of other Owners, including the neighbors of the Owner submitting the plans and specifications as to the conformity and harmony of the proposed plan with the overall scheme of development, and the effect that the proposed plan might have on the physical views of other Owners. After eliciting these opinions, the Design Review Committee may, but need not, take them into account in making its final decision of approval or disapproval of the plans and specifications. While the opinion of no single Lot Owner will control a decision of the Design Review Committee, within its own, discretion, the Design Review Committee may, but need not, attach whatever significance it deems sufficient to the statements of residents and/or neighbors of the resident submitting the proposed construction, alteration or modification. Approval of the plans, specifications, or other complete and conforming submittal shall be evidenced, if at all, by the written endorsement of the Design Review Committee made on the plans and specifications, or by letter or other written approval. No changes or deviations in or from the plans and specifications shall be made without the written approval of the Design Review Committee. After construction is completed, no further change, including any change of exterior color, shall be made without the written permission of the Design Review Committee. All decisions of the Design Review Committee shall be final, and no Owner or other parties shall have recourse against the Design Review Committee for its refusal to approve any

such plans and specifications. All structural improvements must also be in conformance with any applicable building code requirements. All construction shall be prosecuted diligently from commencement until completion.

***Section 4.6
Organization,
Power of
Appointment and
Removal of Design
Review Committee
Members***

The Association shall establish a Design Review Committee to perform the functions set forth in this Declaration with respect to architectural control and other controls contained in the Design Guidelines. The Design Review Committee shall be organized as follows:

- A. *Committee Composition.* The Design Review Committee shall consist of three (3) members and two (2) alternate members. No Committee member shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board or an officer of the Association. In the event one or two of the regular members are absent or disabled, the remaining Design Review Committee member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes and such alternates shall then assume the full authority of regular members for that meeting. The committee may employ a consulting architect who shall serve as a non-voting member of the committee. Members of the Design Review Committee shall serve without compensation, but the consulting architect shall receive compensation. Any consulting architect employed to review proposed plans or designs for a Lot shall receive its compensation from the Lot Owner.
- B. *Initial Members.* The initial members and alternates of the Design Review Committee shall be appointed by the Declarant.
- C. *Term of Office.* The term of office for each Design Review Committee member shall be two (2) years or until resignation or removal, whichever shall first occur. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Any member who has resigned, been removed or whose term has expired may be reappointed if such member accepts reappointment.
- D. *Appointment and Removal.* The right to appoint and remove members of the Design Review Committee at any time so long as Declarant owns a single Lot shall be and is hereby

vested solely in the Declarant or its nominee. Notwithstanding the foregoing, Declarant may at any time relinquish the right to appoint and remove members of the Design Review Committee by so notifying the Association in writing. Upon such early relinquishment by Declarant of its right to appoint the members of the Design Review Committee, the Board shall then have the power to appoint and remove Design Review Committee members; provided, however, that no member may be removed from the Design Review Committee by the Board except by a majority vote of all members of the Board. Appointments or removals of members of the Design Review Committee, as set forth herein, shall be evidenced on the books and records of the Association.

- E. *Resignations.* Any member of the Design Review Committee may at any time resign from said Committee by giving written notice to Declarant or to the Board, whichever then has the right to appoint Design Review Committee members.
- F. *Duties.* It shall be the right and duty of the Design Review Committee (and not the Board) to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof and of the Design Guidelines, to adopt the Design Guidelines, to perform other duties delegated to it by the Board and to carry out all other duties imposed upon it by this Declaration. Without in any way limiting the generality of the foregoing provisions of this Section, the Design Review Committee or any member thereof may, but is not required to, consult with or hear the view of the Association or any Owner with respect to any plans, drawings, specifications or other proposals submitted to the Design Review Committee.

Section 4.7 Meetings

The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The vote of the majority of the members at a meeting of the Design Review Committee shall constitute the act of the Design Review Committee.

Section 4.8 Design Review Committee Rules

The Design Review Committee may propose, amend and repeal Design Guidelines; setting forth the standards and procedures for design review and the guidelines for architectural design, landscaping, color schemes, exterior finishes and materials and similar features which are recommended or required for use within the Properties. The Design Guidelines may not conflict with the provisions hereof. The Design Guidelines shall at all times be a part of the Association's records, are hereby incorporated herein, and

shall be deemed to be a part of this Declaration and shall be binding on all Owners, Members or other persons as if expressly set forth herein. It is the responsibility of each owner or other person to obtain a copy of the most recently revised compilation of the Design Guidelines. The Design Guidelines may, without limitation, establish minimum square footage requirements for Residences; requirements for the establishment of parking spaces for residents and guests as well as driveway construction standards; the posting of bonds to assure compliance with the regulations established; the fencing or other protection of landscaping; standards for roofs, chimneys, window coverings, and lighting equipment; standards for natural area, open spaces and set backs within each Lot, the imposition of fines, builder and contractor regulations and guidelines; height regulations; excavation, grading and clearing limitations; and other requirements or standards designed to protect and enhance the Properties.

The Design Review Committee shall establish and further define the content of a full and complete design submittal for Improvements, and other matters within the jurisdiction and preview of the Design Review Committee. In cases involving Improvements or structures deemed by the Design Review Committee to be of a minor nature, a design submittal may consist of less than full plans and specifications.

The Declarant or the Design Review Committee shall have the right to grant variances as to any of the provisions of this Declaration or to waive any such provisions, as the Declarant or Design Review Committee in its sole discretion shall determine, and neither the Declarant nor the Design Review Committee shall have any liability to any Owner or otherwise in granting any such variance or waiver, or in not granting a similar variance to another Owner. No single-family dwelling or improvement shall exceed one story in height, provided, however, that the Design Review Committee may allow a one-story and a partial story single family dwelling on certain Lots provided the topography of the Lot and its relationship to surrounding Lots is such that in the sole judgment of the Design Review committee such exception(s) would not be in conflict with the Design Guidelines. Any variance or waiver 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 Declarant or the Design Review Committee.

***Section 4.9
No Waiver***

The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or of any other matter requiring the approval of the Design Review Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

***Section 4.10
Liability***

Neither the Design Review Committee, the Board, nor Declarant, nor any member thereof shall be liable to the Association, any Owner or any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development or non-development of any portion of the Properties; or (d) the execution and filing of any estoppel certificate in relation to assessments or any other matter, whether or not the facts therein are correct; provided, however, that with respect to the liability of a Member, such Member has acted in good faith on the basis of such information as may be possessed by him.

***Section 4.11
Time for Approval***

To the fullest extent permitted by law, neither Declarant, the Board, the Design Review Committee or any other committees of the Association or any member thereof, nor any directors or officers of the Association or of Declarant, shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of drawings or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the President, the Board, or such committees or persons reasonably believed to be within the scope of their respective duties.

Subject to the other provisions contained herein, in the event the Design Review Committee fails within forty-five (45) calendar days to approve or disapprove any design submitted to it pursuant to a complete application, the Committee's approval will be deemed to have been denied. Notwithstanding the foregoing, in the event the Design Review Committee shall notify the requesting owner within such time period that it is necessary to obtain independent advice from a licensed architect, professional designer, or other construction or engineering consultant, then the time period for approval or disapproval of said plans and specifications or other complete submittal in accordance with the Design Guidelines shall be extended to the date that is thirty (30) calendar days after the date that such advice is obtained following such design submittal..

Section 4.12
Processing Fee

With respect to any requests made to the Design Review Committee to review any plans, drawings or specifications for any work done or proposed, the Design Review Committee may, consistent with the Design Guidelines, establish processing fees for such requests or actions. The payment of such fees shall be a condition precedent to any Design Review Committee action on such request or other item, no approval shall be given unless and until said fee is paid by the Lot Owner.

Section 4.13
Indemnification

To the fullest extent permitted by law, every director and officer of the Association, every member of the Design Review Committee, and Declarant and its members, agents, employees, and representatives (to the extent a claim may be brought by reason of any matter having to do with the Board or the Design Review Committee) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including without limitation attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his or her being or having served in such capacity on behalf of the Association (or in the case of Declarant by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee), or any settlement thereof, whether or not he is a director, officer or member of the Design Review Committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, member of the Design Review Committee or other person, or Declarant, did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of, his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

ARTICLE V

MAINTENANCE OF COMMON AREAS

Section 5.1
Common Area
Maintenance

The Association, or its duly delegated representative shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, management and operation of the Common Areas and all landscaped areas established for the common benefit of the Owners of the Properties. The Association shall, to the extent applicable, be responsible for:

- A. the maintenance of the common streets, roads, and paths and areas located within Common Areas, entry way features and landscaping within or near the Properties, including walls, any gatehouse and related improvements, etc., and including any facilities, landscaping or riparian areas within rights-of-way, including license or permit areas, for which the Association may be responsible. In this regard, the Association, in its sole discretion, may dedicate such streets, roads, paths, areas or easements, if any, to the public, or to other third parties, as it may deem appropriate, under such terms and conditions as it may deem appropriate.
- B. the maintenance of the landscaped portions of the Common Areas and other areas to be maintained by the Association or over which the Association has assumed the responsibility of maintenance, and including any landscaped medians and similar areas within public rights of way or easements, if any, within the Properties, including any dedicated trails or public access ways established within the Properties.
- C. operation, maintenance (including insurance) and, if necessary, the replacement, restoration or reconstruction of street signs, walls, fences, and other improvements originally constructed by Declarant on the Common Areas;
- D. the payment of ad valorem real estate taxes, assessments and other charges on those portions of the Common Areas owned by the Association;
- E. the insurance of all improvements which the Association is obligated to maintain against damage by casualty with such companies and with such limits as the Association deems appropriate;
- F. the hiring, firing, supervision and paying of employees and independent contractors, including, but not limited to, workmen, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;
- G. the maintenance of such liability insurance as the Association deems necessary to protect the Members and the Board of Directors of the Association from liability for conditions existing and events occurring on or about the Common Areas, including, but not limited to, errors and omissions insurance for the Board of Directors of the Association;

- H. the maintenance of workmen's compensation insurance for the employees, if any, of the Association;
- I. the purchase of all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;
- J. the enforcement, in its sole discretion, of the provisions of this Declaration, including, but not limited to, the use restrictions provided for herein;
- K. the establishment and maintenance of such cash reserves as the Association in its sole discretion deems reasonably necessary for the maintenance and repair of the improvements for which it is responsible and for unforeseen contingencies;
- L. the provision of payment for all utility services for Common Area facilities;
- M. entering into of such agreements and the taking of such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Common Areas and facilities located thereon;
- N. the maintenance upon any Common Areas, of such signs and markers as the Board may deem appropriate for the proper identification, use and regulation thereof, subject to the approval of the Design Review Committee;
- O. the maintenance, repair, replacement and upkeep of any utilities, sewer, pumps, booster pumps or tanks, and facilities relating thereto located upon the Common Area and not dedicated to and accepted by a public utility, city or county; and
- P. such other and further acts which the Board deems necessary to maintain and preserve the Common Areas, and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas, and each Owner shall be responsible for the maintenance of each Lot in a clean and safe condition, and free of rubbish and debris. In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his or her family, guests, licensees, lessees or invitees, the cost of such maintenance or repair shall be paid by such owner, upon demand, to the Association, and the Association may enforce collection

of such amounts as provided herein below for the collection of Individual Assessments.

***Section 5.2
Real Property
Taxes***

Ad valorem real property taxes, assessments and other governmental charges which are attributable to the Common Areas shall be the responsibility of the Association and shall be deemed a Common Expense.

***Section 5.3
Controlled
Access***

The Association, in its sole discretion, may elect to install and maintain controlled access gates along certain of the private or public roads within Properties, and such gates may or may not be manned with personnel, cameras or other such equipment or facilities. Should such gates be installed, the cost thereof, including necessary maintenance and repairs, plus reasonable reserves, may be charged by the Association to the Lots benefitted thereby as Individual Assessments. Such gates may be key card, code, or other suitable type, but neither the Declarant, the Association, nor any committee of the Association, nor any officer, employee, agent or representative of same shall be liable for any loss, damage, injury or death caused or allegedly caused as a result of a breach of privacy, or as a result of any criminal or wrongful act, it being understood that neither the Declarant nor the Association, nor any other person or entity can be responsible to avert such injury or loss. Each Owner, and all guests, invitees, tenants and other occupants of the Properties acknowledge and assume the risk of injury or loss, and recognize that controlled access facilities such as limited access roads and gated entries are merely deterrents and not absolute measures that prevent loss or injury.

ARTICLE VI

OTHER MAINTENANCE

***Section 6.1
Maintenance by
Owners***

Each Owner shall be responsible for the upkeep and maintenance of the Owner's Lot and Residence.

All fixtures and equipment within a Lot, commencing at a point where the utility lines, pipes, wires, conduits, or systems enter the Lot (and including the connection point and junction apparatus in any private street), shall be maintained and kept in repair by the Owner thereof. The Owner shall also have the responsibility to maintain and repair any appliances, such as air conditioning units, located on the exterior of his or her Residence and shall also be responsible for any modifications to the exterior structure of such Residence. Termite and insect control shall be the responsibility of the Owner. An Owner shall not permit any act or work to be performed that will

impair the structural soundness or integrity of the Residence or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their owners.

***Section 6.2
Maintenance by
Association***

The Association shall have the right, but not the obligation, to assume maintenance responsibilities within the Project in addition to the maintenance responsibilities described elsewhere in this Declaration, as the Board may from time to time determine to be in the best interest of the Association and the Owners. The Board shall use a reasonably high standard of care in providing such maintenance, management and repair so that the Project will reflect a high pride of ownership. The Association may elect to discontinue maintenance responsibilities assumed pursuant to this paragraph.

***Section 6.3
Right of
Association
to Enter Upon
Residences***

In the event that any owner shall fail to maintain and repair his or her Residence or Lot as required by this Declaration, the Association, following fifteen (15) days notice to the Owner (except in emergency situations where such notice is not practical), in addition to all other remedies available to it hereunder or by law or in equity, and without waiving any of its said alternative remedies, shall have the right, through its agents and employees, to enter upon said Residence or Lot at any reasonable time and in any reasonable manner, and to repair, maintain, and restore same. Each owner, by acceptance of a deed for his or her Lot, hereby covenants and agrees to repay to the Association the cost thereof upon demand, and the Association may enforce collection of such amounts as provided herein below for the collection of Individual Assessments.

***Section 6.4
Landscaping and
Maintenance of
Lots and
Natural Areas***

Each Owner shall be solely responsible for the maintenance and landscaping of all portions of his or her Lot. All Lots shall be maintained in a neat and natural manner, with preference given to maintenance of all natural vegetation. Natural features of any lot which pose an eyesore, such as old trails or decaying vegetation may be required by the Board to be revegetated or removed at the Owner's expense. Each Owner shall be solely responsible for all drainage patterns associated with each Lot, and each Owner shall maintain his or her Lot in a manner that will avoid harm or injury to adjacent Lots and Common Areas, including injury or damage due to erosion. Should an Owner fail to so maintain his or her Lot, the Association shall have an easement to enter upon the Lot for such purposes and may levy an Individual Assessment for the costs thereof.

Notwithstanding the above, each Owner shall maintain all portions of his or her Lot designated or defined herein as Natural Area in completely undisturbed state, free of structures, improvements, grading, clearing, or other disturbance. Each Owner may, however, with the written approval of the Design Review Committee, remove or remedy any condition on the Natural

Area that, in the Board's discretion, constitutes a nuisance or eyesore, and the Board may require an Owner to do so.

The Association is released in total from any claims, demands or liabilities which may be asserted relating in any way to such landscaping or the maintenance, including any claims for personal injury or property damage or for loss of such landscaping or vegetation:

***Section 6.5
Septic System
Maintenance***

Each Owner shall be solely responsible for the repair and maintenance of all septic systems on any Lot, including any necessary leaching field, pumps or other equipment, including any pumps on Common Area if dedicated exclusively to the Owner's Lot.

ARTICLE VII

COVENANT FOR ASSESSMENTS

***Section 7.1
Authority to Levy
and Purpose for
Assessments***

Except as otherwise provided herein, the Board shall levy assessments against each Lot to collect the funds necessary to cover the costs and expenses incurred by the Association together with the adequate reserve funds determined by the Board, in its sole and absolute discretion, to be appropriate. The assessments levied by the Association shall be used for the purpose of promoting the general welfare of the Owners within the Project, enhancing the quality of life within the Project and enhancing and protecting the value, desirability and attractiveness of the Project, including maintenance of all Common Areas, Lots and riparian areas (as provided herein), and including services and facilities, insurance, taxes on the Common Areas or the Association's property, expenses of operation and management, and the discharge of the Association's duties under this Declaration and other agreements to which the Association is a party.

***Section 7.2
Creation of the
Lien and
Personal
Obligation of
Assessments***

Each Owner of a Lot within the Project (other than Declarant), by acceptance of a deed or other conveyance, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Assessments Association: Regular Assessments, Special Assessments and Individual Assessments (collectively, "Assessments"), such assessments to be fixed, established and collected from time to time as hereinafter provided. All assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall, to the extent allowed by law, be a charge on the land and shall be a continuing lien (the "Assessment Lien") upon the Lot against which each such assessment is made. Each such Assessment, together with such interest, costs and reasonable attorneys' fees incurred in the collection thereof, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation and liability of the Owner shall not be deemed to limit or discharge the charge against the land and the continuing lien upon the Lot against which

such assessment is made. No Owner of a Lot may exempt himself from liability for the assessments by waiver of the use or enjoyment of the Common Areas or by the abandonment of his or her Lot.

***Section 7.3
Regular
Assessments***

The amount and time of payment of Regular Assessments shall be determined by the Board after giving due consideration to the current maintenance costs and future needs of the Association. Not later than thirty (30) days prior to the beginning of each fiscal year, or as soon thereafter as the Board may determine, the Board shall prepare a budget containing an estimate of the total Common Expenses to be incurred for the forthcoming fiscal year and set the amount of the Regular Assessment for each Lot. The amount of the Regular Assessments and reserves, if any, shall be in the sole discretion of the Board. Written notice of the Regular Assessments shall be sent to every Owner. Each Owner shall thereafter pay to the Association his or her Regular Assessment in such manner and such times or installments as is established by the Board. In the event the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall immediately determine the approximate amount of such inadequacy, issue a supplemental estimate of the total Common Expenses and the revised Regular Assessments, and give written notice thereof to every Owner. The Board shall not increase the Regular Assessment in any year beyond the maximum allowed by law. If the Board determines that the amount collected or to be collected through Regular Assessments is in excess of the Association's needs for the current year and reserves appropriate for future needs, the Board, in its sole discretion, may refund to the owners who paid such Assessments all or a portion of such excess, reduce the amount of the Regular Assessments or abate collection of Regular Assessments as it deems appropriate. In no event shall a reduction in the amount of or abatement in the collection of Regular Assessments pursuant to this Section result in a quality of services diminished from those upon which the Common Expense budget was based.

***Section 7.4
Special
Assessments***

The Board shall have the right and power to levy a Special Assessment for the purpose of defraying in whole or in part the cost of the construction of additional common facilities and other capital improvements, the alteration, reconstruction, demolition or removal of existing common facilities and capital improvements, or for the purpose of defraying any other extraordinary expenses. Following the Turnover Date, any such Special Assessment the amount of which is equal to or greater than the amount of thirty percent (30%) of the total amount of the then current annual Regular Assessments for the project shall require ratification and approval by the affirmative vote of Owners representing at least seventy-five percent (75%) of the total votes held by the Members present at a duly called meeting at which a quorum is present (in person or by proxy). The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Regular Assessments for such purposes.

Section 7.5
Individual
Assessments

If the need for maintenance or repair of any Common Area or others caused through the willful or negligent act of any Owner, or his or her family, guests, invitees, agents, contractors, employees, licensees or lessees, or by any other person or resident using the Common Areas with the permission of the Owner, or is caused by special conditions of a Lot owned by a particular Owner, the cost of such maintenance or repairs shall be paid by the respective owner upon demand and shall constitute an Individual Assessment against such Owner and against each Lot owned by such owner and shall be secured by an Assessment Lien against each Lot owned by the owner. If any portion of any Lot is maintained so as to present a public or private nuisance or to substantially detract from the appearance or quality of the surrounding Lots, Common Areas, or other areas of the Properties, or if any portion of a Lot is being used in a manner which violates this Declaration, or if the Owner of any Lot is failing to perform any of its obligations under this Declaration or to abide by any of the provisions of this Declaration, the Board may, by resolution, make a finding to such effect. The resolution of the Board shall specify the particular condition or conditions which exist and shall fix a reasonable period of time which the owner shall have to correct such condition or conditions (which period shall be no less than three (3) days and no more than thirty (30) days after the Owner receives notice of the Board's action). Notice shall be given to the owner of the subject Lot that unless corrective action is taken within the time period fixed by the Board, the Board may cause such action to be taken at the Owner's cost or the Board may commence appropriate legal action, whether at law or in equity, to compel compliance with this Declaration. If, at the expiration of such period, the requisite corrective action has not been taken, the Board shall have the right to cause corrective action to be taken and/or to commence appropriate corrective legal action and all costs thereof, including court costs and attorneys' fees, shall bear interest from the date incurred until paid at the Default Rate and shall be against the offending Owner and against each Lot owned by the owner and shall be secured by an Assessment Lien against each Lot of the Owner.

In the event the Association undertakes to provide materials or services which benefit an individual Residence or Lot, and which can be accepted or not by the individual Owner thereof, such Owner, in accepting such materials or services, shall be deemed to have agreed that statements therefor from the Association shall be an Individual Assessment, shall be due upon presentation, and if not paid, shall bear interest at the Default Rate.

In addition to the foregoing, the Association may undertake to provide special or unique improvements, facilities, materials or services which benefit only groups of Residences or Lots, and may levy Individual Assessments against the Owners of such Residences or Lots. Any statement from the Association

for such improvements, facilities, materials and services shall be an individual Assessment, shall be due upon presentation, and if not paid, shall bear interest at the Default Rate. Further, such materials or services which serve to benefit individual Residences or Lots, and for which the Association may levy Individual Assessments, shall include, without limitation, any private gate systems regulating vehicle access to streets or Lots shown on the Plat.

***Section 7.6
Certificate of
Payment***

The Association shall, upon demand, immediately furnish to any Member a certificate in writing, signed by an officer or authorized agent of the Association, stating whether the Assessments on such Owner's Lot have been paid, the amount of delinquency, if any, and the nature of violations of the Declaration that are known to exist. Such certificates shall be conclusive evidence of payment of the Assessment therein stated to have been paid.

***Section 7.7
Date of
Commencement
of Regular
Assessments***

Except as otherwise provided herein, each Lot shall become subject to the assessment provisions of this Article as of the first day of the calendar month following the conveyance of the Lot by Declarant to another purchaser, and the Lot shall be subject to the appropriate prorated portion of the annual assessment for that year. Until the first full fiscal year of the Association following the sale of the first Lot by Declarant, the Association may prepare an interim budget and estimate and levy the necessary assessments required for the remainder of the year in question.

***Section 7.8
No Offsets***

Assessments shall be payable in the amount specified by the notice of Assessment, and no offsets against such amount shall be permitted for any reasons including, without limitation, a claim that the Association is not properly exercising its duties and responsibilities under this Declaration.

***Section 7.9
Delinquency***

Any Assessment provided for in this Declaration which is not paid within thirty (30) days of when due shall be late or delinquent. A late charge the greater of fifteen dollars or ten percent of the amount of the delinquent assessment may be assessed, or such lesser amount as the Board shall from time to time determine as a late charge may be assessed, and the Assessment shall also bear interest from the date of delinquency at the Default Rate. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same and/or foreclose the Assessment Lien against the Lot in accordance with the then prevailing law of the State of Arizona relating to the foreclosure of liens upon real property. There shall be added to the amount of such Assessment any late charges, interest, recording fees, expenses and costs incurred in filing an Assessment Lien and in collecting the amounts due and the reasonable attorneys' fees incurred in collection with such collection efforts, regardless of whether or not a legal suit is commenced, all to the extent allowed by law. Each Member vests in

the Association or its agents the right and power to bring all actions at law or in equity or lien foreclosure remedies against such Member for the collection of such delinquent assessments. The lien provided for in this section shall be in favor of the Association. Any action to foreclose the lien of any Assessment may be commenced and prosecuted in the same fashion as for the foreclosure of a mortgage pursuant to Arizona law. At any foreclosure sale of a Lot, the Association shall have the power to bid on such Lot at such foreclosure sale, using Association funds or funds borrowed for that purpose, and to acquire and hold, lease, mortgage and convey the same.

***Section 7.10
Recorded
Assessment
Liens***

With respect to any delinquent Assessment, the Association is legally authorized and the Owners hereby are deemed to have granted the right and irrevocably given consent for the Association to record a Notice of Assessment Lien in the Office of the Cochise County Recorder, appropriately describing the Lot and the amount of the delinquent Assessments and other charges, to impose a lien of record against the Lot for the amounts specified therein. A copy of the Notice of Assessment Lien may, at the sole election of the Board, be posted on the affected Lot. Upon payment of all amounts due, including interest, late fees, fines, and attorneys' fees, the Association shall record an appropriate satisfaction and release of the Assessment Lien. Each Owner, other than Declarant, by acceptance of a deed to any Lot, agrees that the Association and its employees, officers, agents, directors and all affiliates shall be absolutely immune from any and all liability relating in any way to the recording of a Notice of Assessment.

***Section 7.11
Cumulative
Remedies***

The Assessment Lien and the rights to foreclosure thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and at law or in equity, including a suit to recover a money judgment for unpaid Assessments.

***Section 7.12
Exempt Property***

The Common Areas and all property dedicated for public thoroughfares and thoroughfares owned by the Association and Declarant, and utility services shall be exempt from the Assessments created herein; provided, however, in the event any change in ownership of any such property results in all or any part thereof becoming assessable in any year, such property shall be subject to assessment (prorated as of the date it becomes assessable) and shall be subject to all of the provisions herein relating to Assessments.

***Section 7.13
Declarant's
Exemption***

Anything in this Declaration to the contrary notwithstanding, the Declarant shall not be liable for or be required to pay Assessments upon Lots owned by Declarant which are not improved with a Residence completed and ready for occupancy. Nor shall Declarant be liable for the payment of any assessments

for any Lot that, having been previously sold to a purchaser, has been deeded back to the Declarant by foreclosure or deed in lieu of foreclosure or otherwise reacquired by Declarant.

***Section 7.14
Uniform Rate of
Assessment;
Exceptions***

Except for Lots owned by Declarant, Regular and Special Assessments shall be fixed at a uniform rate for each Lot. The following qualifications and limitations exist:

- A. *Declarant Exemption.* It is understood that at no time, either before or after the Turnover Date, shall any Lots owned by Declarant be subject to Regular Assessments, Special Assessments, or Individual Assessments. Lots owned by Declarant are exempt from all assessments of any nature, unless such Lots are improved with a Residence completed and ready for occupancy.

In consideration for Declarant's exemption from assessment, Declarant agrees that it shall pay, for any given assessment year in which Declarant has paid or contributed to the Association less than the full Regular Assessment for each Lot owned, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Areas, but only up to the full Regular Assessment for each such Lot owned by Declarant. A shortfall or deficiency shall exist if current ordinary expenses of the Association are greater than the revenues of the Association from all sources for the assessment year in question; provided, however, that Declarant shall not be liable for any shortfall or deficiency created by any decrease in the amount of the Regular Assessments received from or charged to from those charged during any year. Declarant and shall be given full credit in determining such deficiency obligation for all contributions of services, money, property or other value given to or expended for or on behalf of the Association. In no event shall this paragraph be interpreted to limit the right of Declarant to cause the Association at any time to increase the amount of Regular Assessments.

Declarant may at any time at its sole discretion elect to cease paying the shortfall or deficiency, if any, and, instead, to pay up to the full Regular Assessment) for each Lot owned by Declarant, as applicable.

B. *Limited Incentive to Builders.* As an incentive to builders of homes, there shall be a reduction of Assessments as follows:

(1) "Builder," for purposes of this subsection, shall mean a licensed contractor in the business of building Residences, and who has purchased in a single transaction at least two (2) Lots for purposes of constructing Residences thereon.

(2) Builders shall pay only twenty-five percent (25%) of the amount of the Regular Assessments and any Special Assessments applicable to a Lot owned by a Builder until the earlier: a) of twelve (12) months from purchase of the Lot directly from Declarant; b) six months from commencement of construction of a Residence thereon; or c) completion of a Residence thereon.

(3) In the event of any shortfall or deficiency as set forth in Section 7.14(A), above, each Builder paying a reduced Assessment shall be liable for its ratable share of such deficiency, up to the full amount of the Regular and Special Assessments.

***Section 7.15
Subordination of
Assessment Lien
to First Mortgage
or Deed of Trust;***

Any Assessment Lien of any nature shall be subordinate to any first mortgage or deed of trust on the affected Lot. The Assessment Lien shall also be subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided or by law, the priority of any Assessment Lien for a delinquent assessment relates back to the date of recordation of this Declaration and each Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed on any Lot. Sale or transfer of any Lot shall not affect the Assessment Lien unless the sale or transfer is pursuant to foreclosure of a first mortgage or first deed of trust or pursuant to any trustee's sale or any proceeding in lieu thereof. In that case, the purchaser at the mortgage foreclosure or deed of trust sale or any grantee taking by deed in lieu of foreclosure shall take the Lot and improvements free of the Assessment Lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure. Such purchaser or grantee, however, shall be liable for all Assessments and associated Assessment Liens accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure.

ARTICLE VIII

CONDEMNATION

The term "taking" as used in this Article, shall mean condemnation by eminent domain or sale under threat of condemnation.

Section 8.1 Taking Defined

Section 8.2 Taking of Common Areas

In the event of a threatened taking of all or any portion of the Common Areas, the Members hereby appoint the Board members and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a total taking, the Board may elect either to retain any award in the general funds of the Association for use in meeting Common Expenses or to refund to the owners of all of the Lots proportionately, including Declarant, all or a portion of such award.

ARTICLE IX

INSURANCE

Section 9.1 Insurance Obtained by Association

The Association shall, so long as such coverages are reasonably available, obtain a broad form public liability policy (of at least \$1,000,000.00 combined limits) and full replacement cost fire and extended coverage insurance (in amounts to be determined by the Board) covering all Common Areas and facilities and all damage or injury caused by the act or omission of the Association or any of its officers, directors, committee members or agents. Premiums for all such insurance shall be Common Expenses. In addition, the Board may obtain such other types of insurance as may be required or as the Board may deem appropriate to protect the Association, its property or the Owners, including, without limitation, worker's compensation insurance and directors' and officers' liability insurance for the directors, officers and committee members of the Association and for such other Association Members or employees as the Board may deem appropriate, with due consideration to all Association responsibilities.

Section 9.2 Restoration

In the event of damage or destruction by fire or other casualty to the Common Areas or any property located thereon, the Association shall, upon receipt of the insurance proceeds, contract with a licensed contractor to rebuild or repair such damaged or destroyed property. All such insurance proceeds shall be deposited in the accounts of a bank or other financial institution which are insured by a federal government agency.

In the event the insurance proceeds, together with uncommitted capital reserves of the Association, are insufficient to pay all the costs of repairing and/or rebuilding such property, but equal at least seventy-five percent of the cost thereof, the Association shall levy a Special Assessment against all Owners to reconstruct and restore the same.

In the event the insurance proceeds, together with uncommitted capital reserves of the Association, equal less than seventy-five percent of the cost of reconstruction, restoration and repair of the Common Areas, the Association shall levy a Special Assessment against all Owners to reconstruct and repair same unless the holders of seventy-five percent of the votes of each class of members, at a special meeting called for such purpose, determine not to repair and reconstruct the Common Areas. Notwithstanding the foregoing, a Special Assessment shall be levied if the Common Areas are necessary for ingress or egress, or for the safety of the Properties, and in all other cases any unrestored Common Areas shall be restored to a safe and clean condition.

***Section 9.3
Insurance for
Residences
and Lots***

All Owners shall at their own expense obtain insurance for their Residences and Lots, insuring against fire, accident and casualty, which insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of any such loss or losses.

In the event of damage or destruction by fire or other casualty to any Residence, Lot or other property covered by insurance written in the name of an individual Owner, said Owner shall, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of the Residence or Lot in a good workmanlike manner in conformance with the original plans and specifications of said Residence and Lot (except for changes thereto approved by the Design Review Committee or required by then current building codes). In the event such Owner refuses or fails to so repair and rebuild any and all such damage to the Residence or Lot within thirty (30) days or such longer time as may be permitted by the Association, the Association, by and through its Board, may, and is hereby irrevocably authorized by such Owner to, repair and rebuild any such Residence or Lot in a good and workmanlike manner in conformance with the original plans and specifications for the Residence and Lot. The Owner shall then, within ten (10) days following the Owner's receipt of a written statement of the costs incurred from the Association, repay the Association the amount actually expended for such repairs. Said amounts shall bear interest at the Default Rate from the date due until paid. If such amounts are not repaid as provided for herein, said amounts shall constitute an Individual Assessment against said Owner's Lot and shall constitute an Assessment Lien until fully paid.

Notwithstanding any other provision of this Declaration, property damage insurance coverage on individual Lots, residences, and improvements thereon, shall be the sole responsibility of each Owner. Each Owner shall be personally liable to repair, rebuild and restore the improvements on the Lot and shall expend his or her personal funds if necessary to accomplish same, and the Association shall have a lien upon the Lot to assure compliance with the provisions hereof.

Section 9.4
Fidelity Bonds

The Association shall obtain fidelity coverage to the extent the same is reasonably available, against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance shall name the Association as the insured and shall be written to provide protection which is in no event less than the greater of: (i) one and one-half times the Association's estimated annual operating expenses and reserves or, (ii) the sum of three months' assessments on all Lots then within the Project plus the reserve funds held by the Association. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy should not otherwise cover volunteers.

Section 9.5
Policy
Requirements

The insurance policies purchased by the Association with respect to Common Area shall, to the extent reasonably possible, contain the following provisions:

- A. The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by owners or first mortgagees;
- B. The conduct of any one or more Owners shall not constitute grounds for avoiding liability on any such policies;
- C. There shall be no subrogation with respect to the Association, its agents or employees, Owners and members of their household and their employees, and each mortgagee of all or any part of the Properties or of any Residence or Lot, or the policy(ies) should name said persons as additional insureds and each policy must contain a waiver of any defenses based on coinsurance or on invalidity arising from the acts of the insured;

- D. A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners;
- E. For policies of hazard insurance, a standard mortgagee clause shall provide that the insurance carrier shall notify the first mortgagee named at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy;
- F. Any "no other insurance" clause shall exclude insurance purchased by owners or first mortgagees;
- G. Coverage must not be prejudiced by (i) any act or neglect of owners when such act or neglect is not within the control of the Association or (ii) any failure of the Association regarding any portion of the property over which the Association has no control; and
- H. Coverage may not be canceled or substantially modified without at least 30 days' prior written notice to any and all insureds including first mortgagees their successors and assigns.

ARTICLE X

EQUESTRIAN CENTER

Section 10.1 Establishment

Certain portions of the Properties are intended to be suitable for horses, subject to applicable zoning, and to such additional limitations as the Declarant or the Red Hawk at J-6 Ranch Equestrian Operator may establish. It is acknowledged that typical sights, sounds, smells, equipment, trailers, and all other aspects associated with and incident to equestrian use will be evident on the Properties.

The Red Hawk at J-6 Ranch Equestrian Center may be established as and where shown on the Plat. The Equestrian Center shall, be operated by the Red Hawk at J-6 Ranch Equestrian Operator upon such terms as the Declarant in its discretion may permit. The terms may require or permit the installation of certain equipment and facilities which may be removed by the Red Hawk at J-6 Ranch Equestrian Operator and/or Declarant pursuant to the terms of the Operating Agreement upon a termination thereof. Declarant shall expressly be permitted to control the affairs and governance of the Red

Hawk at J-6 Ranch Equestrian Operator, and may have a financial interest in the Red Hawk at J-6 Ranch Equestrian Operator.

In view of the ordinarily expected risks associated with equine facilities, and in view of the reasonably foreseeable and predictable nature of accidents that sometimes can and will occur in connection with equine activities, each Owner, for the Owner and all guests and invitees, fully releases and discharges the Association, Declarant, its assigns, the Red Hawk at J-6 Ranch Equestrian Operator, and all of their agents, affiliates, representatives and employees from and against any and all liability, cost, demand, responsibility, or obligation relating in any way to or arising out of any act, omission, accident, mishap, injury or death in connection with the Equestrian Center or any service performed at the Equestrian Center or by the Red Hawk at J-6 Ranch Equestrian Operator.

Section 10.2
Use and Operation

Contingent upon available capacity and boarding space, the Owners, and their Lessees, guests and invitees may stable their horses at the Equestrian Center, with boarding rates and terms to be established by the operator. The Red Hawk at J-6 Ranch Equestrian Operator may establish rules governing the Equestrian Center, such as minimum length of boarding time, dues schedules, and other provisions pertinent to and for the benefit of the community. It is intended that all operational expenses of the Equestrian Center will be funded from individual dues charged for the use thereof.

The Red Hawk at J-6 Ranch Equestrian Operator may at any time, subject to the terms of its agreement with Declarant elect to cease operating the Equestrian Center, at which time the Declarant may elect either to operate such facility itself or contract with another operator.

Under no circumstances shall Declarant or any other party be required actually to operate said facility, it being understood that economic and other considerations shall govern the manner in which said facility is operated, if at all, and by whom.

ARTICLE XI

USE RESTRICTIONS

Section 11.1
Lot Restrictions,
Lighting, Window
Coverings, Roofline
Restrictions,
Residence Size, Etc.

Each separate Lot shall be limited in use to one single family Residence, the height and size of which shall conform to the Design Guidelines incorporated herein by reference, as from time to time amended by the Design Review Committee. Guest houses and customary accessory structures may be permitted in the sole discretion of Design Review Committee. Without

limitation, mobile homes, prefabricated and manufactured housing shall be strictly prohibited within the Properties.

All buildings or structures erected upon each Lot shall be of new construction and no buildings or structures shall be moved from other locations onto a Lot. Roof mounted air-conditioning equipment, utilities, solar improvements and other roof mounted equipment, except as otherwise provided herein, shall be prohibited. Solar equipment shall be permitted, if placed in accordance with the approval of the Design Review Committee and in accordance with the Design Guidelines.

***Section 11.2
Temporary and
Other Structures***

No structures of a temporary character, trailer, tent, shack, barn or other similar outbuilding shall be constructed, erected, placed or used on any portion of the Properties at any time for any purpose whatsoever, either temporarily or permanently. Notwithstanding the foregoing, the Design Guidelines may set forth regulations and standards relating to the maintenance of temporary facilities and other improvements necessary in the course of construction, such as construction toilets, temporary dumpsters, and like items.

***Section 11.3
Declarant's Use of
Lots and Common
Areas***

Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of sale or promotion of Lots, upon such portion of the Properties as the Declarant, or its duly authorized agents, successors, or assigns may authorize, including, without limitation, any portion of the Common Areas, or Lots owned by Declarant, one or more offices, convenient or incidental to the construction and sale of the Lots, sales and administrative offices, parking areas and related improvements. Without limitation, Declarant may, maintain a permanent sales office, including a general real estate or brokerage office.

***Section 11.4
Horses; Animals***

The keeping of horses on Lots shall be strictly governed by rules of the Association, including the Design Guidelines. No Lot may be used for the keeping of horses unless specifically permitted by the Board.

No cattle, sheep, goats, pigs, rabbits, poultry or other animals shall be bred, raised or kept on the Properties, nor shall dogs, cats or other animals be kept in kennels or similar enclosures on the Properties. Dog runs shall be permitted, as approved by the Design Review Committee. This restriction shall not be construed, however, as prohibiting the keeping of a reasonable number of ordinary domestic pets as long as such pets are kept confined in the single family residence and Private Area. When domestic pets, which are allowed to be kept on the Properties, are taken off of an Owner's Lot the domestic pet(s) shall be on a leash and the Owner shall be required to pick up immediately any animal feces, provided that if the animal is or can be

aggressive it must be on a leash anytime outside the residence. The Board shall have the right and authority to prohibit certain kinds of pets altogether, such decision to be at the Board's discretion and rendered whenever the Board may deem such prohibition to be necessary for the peacefulness, safety, tranquility or desirability of the Properties. No animals may be kept for commercial purposes, and in no event may any Owner maintain more than the number of pets than is permitted by the Association Rules, and such rules may determine and define what shall constitute a reasonable number of pets and what shall constitute a domestic pet. Farm animals and animals which may be considered pets to particular individuals, but which are not commonly and widely considered to be domestic pets, or which are range animals or animals which may create a nuisance are prohibited. In addition to the foregoing, unless otherwise provided in the Design Guidelines or in the Association Rules, more than four dogs and cats, in the aggregate, shall not be deemed a reasonable number in any household or upon any Lot.

Section 11.5
Exterior Storage
and Trash

Outside storage piles are not allowed on the Properties. Each Lot or Residence shall have a sufficient number of lidded garbage containers in such size, shape and quantity as may be prescribed by the Board from time to time or as may be required by any governmental entity providing rubbish removal services, which containers shall be kept in a clean and sanitary condition and shall be screened from view at all times. To the extent feasible, all rubbish, trash or garbage shall be kept in such containers and shall not be allowed to accumulate on the Properties. Rubbish, garbage or trash not capable of being kept in said containers shall be kept in other appropriate containers and screened from view of neighboring Lots and streets until the date of pickup by a trash collection service. No rubbish, trash or garbage shall be burned on the Properties. Incinerators of every kind are prohibited. Fees for trash removal shall be the responsibility of the individual Owners and not of the Association, although the Association shall have the right to select the trash collection service to be used by all Owners and shall have the right to collect such fees in its discretion.

Section 11.6
Utilities

Gas, electric, power, telephone, water, cable television and other utility or service lines (used for the general benefit of the Residence Owners) and other utility type wires or lines now or hereafter invented or used shall be placed and kept underground up to the walls of the buildings on the Properties (except to the extent, if any, such underground placement may be prohibited by law or, by the nature of the service to be rendered, such underground placement prevents the lines from being functional). This restriction shall apply to the service and utility lines for each and every Residence, Lot and the Common Areas, as well as to the distribution lines located in the streets or elsewhere within the Properties. However, the foregoing shall not prohibit

service pedestals and above ground switch cabinets and transformers, which may be required.

All Lots, and the Common Area, shall be subject to all easements shown upon the Plat, including but not limited to any water, electrical, gas, telephone or cable television easement, and including all booster station sites or other facilities, and such easements shall include easements for ingress and egress, and for the repair and maintenance of such facilities as may be installed therein. Declarant shall have the right, unilaterally, to dedicate any such easements to any and all public utility companies by separate instrument if same should be deemed appropriate.

Each Owner shall be solely responsible for all septic systems serving the Owner's Lot, as well as for any and all pumps, valves or appurtenant equipment, including any evapotranspiration devices and systems, in relation thereto, and for all maintenance and repair of same.

Section 11.7
Aerials, Antennas,
Etc.

No television, radio, or other electronic towers, aerials, antennae, satellite dishes larger than four feet in diameter or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 CFR Part I, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the location of and types of antennae satellite dishes that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae and satellite structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to the rules of the Association may only be installed in a side or rear yard location, not visible from the street or (when reasonably feasible) from neighboring property or integrated with the Residence and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

Section 11.8
Signs

No sign of any nature whatsoever, whether permanent or temporary, shall be permitted on any Lot except that one temporary construction and temporary financing sign (i.e., the sign of the construction lender, only) may be erected per Lot during the development thereof and except for such addressing signs

as may be permitted or required by the provisions of the Design Guidelines. This restriction shall not prohibit the temporary placement upon any Lot or Residence of building or other permits as may be required to be placed upon such Residence or Lot during the period of construction of any Improvements thereon by any applicable governmental agency. This paragraph shall not apply to Declarant, nor to any activity of Declarant incidental to the development or improvement of the Properties, nor to any activities of Declarant incident to the marketing and sale of Lots, nor shall it apply to the activities of the Association taken in the furtherance of its powers and purposes as herein set forth. The Association shall have the right to adopt rules and regulations governing the placement of "For Sale" or "Open House" signs upon each Lot and, without limitation, may require that such signs be limited in size, placed only in window areas, and erected only when a home is actually open for inspection pursuant to a generally advertised publication.

***Section 11.9
Private Basketball
Hoops***

Basketball backboards may be permitted, but only in the discretion of the Design Review Committee.

***Section 11.10
Rental***

No portion of a Residence or Lot may be rented, other than the entire Residence, and then only to a single family. Any Lessees will abide by the Restrictions set forth in this Declaration and any rules promulgated by the Board.

Any lease or rental agreement entered into between an Owner and a tenant of a Residence shall require compliance by the tenant with all of the provisions contained in this Declaration, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right of action directly against any tenant of an Owner, as well as against the Owner, for non-performance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

No Residence may be leased for a term less than one year, and not less than an entire Residence may be leased and occupied by any tenant. Each Owner shall notify the Association in writing of the names of any tenants and property management companies occupying or managing each Residence or Lot.

***Section 11.11
Parking***

- A. *General Rule.* Any and all motor vehicles not prohibited by the provisions hereof shall be stored in a garage so as to conceal the same from view from adjoining property or from the street or public way, except that vehicles (other than recreational vehicles, commercial vehicles, motor homes, campers, trailers, boats and similar vehicles,

as provided below) may be parked upon the paved driveway surfaces of each Lot, as near as possible to the residence, when there is insufficient room within an enclosed garage. No vehicles may be parked in the streets or Common Area. Temporary visitors may park passenger vehicles (but not commercial trucks or recreational vehicles) in the streets, if insufficient space exists on the paved surfaces of the Lot, but subject to the rules of the Board.

- B. *Recreational and Commercial Vehicles.* Parking and/or storing of recreational vehicles, commercial vehicles, motor homes, campers, trailers, boats and similar vehicles is prohibited on all portions of the Properties and on any private or public street adjacent thereto, except within the confines of an enclosed structure which has been first approved by the Design Review Committee, in its sole and absolute discretion, except that such vehicles may be parked on the parking area of an Owner's Lot for short periods of time solely for purposes of loading or unloading. If the Association has provided a designated area on Common Area for the parking of recreational vehicles or motorhomes, the Association may require same to be parked upon such Common Area and that a parking or storage fee be paid. The designated area so provided may be uncovered and/or open to public view.

The foregoing prohibition stated in subparagraph B above shall not apply to (1) pick-up trucks with no more than a 3/4 ton capacity with camper shells attached that are no more than seven feet in height as measured from ground level; (2) mini-motorhomes that are no more than seven feet in height and no more than twenty-one feet in length or (3) non-commercial pick-up trucks larger than 3/4 ton capacity with camper shells attached, that the Design Review Committee finds to be substantially similar in size and appearance to smaller vehicles; so long as any such vehicles are used on a regular and recurring basis primarily for personal transportation, do not meet the definition of "commercial vehicle" stated below, and are parked in accordance with the provisions of Subsection A of this section. There shall be no regular or frequent loading or unloading of inventory or equipment carried on by an Owner in the course of his or her business or for commercial purposes. For purposes of the foregoing, a "commercial vehicle" shall be deemed any vehicle obviously used for commercial purposes, such as construction trucks or vehicles bearing name plates, signs or other identification, messages or promotions.

C. *Use of Recreational Vehicle as Living Quarters; Storage of Vehicles Under Repair.* The use or occupancy of a recreational vehicle, motor home, van, camper, trailer, or boat as living quarters on either a temporary or permanent basis is strictly prohibited on any portion of the Properties. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories.

***Section 11.12
Conformity to
Building Codes***

All structural and design work shall be accomplished in accordance with all applicable governmental regulations, ordinances, procedures and codes, in addition to the provisions hereof and of the Design Guidelines.

***Section 11.13
Screening***

Mechanical and electrical equipment to be installed by an Owner shall, within reason, be concealed from the view of any adjoining street front or Lot. Included within this restriction are air conditioning, evaporative coolers and pool pump or heating equipment. No such equipment shall be permitted to remain exposed at the side or rear of any Lot unless reasonably concealed by planting or fencing.

***Section 11.14
No Business Use***

No business use shall be made of any Lot, and no building or structure intended for or adapted to business purpose, and no apartment house, duplex, lodging house, rooming house, hospital, sanitarium or doctor's office, multiple family dwelling or other similar structure or use shall be erected, placed, permitted or maintained on any part of the Properties. No Lot may be rented for a hotel or transient purpose, which shall be construed to mean for a period of less than thirty (30) days, nor shall any lot be rented to other than a single family. The foregoing restrictions shall not apply to the business activities or the construction and maintenance of buildings by the Declarant, its agents, successors and assigns during the construction period and sale of Lots by the Declarant, and provided further that the foregoing restrictions shall not apply to any actions of the Association in furtherance of its powers and purposes as herein set forth. The Declarant and its assigns so designated in writing may maintain a permanent sales or real estate office on one or more Lots within the Properties.

Home occupations such as painting, bookkeeping, accounting, arts and crafts and the practice of law shall be permitted if traffic of customers to and from a residence does not interfere with the peaceful enjoyment of the Properties, and only if there is no advertisement or solicitation in connection therewith, no parking in the private streets, and no noise, commotion, or external evidence of such activity. The Board shall be the sole judge of whether such activity poses a nuisance or creates a disturbance in violation of the provisions hereof. No home occupation may be conducted involving any

unlawful, immoral or illicit activity, and no commercial emblems, signs, or other exterior evidence of commercial activity may exist. Any such activity must comply with all zoning laws.

***Section 11.15
Other Buildings***

No garage or other building or structure shall be erected, placed or maintained on any Lot until the construction and completion of the principal residence thereon, except that the necessary customary outbuildings, a garage or other structures relating to the principal residence may, with the approval of the Design Review Committee, be simultaneously constructed, and nothing herein shall be construed to prevent the incorporation and construction of a garage in and as part of such residence. The Design Review Committee may require that any garages and other accessory buildings be incorporated as a part of and attached to the Residence, in a manner approved by the Design Review Committee rather than located apart from the Residence. The size, appearance and all other details of any such structures shall be subject to approval of the Design Review Committee.

***Section 11.16
Nuisances,
Rubbish, Etc.***

Subject to the provision of Article X above, no Lot shall be used in whole or 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 otherwise. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done, placed or stored thereon which may become an annoyance or nuisance to the neighborhood or occasion any noise or odor which will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding properties.

Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a "nuisance" and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action. Any violation of any State, county, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any portion of the Properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

***Section 11.17
Resubdivisions***

No Lot shall be resubdivided, except for the purpose of combining the resubdivided portions with another adjoining Lot. All such resubdivisions shall be approved both by Declarant and by the Design Review Committee. Notwithstanding the above, Declarant does hereby reserve and shall have the power to resubdivide all or any portion of the Lots, and all or any portion of the Common Areas, and shall have the right at its sole discretion, and without the necessity of any vote or approval of the Members or of the Association, to resubdivide portions of the Common Area and to convey same as portions

of adjacent Lots should Declarant believe that to do so is in the best interests of the aesthetics of the Properties due to special land features or topography, or for any other reason at the sole discretion of Declarant. Without limitation, notice is hereby given that Declarant may resubdivide certain Lots and create an additional equestrian center should Declarant decide to do so, in Declarant's sole discretion.

Section 11.18
Hillside
Development

Each Owner, by acceptance of a deed to any portion of the Properties, acknowledges that development of hillsides may require compliance with applicable hillside development laws and that Building Site plans may require modification to comply therewith including modifications designed to limit grading. No approval by the Design Review Committee shall be deemed to constitute an approval that complies with Hillside Development regulations, nor shall any approved Building Site be deemed to constitute an approval that complies with Hillside Development regulations. The sole responsibility for such compliance shall rest with each Owner who shall consult with qualified experts. Declarant, and all of its agents and employees are fully released from all responsibility in connection therewith.

Section 11.19
Noise

No Owner shall engage in any activity or permit any activity to occur on the Properties which shall result in unusual, loud or obtrusive noise or sounds. Barking dogs that annoy any nearby or surrounding Owner shall be strictly prohibited. The Association may enforce this Section by liens, injunctive action or other relief and may require removal from the Properties of any dog causing a disturbance.

Section 11.20
Shrubs, Trees
and Grasses

No shrubs, trees or obstructions of any kind shall be placed on corner Lots in such places as to cause a traffic hazard. All grass, trees and other vegetation planted on any Lot shall comply with local ordinances, shall have first been approved by the Design Review Committee, and shall be kept trimmed to a height which will not, in the sole judgment of the Design Review Committee, materially interfere with views from neighboring building sites. The Design Review Committee may forbid the planting or maintenance of certain plants, trees, grasses and shrubs or restrict the propagation of such plants, trees, grasses and shrubs to specific species. The Design Guidelines will set forth protected plant types and species, prohibited plant types and species, and may establish approved plant lists.

The natural growth on the Properties shall not be destroyed or removed except by Declarant or as approved by the Design Review Committee. In the event growth is removed, the Design Review Committee may require the replanting or replacement of same.

***Section 11.21
Inoperable Vehicles
and Commercial
Vehicles***

No inoperable, junk, wrecked vehicles or vehicles in the process of being repaired or restored (including boats, trailers or buses) shall be placed on or stored on any Lot (except in an enclosed garage) or Common Areas, nor shall any commercial, construction, or like vehicles (except those of the Declarant or its agents) be placed on or stored on any Lot (except in an enclosed garage) or Common Areas, except as may be permitted by the Association, in writing, for limited periods of time.

***Section 11.22
Drainageways***

No structure, planting or other material, except as installed by Declarant or as approved by the Design Review Committee, shall be placed or permitted to remain within any drainage-way which may change the direction of flow or which may obstruct or retard the flow of water.

***Section 11.23
Derricks, Tanks***

No structure designed for use in boring for water, oil or natural gas shall be erected, placed or permitted upon any part of the Properties, nor shall any water, oil, natural gas, petroleum, asphaltum or hydrocarbon products or substances be produced or extracted therefrom.

No outdoor tanks of any kind shall be erected, placed or permitted upon any part of the Properties, other than propane tanks, as allowed in the Design Guidelines, tanks owned or operated by Declarant or a public utility, underground septic tanks.

***Section 11.24
Clotheslines***

Clothes lines shall be adequately screened by patio walls and shall not be visible from neighboring streets or properties. Any construction of utility yards around clothes lines must adhere to the Design Guidelines, including all standards governing height and materials.

***Section 11.25
Riparian
Protection***

Each Owner within Properties shall comply with all applicable provisions of the ordinances of Cochise County relating to the protection of washes and riparian areas within the Properties governed by such ordinances. All riparian habitat and riparian protection rules and regulations of Cochise County relating to the Properties shall be adhered to.

***Section 11.26
Inspection***

During reasonable hours, any member of the Board of Directors of the Association, or any authorized representative of any of them, shall have the right to enter upon and inspect any Lot within the subdivision (not including the interior of any Residences erected thereon) for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

***Section 11.27
Exemption of
Declarant***

Nothing in this Declaration shall limit the right of Declarant, or its agents to complete excavation, grading and construction of improvements on any Lot or Common Areas within the Properties, or to alter the foregoing or to construct such additional improvements as Declarant deems advisable so long as any Lot therein remains unsold, or to use any structure in the subdivision as a real estate sales, administrative or leasing office. Declarant need not seek or obtain the approval of the Board of Directors of the Association or Design Review Committee for the installation of any improvements, including landscaping. The rights of Declarant hereunder or elsewhere in these Restrictions may be assigned.

***Section 11.28
Addresses and
Mailboxes***

Each Owner shall comply with street monument signage requirements adopted by the Design Review Committee, and all such monuments shall be uniform in design and appearance. All mailbox and address signage shall be subject to the Design Guidelines.

***Section 11.29
Water***

The Declarant shall have the right to restrict the amount of water a lot owner may use on a monthly basis so long as Declarant owns one (1) Lot in the Properties, including any annexed Properties. The limitations shall comply with the standards as set by the Arizona Department of Water Resources or other applicable agencies and, unless modified as provided below, shall not exceed an average of 300 gallons per day per Lot usage averaged over a calendar year. Thus, usage on any particular day may substantially exceed 300 gallons of water, as long as the average daily usage over any calendar year does not exceed 300 gallons per day. Moreover, Declarant reserves the right, in its sole discretion, to make available to Lots using more than the allotment, increased allotments of water from Lots not using the 300 gallons per day average. Further, notwithstanding anything herein to the contrary, if the Arizona Department of Water Resources or other governmental agency requires a higher maximum of water availability then the above limit on water usage shall be modified accordingly.

ARTICLE XII

EASEMENTS

***Section 12.1
Utility Easement***

There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, gas, telephone, electricity, television cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Properties and to affix and maintain wires and conduits in and under the roofs and exterior walls of the

Residences. Notwithstanding anything to the contrary contained in this Section, no electrical lines, water lines or other utilities or service lines may be installed or relocated within any Lot except as approved by the Board.

***Section 12.2
Encroachment
Easement***

Each Lot and the Common Areas shall be subject to an easement for encroachments created by construction or placement of Improvements, including, without limitation, driveways and walkways, as designed or constructed by the Declarant or as constructed by or on behalf of any Owner as approved by the Board or the Design Review Committee. A valid easement for said encroachments and for the maintenance of the same is hereby created and shall continue, so long as such encroachments continue to exist.

***Section 12.3
Declarant
Easement***

There is hereby created an affirmative, nonexclusive easement in favor of Declarant, and appurtenant to portions of the Properties owned by Declarant for ingress and egress over all Common Areas, including without limitation the private streets, and for the right to go over, under and across, and to enter and remain upon all Common Areas for all purposes reasonably related to Declarant's rights and obligations hereunder and to the development, operation, maintenance, advertisement and sale or rental of the portions of the Properties owned by Declarant. The easement created in this Section shall continue until the day on which title to the last Lot in the Properties owned by Declarant is conveyed to a third party for value, other than as security for performance of an obligation.

***Section 12.4
Drainage
Easement***

There is hereby created an easement over each Lot in favor of the remainder of the Properties for reasonable drainage from the remainder of the Properties.

***Section 12.5
Easements for
Hiking, Pathways,
Biking, Etc.***

The Plat depicts certain easements. The said easements may include trail access through the Properties, equestrian, pedestrian, and mountain biking, to the extent allowed by the Association, with the precise location of each natural easement and trail to be established by Declarant within the area generally depicted on the Plat. Declarant or the Association shall at any time have the right to record a specific legal description of each such easement, or the centerline thereof, within the designated area. In all cases involving private trails over and across private Lots, trail access shall be limited as determined by Declarant. All such easements and trails shall be subject to control and regulation by the Association, and each Member of the Association or of the Equestrian Center, as determined by Declarant, shall have the right over and across such trails for recreational use and enjoyment, but no use may be by motorized vehicle or means, nor may any vegetation or terrain be altered without the approval of the Association. Further, no use of the trails shall be made which is a nuisance, nor may any camping, loitering

or other such intrusive use be made, the intention being that such trails are to provide an amenity in the form of trail access or enjoyment of the desert environment without undue disturbance of private Owners. Each Owner and all guests and invitees agree that the Association, the Board, all Owners, and all committees of the Association are fully released from any and all liability, cost, damage or claim in any way relating to the trails or the use thereof.

***Section 12.6
Miscellaneous
Easements***

In addition to the blanket easements granted herein, the Association is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and rights-of-way for water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, security lines, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

ARTICLE XIII

GENERAL PROVISIONS

***Section 13.1
Binding Effect and
Enforcement***

In the event of any conflict between the provisions hereof and the provisions of the Articles or Bylaws, the provisions of this Declaration shall always control.

***Section 13.2
Annexation***

The covenants, conditions, charges, liens, reservations, easements, and restrictions contained herein shall run with the title to the land and shall be binding upon all persons purchasing, owning, leasing, subleasing or occupying or otherwise having any interest in any Lot, their heirs, personal representatives, administrators, successors, grantees and assigns. After the date on which this Declaration has been recorded, these restrictions may be enforced by any one or more of the following: (a) The Association, (b) the Declarant (so long as such entity has an interest in any part of the Properties, (c) the Owner or owners of any Lot. The terms and conditions of this Declaration shall be binding upon all persons affected by its terms, regardless of whether any reference is made to this instrument in the deed or other instrument of conveyance. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any Restrictions either to restrain, enjoin, or abate the violation and/or to recover damages. In the event the Declarant or the Association employs an attorney or attorneys to enforce any lien or to collect any moneys due pursuant to this Declaration, or to enforce compliance with or specific performance of the

terms and conditions of this Declaration or otherwise seeks to enforce these restrictions, the Declarant or Association, as the case may be, shall be reimbursed by the Owner or Owners whose actions have necessitated the enforcement proceeding for all costs including attorneys' fees, expended in such enforcement efforts, regardless of whether or not a civil action is actually commenced. The amount of such costs shall be assessed against such Owner or Owners as an Individual Assessment and each such Owner's Lot shall be subject to an Assessment lien upon all of said Owner's Lots, subject to the provisions hereof. Nothing herein shall be deemed to indicate that damages at law constitute an adequate remedy for violation of a Restriction herein. Notwithstanding the foregoing, the violation of these Restrictions shall not affect the lien of any mortgage or deed of trust now or hereafter placed of record.

Declarant may, so long as they own any Lot in the Properties, or until December 31 of the year 2025, whichever date is later, annex into the Properties additional Land adjacent to the Properties without the consent of the Association, Owners, Members or any other entity. Without limitation, such land may include all or any portion of the land along the exterior boundaries of the Property as shown on the Plat.

Each such annexation shall be accomplished by Declarant recording a Declaration of Annexation, executed by Declarant, as applicable, in the Office of the County Recorder of Cochise County, Arizona, which document shall provide for annexation to this Declaration of the property described in such document.

All provisions of this Declaration, including but not limited to those provisions regarding assessments by the Association and any right to cast votes as Members of the Association, shall apply to annexed property immediately upon recording the annexation document, unless provided to the contrary in the Declaration of Annexation or in covenants recorded or approved in writing by Declarant with respect to the annexed property.

The annexation of additional property shall extend the exclusive voting rights of the Declarant and all the Declarant's special reserved rights as provided in this Declaration, to such annexed property.

A Declaration of Annexation may include, but shall not be limited to, a designation and description of the nature of the Lots and structures in the annexed property, including but not limited to the type and quality of construction.

Upon recording of any Declaration of Annexation, the lots described therein shall be deemed Lots hereunder, and the Lots, together with any common areas so designated, shall be deemed a part of the Properties.

The Declarant expressly reserves the right in the course of development of the annexed property to designate common areas. The Declarant may convey, or cause the owners of such land to convey, the common areas in such annexed property, as appropriate, to the Association and the Association shall accept such property as Common Area, subject to all the provisions hereof. Declarant further expressly reserves unto itself perpetual non-exclusive easements (and the right to grant such easements) for ingress, egress and utilities over and across all Common Areas for the benefit of all land owned by them or by their partners, members, affiliates or other successors or assignees, which lands are adjacent or nearby to the Properties.

The provisions of this Section may not, so long as Declarant owns a single Lot or any portion of the Plat, or until December 31, 2025, whichever date is later, be amended without the written consent of Declarant, and in no event may the easements herein established be revoked or modified without Declarant's written approval.

***Section 13.3
Exercise of
Declarant Rights***

The rights of the Declarant hereunder shall be enjoyed collectively by all persons or entities constituting the Declarant.

***Section 13.4
Waiver or
Abandonment***

The waiver of or failure to enforce any breach or violation of any Restriction herein contained shall not be deemed to be a waiver or abandonment of such Restrictions, or a waiver of the right to enforce any subsequent breach or violation of such Restrictions. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these Restrictions) had knowledge of the breach or violation.

***Section 13.5
Equal Treatment
of Owners***

Except as otherwise expressly provided herein, these restrictions shall be applied to all Owners without discrimination.

***Section 13.6
Severability***

The invalidity of any one or more phrases, sentences, clauses, paragraphs, or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that one or more of the phrases, sentences, clauses, paragraphs, or sections contained herein should be invalid or should operate to render this Declaration invalid, this Declaration shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted.

***Section 13.7
Gender***

The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

***Section 13.8
Topic Headings***

The marginal or topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections of this Declaration.

***Section 13.9
Term***

Except to the extent this Declaration may be amended as provided herein, this Declaration shall remain in full force and effect through December 31, 2025. This Declaration shall thereafter be deemed automatically extended and renewed for successive terms of ten (10) years each unless then revoked by a written instrument signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the Lots within the Properties (or unless amended as permitted below), which instrument shall be recorded in the office of the County Recorder of Cochise County, Arizona, at any time after the expiration of the initial twenty year period.

***Section 13.10
Amendment***

This Declaration may at any time be amended with the written consent of the Owners (including Declarant) of not less than two-thirds (2/3) of the Lots within the Properties. Any such amendment shall, so long as Declarant owns a single Lot, also require the written consent of Declarant, and any amendment without such consent of Declarant shall be void. Any such amendment which requires the affirmative written consent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved, and when the amendment has been recorded in the office of the County Recorder of Cochise County, Arizona.

***Section 13.11
Declarant's
Right to
Amend***

A. *General Amendments.* The provisions of Section 13.10 notwithstanding, Declarant hereby reserves the right to amend this Declaration as may be necessary or appropriate in its sole discretion at any time while Declarant owns a single Lot. Any amendment which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Cochise County, Arizona. No amendment made by Declarant shall be deemed void or unenforceable merely because such amendment affected the Properties in a non-uniform manner. Declarant's right of amendment pursuant to this paragraph (based upon Declarant's ownership of at least one Lot) is intended to allow such amendments as may in Declarant's sole discretion be necessary to eliminate ambiguities,

correct errors, clarify the scope and intent of the provisions hereof (including, but not limited to, the elimination of hazards and detriments to the Properties), avoid undue hardship caused by unforeseen topographical or soils problems, or to better enable the Association to administer the Properties. Should Declarant determine that such amendments are necessary or advisable, then no other consent or approval shall be required, and Declarant's determination that such amendment is proper shall be binding upon all Owners and members.

- B. *FHA, VA, FNMA and GNMA Amendments.* Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, then Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners, First Mortgagees, or any other person or entity.
- C. *Resubdivision Amendments or Annexations.* In addition, Declarant shall have the right, without any vote or consent of members, to record such amendments to this Declaration as may be necessary to conform to any resubdivision plat recorded with respect to the Properties or to further confirm any Declaration of Annexation.

Section 13.12
Withdrawal of
Property

Notwithstanding anything contained herein to the contrary, Declarant reserves the right, to be exercised or not in Declarant's sole discretion, and without any other approval or consent, so long as Declarant holds Class B Membership, to withdraw any real property subject to this Declaration by executing and recording a Notice of Withdrawal, making reference to this Declaration, and specifically describing the withdrawn property. The property so described shall be deemed excluded for all purposes of this Declaration.

It is specifically understood that this right of withdrawal may be exercised in Declarant's sole and absolute discretion, and that once withdrawn, none of the provisions hereof shall apply to or encumber the land. Further, Declarant or the Class B Member may cause the Association to grant and convey such

easements as may be necessary to benefit such land withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

***Section 13.13
Personal Liability***

No member of the Board, nor any committee of the Association, including the Design Review Committee, nor any officer of the Association, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, any manager or any other representative or employee of the Association, the Design Review Committee or any other committee, or any officer of the Association in any way relating to this Declaration, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

***Section 13.14
Interpretation of
the Covenants***

Except for judicial construction or construction by an arbitration panel, if required hereunder, following the Turnover Date, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction or construction by an arbitration panel, if required hereunder, the Association's construction or interpretation of the provisions of this Declaration shall be final, conclusive and binding as to all persons and property benefitted or bound by the provisions of this Declaration. Prior to the Turnover Date, Declarant shall determine such matters.

***Section 13.15
Change of
Circumstances***

Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

***Section 13.16
Limitation on
Declarant's
Liability***

Notwithstanding, anything to the contrary herein, it is expressly agreed that from and after the date of this Declaration, neither Declarant, nor any of its members, agents, employees, members, or officers shall have any personal liability to the Association, or to any Owner or other person, arising under, in connection with, or resulting from this Declaration.

***Section 13.17
Assignments of
Declarant Rights;
Exemption of
Declarant from
Restrictions***

All rights, exemptions and privileges of the Declarant hereunder shall be assignable in whole or in part. Without limitation, Declarant may assign to one or more successors or assigns, in whole or in part, some or all of Declarant's rights, exemptions or privileges hereunder, including such rights as the Class B Member may enjoy, and any exemption from the payment of Assessments, while at the same time reserving such rights to itself with respect to Lots it retains.

Any such assignment may be on such terms as Declarant may in its discretion determine are appropriate.

None of the covenants, conditions, restrictions, easements or other provisions in this Declaration shall be construed or deemed to limit or prohibit any promotional act of Declarant, or its employees, agents and contractors, or parties designated by them which is reasonable or customarily incidental to the sale or leasing of Lots, the Properties, or any part thereof.

***Section 13.18
Arbitration***

In the event of any dispute involving any Owner, the Association, the Declarant, or any of their officers, agents, employees, representatives, partners or affiliates, relating in any way to this Declaration or, without limitation, to any right, obligation or privilege hereunder, or relating in any way to the operation or management of the Association, the maintenance or use of Common Areas, or to the construction of improvements upon the Properties, or to any representations made or allegedly made by any person, each Owner and Member, the Association, and Declarant, for themselves and their agents and contractors, agree that such dispute shall not be litigated in any court or judicial tribunal, but rather shall be arbitrated in accordance with the Construction and Commercial Arbitration Rules of the American Arbitration Association. At least three arbitrators shall preside in any case involving a claim in excess of \$100,000.00. Any arbitration shall take place in the State of Arizona, and not elsewhere. Judgment upon a final award may be rendered by any court of competent jurisdiction.

Notwithstanding the foregoing, the Association shall not be required to arbitrate any matter relating to the imposition of any fine, assessment, Assessment Lien, or the foreclosure of any Assessment Lien, nor shall the Association be precluded from seeking injunctive relief in court to enforce compliance with the provisions hereof.

***Section 13.19
Rights of the
Declarant***

Any and all rights of the Declarant hereunder may be exercised by and shall be for the benefit of the Declarant and its beneficiaries.

***Section 13.20
Delivery of Notices
and Documents***

Any written notice or other documents relating to or required by this Declaration or the Articles or Bylaws may be delivered either personally or by mail. If by mail, such notice or documents shall be deemed to have been delivered forty-eight (48) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows:

A. If to the Association or the Design Review committee:

Red Hawk at J-6 Ranch Property Owners Association
c/o James Vermilyea
6501 East Grant Road, Ste F
Tucson, Arizona 85715

If to Declarant:

Title Security Agency of Arizona
as Trustee under Trust Number 711
6390 E. Tanque Verde Road
Tucson, Arizona 85715

with a copy to:

Thunder Ranch Estates, LLC
c/o James Vermilyea
6501 East Grant Road, Ste F
Tucson, AZ 85715

J-6 Ranch, L.L.C
c/o Neil Simonson
P.O. Box 31087
Tucson, Arizona 85751

M.S.R. Associates, Inc.
c/o 6850 N. Oracle Road
Tucson, Arizona 85704

- B. If to an Owner, to the address of any Lot owned by him or to any other address last furnished by an Owner to the Association. Any such address may be changed at any time by the Association, Design Review Committee, or Declarant, by recording a written notice of change of address and delivering a copy thereof to the Association, or by an Owner by filing the correct mailing address of such owner with the Association. Each Owner shall promptly notify the Association in writing of any subsequent change of address.

If the Association is dissolved, the assets shall be dedicated to a public body, or conveyed to a non-profit organization with similar purposes pursuant to the provision of A.R.S. § 10-1046

IN WITNESS WHEREOF, Declarant, being the owner of record all of the Properties, has caused this Declaration to be duly executed this 21st day of February 2000.

Title Security Agency of Arizona as Trustee under
Trust Number 711, as Trustee only and not in its
Corporate capacity

By: Wesley D. Hoy
, its authorized representative

NOTARY ACKNOWLEDGMENTS FOR THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR RED HAWK AT J-6 RANCH.

STATE OF ARIZONA)
)ss.
County of Pima)

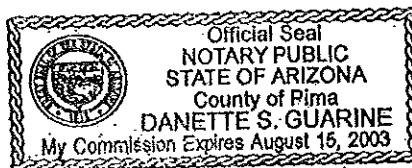
On February 21, 2001, before me, the undersigned Notary Public, personally appeared Leslie D. Hagg, Trust Officer, personally known to me (or proven to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My Commission, Expires:

Aug. 15, 2003

Danette S. Guarine
Notary Public



G:\CLIENT\Christensen\Redhawk\6REDHAWKCCR13001(final).wpd

010306235

When recorded return to:
THE LENIHAN LAW FIRM
1050 East River Road, Suite 300
Tucson, Arizona 85718
Attn: Stephen J. Lenihan, Esq.



FEE # 030933571
OFFICIAL RECORD
COCHISE COUNTY
DATE 09/18/03 HOUR 9

REQUEST OF
LENIHAN LAW FIRM
CHRISTINE RHODES-RECORDER
FEE : 24.00 PAGES : 1

**FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR RED HAWK AT J-6 RANCH**

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RED HAWK AT J-6 RANCH is made as of the Effective Date (as defined below) by TITLE SECURITY AGENCY OF ARIZONA, an Arizona corporation, as Trustee under Trust Number 711, as Declarant, and as the holder of not less than two-thirds (2/3rds) of the Lots.

WITNESSETH:

WHEREAS, Declarant executed and caused to be recorded, on March 7, 2001, in the Office of the County Recorder, Cochise County, Arizona, a Declaration of Covenants, Conditions and Restrictions for Red Hawk at J-6 Ranch ("Original Declaration") as Fee #010306235, official records of Cochise County, Arizona pertaining to the property described on Exhibit D hereto and any other property hereafter annexed thereto by written notice of Declarant;

WHEREAS, Section 13.11 of the Original Declaration provides, at any time Declarant owns a single Lot, that the Original Declaration may be amended by Declarant in its sole discretion;

WHEREAS, Declarant is the Owner of not less than two-thirds (2/3rds) of the Lots;

WHEREAS, the Declarant desires that the Declaration be amended;

NOW, THEREFORE, the Declarant hereby amends the Declaration as follows:

1. Effective Date. This instrument is effective as of the date of the Original Declaration.

2. **Conflict.** In the event of a conflict between the provisions of this First Amendment and the provisions of the Original Declaration, the provisions of this First Amendment shall prevail.

3. **Defined Terms.** To the extent a term is not defined in this First Amendment, the definition assigned in the Original Declaration shall apply.

4. **Horse-Related Provisions.** The Original Declaration is hereby amended by deleting the first paragraph of Section 11.4 in its entirety and adding the following provision in its place:

"The keeping of horses on Lots or any portion of the Project or Properties is strictly prohibited, except as provided below:

(a) Horses shall be allowed in the Equestrian Center subject to the provisions of this Section 11 and to the other provisions of the Original Declaration (as amended hereby and as amended from time-to-time).

(b) An equestrian easement ("Equestrian Easement") may be established along the north twenty (20) feet of Lots 2 through 6 and 8 through 18 of all the Red Hawk at J-6 Ranch. In addition, a 20 foot wide equestrian easement may be established on the Lots described below, running generally from north to south on and between Lots 10 and 11 and on and between Lots 41 through 49 and 62 on the west and Lots 63 through 72 on the east, including any necessary road crossings to connect to the pedestrian easement on the north portion of Lots 2 through 6 and 8 through 18.

(c) There shall be no equestrian use (except for the Equestrian Easement) on any other Lot within Red Hawk at J-6 Ranch except for Lots 2 through 6 and 8 through 18.

(d) The following provisions shall apply to any equestrian-related use of Lots 2 through 6 and 8 through 18:

i. Any exterior fencing enclosing equestrian activity shall be composed of brown or earth tone vinyl (PVC) fencing with a minimum set back of ten (10) feet from the east and west

property lines and twenty-five (25) feet from the northern property line. See attached example diagram (Exhibit "B").

ii. Interior fencing shall be composed of galvanized steel or painted pipe, or heavy duty portable panels and maintained to acceptable standards.

iii. Owners are required to build barns and stalls which must match the same construction and design as that of the Owner's Residence and which must be placed to the rear of the home and must be completed before horses are permitted on the Lot.

iv. All feed, tack and related equipment must be stored in a barn or architecturally-approved attached structure.

v. No horse or horse-related activity shall occur more than two hundred twenty-five (225) feet from the northern boundary of the Lot ("Equestrian Area"), and all related activity shall occur to the rear of the Residence.

vi. Nor more than two (2) horses owned by any one Owner shall be allowed to reside in the Equestrian Area on a permanent basis, except for unweaned foals. Visiting horses may stay at the Owner's Lot for no longer than a 24-hour period.

vii. Riding in the Project will be in restricted Equestrian Easements only, and all riding within the Project is at the risk of the rider and/or horse-owner.

viii. Waste removal shall be required on a regular basis and acceptable fly prevention treatment will be required and enforced. Trash removal shall comply with those standards as set forth in the Original Declaration (as amended hereby and as amended from time-to-time).

ix. Access to the Equestrian Area shall be over constructed paved driveways only and all related vehicles or trailers must be parked in a garage, storage facility or the common area storage, if any, of the Project.

(e) The Board shall have the authority to promulgate rules and regulations relating to the use of portions of the Project for equestrian-related activities provided that such rules and regulations do not in any manner lessen the restrictions on equestrian-related uses that are contained in this Section 11.4.

(f) The provisions of this Section 11.4 shall be enforced by the Association and may be enforced by any Owner of 100 acres or more of the Benefited Lands. In the event any of the aforementioned persons pursue legal action to enforce the provisions of this Section 11.4, the Owner(s) of the Lot(s), or if the violation is not on a Lot, then the Owner responsible for such violation shall be responsible for paying the legal fees and costs, court costs and other costs and expenses reasonably incurred by the person enforcing the provisions of this Section 11.4."

5. **Amendments.** Notwithstanding the provisions of Section 13.10 and 13.11 of the Original Declaration, neither the provisions of Section 11.4 of the Original Declaration (as added by this First Amendment) nor the provisions of the Special Design Guidelines (as defined below) may be amended without the written approval of (i) those owners of not less than two-thirds of those portions of the total acreage of the Pima County Benefited Lands of which the owners own 100 acres or more and (ii) those owners of not less than two-thirds of those portions of the total acreage of the Cochise County Benefited Lands of which the owners own 100 acres or more.

"Pima County Benefited Lands" and "Cochise County Benefited Lands" shall mean those certain properties legally described in Exhibit "A" attached hereto and incorporated herein by this reference. In determining whether an Amendment is approved by two-thirds of the owners, acreage owned by governmental authorities shall not be counted in either the numerator or the denominator.

6. **Design Guidelines.** The design guidelines ("Special Design Guidelines") attached hereto as Exhibit "C" are hereby incorporated into this First Amendment by this reference and shall constitute Special Design Guidelines for the Property encumbered by the Original Declaration (including lands subsequently annexed thereto), and in the event of a conflict between the provisions of the Special Design Guidelines and the provisions of the Original Declaration (as amended from time-to-time), the provisions of the Special Design Guidelines shall prevail. The incorporation of the Special Design Guidelines into the Original Declaration, as set

forth above, is agreed by the signatories hereto as satisfying the provisions relating to Exhibit L set forth in Section 8.3.2 of that certain Amended and Restated Real Estate Sale and Purchase Agreement and Escrow Instructions dated effective as of June 29, 2000, by and between Jay-Six Ranch, Ltd., an Arizona limited partnership, and Empirita Ranch Limited Partnership, an Arizona limited partnership as Sellers, and Thunder Ranch Estates, L.L.C., an Arizona limited liability company as Purchaser, and it is further agreed by the signatories hereto that the provisions of Exhibit L set forth in Section 8.3.2 are of no further force and effect.

EXECUTED as of the Effective Date by the Declarant, who is also the sole Owner.

Title Security Agency of Arizona, an Arizona corporation,
as Trustee under Trust Number 711,
as Trustee only and not in its corporate capacity

By: Leslie D. Hogg

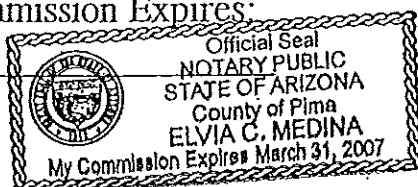
Its: Trust Officer

STATE OF ARIZONA)
) SS
COUNTY OF Pima)

The foregoing instrument was acknowledged before me this 12th day of September, 2003, by Leslie D. Hogg, the Trust Officer of Title Security Agency of Arizona, an Arizona corporation, as Trustee under Trust Number 711.

[Signature]
Notary Public

My Commission Expires:




AGREED AND ACCEPTED:

SELLER:


JAY-SIX RANCH LTD., an Arizona
limited partnership

By: Jay-Six Ranch, Inc., an
Arizona corporation, its General
Partner

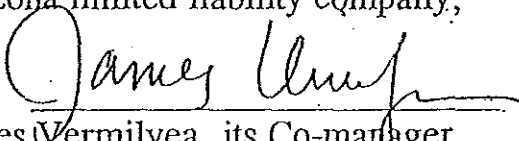
By: 
(Neal T. Simonson, President

EMPIRITA RANCH LIMITED
PARTNERSHIP, an Arizona limited
partnership

By: Empirita Ranch, Inc., an
Arizona corporation, its General
Partner

By: 
Neal T. Simonson, President

THUNDER RANCH ESTATES, an
Arizona limited liability company,

By: 
James Vermilyea, its Co-manager

and

M.S.R. ASSOCIATES, INC. an
Arizona corporation, Co-Manager

By: 
Its: Vice President

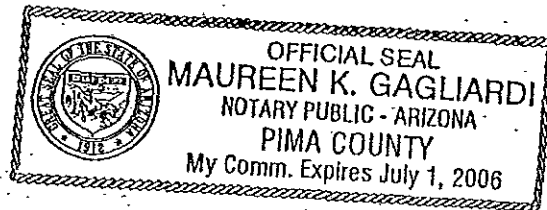
STATE OF Arizona)
COUNTY OF Pima) SS

The foregoing instrument was acknowledged before me this 27th day of June, 2003, by Neil Simonson, the President of Jay-Six Ranch Ltd., an Arizona limited partnership.

Maureen K. Gagliardi
Notary Public

My Commission Expires:

July 1, 2006



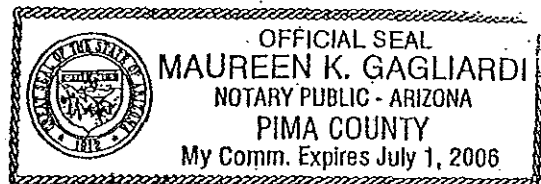
STATE OF Arizona)
) SS
COUNTY OF Pima)

The foregoing instrument was acknowledged before me this 27th day of June, 2003, by Karl Simonson, the President of Empirita Ranch Limited Partnership, an Arizona limited partnership.

Maureen K. Gagliardi
Notary Public

My Commission Expires:

July 1, 2006

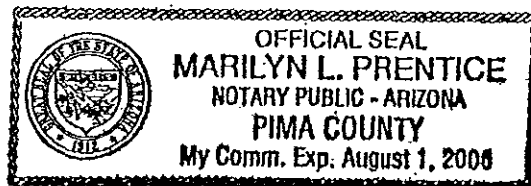


STATE OF Arizona)
) SS
COUNTY OF Pima)

The foregoing instrument was acknowledged before me this 22nd day of August, 2003, by James Vermilyea, the Co-Manager of Thunder Ranch Estates, an Arizona limited liability company.

Marilyn L. Prentice
Notary Public

My Commission Expires:

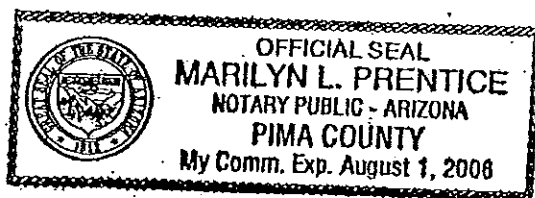


STATE OF Arizona)
COUNTY OF Pima) ss

The foregoing instrument was acknowledged before me this 22nd day of August, 2003, by Louis B. Christensen, the Vice President of M.S.R. Associates, Inc., an Arizona corporation.

Marilyn L. Prentice
Notary Public

My Commission Expires:



030933571

EXHIBIT "A"

BENEFITED LANDS

"Pima County Benefited Lands"

The East Half of Section 24, Township 17 South, Range 18 East,
G&SRB&M, Pima County, Arizona

"Cochise County Benefited Lands"

The West Half of Section 20, Township 17 South, Range 19 East,
G&SRB&M, Cochise County, Arizona

and

The North Half of Section 30, Township 17 South, Range 19 East,
G&SRB&M, Cochise County, Arizona

and

The Southeast Quarter of the Northwest Quarter; the East Half of the
Southwest Quarter, and the Southwest Quarter of the Southwest Quarter of
Section 29, Township 17 South, Range 19 East, of the Gila and Salt River
Base and Meridian, Cochise County, Arizona
and

Lot 4; the Southeast Quarter of the Southwest Quarter, and the South Half
of the Southeast Quarter of Section 30, Township 17 South, Range 19
East, of the Gila and Salt River Base and Meridian, Cochise County,
Arizona

and

The Northeast Quarter of the Northeast Quarter; the East Half of the
Northwest Quarter of the Northeast Quarter; the Southeast Quarter of the
Northeast Quarter; and the North Half of the Southeast Quarter of Section

31, Township 17 South, Range 19 East, of the Gila and Salt River Base
and Meridian, Cochise County, Arizona

and

The Southwest Quarter of the Northwest Quarter and the West Half of the
Northwest Quarter of the Northwest Quarter of Section 32, Township 17
South, Range 19 East, of the Gila and Salt River Base and Meridian,
Cochise County, Arizona

030933571

EXHIBIT "B"

J-6 RANCHETTES

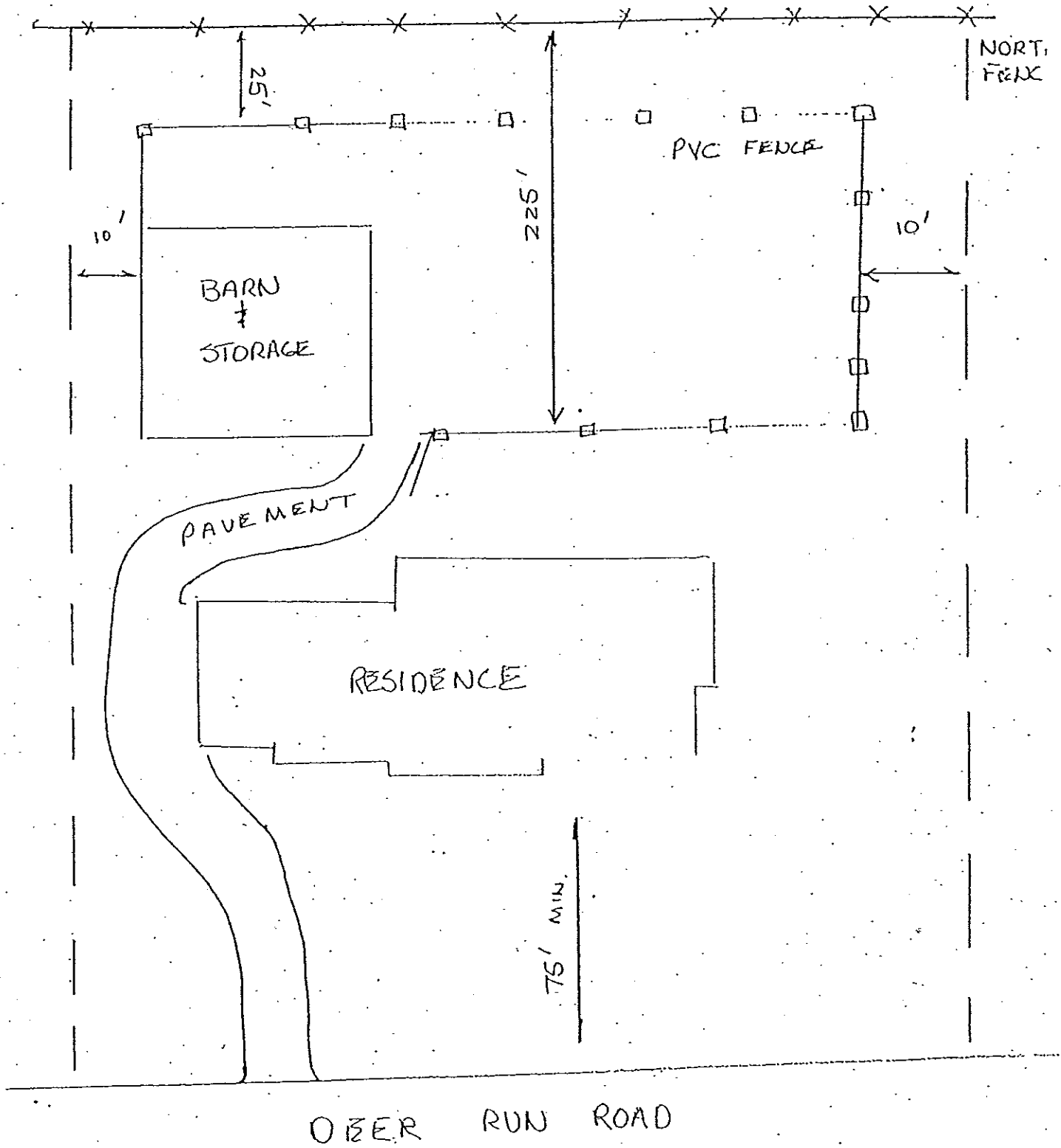
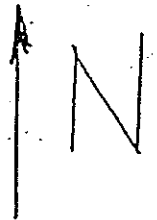


EXHIBIT "C"

Design Guidelines

Except for improvements or alterations undertaken by the Declarant, all plans must meet the following minimum criteria and such further criteria as the Design Review Committee promulgates:

Be in accordance with the provision of this Declaration;

The location; style of architecture, which shall be Southwest colonial, Spanish colonial, Mexican colonial, Santa Fe style, Ranch style, or soft contemporary as determined by the Design Review Committee (DRC); exterior color scheme; height; location of exterior lights; selection of building materials and their application shall meet the satisfaction of the DRC;

The subdivision should consist of Single-Family Dwellings only and each dwelling shall be located within a building envelope and shall contain not less than 1,850 square feet of living area.

Be in sufficient detail to permit the Design Review Committee to make its determination;

The roof shall be of the material, design, and style satisfactory to the Design Review Committee. White reflective roofs shall be unacceptable. The repair or replacement of any roof shall be subject to the same conditions as the original roof. Flat roofs, if approved, must be fully enclosed by parapet walls at heights approved by the Design Review Committee and shall be painted desert tan. Type, style, and location of skylights on pitched roof surfaces shall be approved by the DRC.

The exterior color schemes for dwellings shall consist of earth tones or soft contemporary colors, and shall be approved by the Design Review Committee before construction.

Included not less than a two-car garage with doors of a style or design approved by the Design Review Committee and shall not be positioned to directly face the street.

Shall include adequate utility yards or enclosures in which all ground-mounted exterior heating and cooling apparatus, meters, mechanical equipment, tanks, space for trash or rubbish containers, and wood storage shall be located.

All electrical service and telephone lines from the utility company lines shall be placed underground, and no outside electrical and telephone lines shall be placed

overhead. This restriction prohibiting overhead lines also applies to cable television lines and security and fire protection system lines.

Where water, gas, or other public utility facilities or private utility facilities or private services have been installed to or near the property line of a particular Lot for the purpose of providing service to that Lot, the service connection to service an Improvement on that Lot shall be made only to and from the installed facility or point assigned by the Design Review Committee.

There shall be no grading or removal of vegetation until the building plan has been approved by the Design Review Committee and all construction shall proceed in an expeditious manner. Construction shall not last more than nine (9) months from start to finish unless DRC approval is given. The DRC has the right to restrict construction hours on the dwelling and not allow any work to be done on Sundays. Workers shall park their vehicles in specified areas of the lot and only be able to use one entry for ingress and egress during construction.

Patio walls may be constructed and attached to dwellings. However, fences defining the lot perimeter will not be permitted.

The DRC shall have approval of the types of building material used and shall cooperate with the builder in all forms of construction.

No Single-family Dwelling or Improvement shall exceed one story in height; no part of the roof ridge line shall exceed eighteen (18) feet; and no part of a parapet wall shall exceed sixteen (16) feet above finished floor elevation or such dwelling or improvement. Provided, however, the Design Review Committee may allow a one-story and a partial story Single-family Dwelling on certain Lots; provided the topography of the Lot and its relationship to surrounding Lots is such that in the sole judgment of the DRC such exception(s) would not be in conflict with the stated intent of the subparagraph. The finished floor elevation shall be the average elevation of the natural grade of the area on which the Single-family Dwelling or Improvement is located. The natural grade shall be determined by the DRC based on the topographic elevations shown on the Tentative Plate approved by and on file with Cochise County, Arizona, or engineered topographic depiction deemed to be accurate and reliable by the Declarant. The Building Envelope shall be that area designated on each Lot as provided for in Article IV, Section 4.3.

The intent of this subparagraph is to provide a means for controlling the position and height of Single-family Dwelling and Improvements relative to surrounding Dwellings and Improvements within the Building Envelope, so as to provide the greatest protection of views and privacy for the benefit of the largest number of Lot Owners.

All areas of cut and/or fill which result from grading or related site work on any Lot shall be landscaped or improved by the Owner in accordance with plans approved by the Design Review Committee. Site preparation shall not be planned which results in a cut and/or fill which covers a vertical distance of more than ten (10) feet. All areas of cut and/or fill having a slope not steeper than two-to-one 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. 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 to the corresponding change in vertical elevation. It being understood that 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 consideration 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 Design Review Committee. All landscaping of areas of cut and/or fill, including the planting and establishment of vegetation and the construction of retaining walls, which shall match the construction, finish, and color of the Single-family Dwelling, shall be completed concurrently with the completion of construction of the Single-family Dwelling upon the Lot, and shall be continuously maintained thereafter by the Owner.

All cooling and heating equipment shall be concealed from view from public rights-of-way and other Lots. No evaporative cooler, air conditioning equipment, heating equipment, cooling or heating ducts, gas lines, or other equipment, including solar swimming pool heating equipment, shall be placed, installed, or maintained on the roof or wall of any building or structure, except that certain solar devices which heat or cool may be placed on roofs which completely conceal the same and are not detrimental to other Owners of Lots within the subdivision. Specific prior written approval by the Design Review Committee is required before placement of such solar devices; provided, however, the requirements hereunder shall not effectively prohibit the installation or use of solar energy devices. If such approval is not obtained, said devices shall be immediately removed by the Owner at his expense.

Foundations and floors for all Single-family Dwellings and all other permitted Improvements on each Lot shall be reinforced and shall be constructed in accordance with plans prepared by an engineer registered in the State of Arizona.

All driveways shall be paved with asphalt or concrete.

All exterior lights must be located so as not to be directed toward or reflect upon surrounding properties, public rights-of-way, or Common Areas and shall comply with any light pollution ordinances.

Upon completion of construction of a Single-family Dwelling, each Owner shall install an address and property identification sign and light standard which shall be of a uniform shape, size, color, lettering, and design as designated by the Design Review Committee in order that the Property be strictly uniform in appearance with respect thereto.

All grass and other ground covers shall be kept within patio walls and shall be of a variety recognized to be pollen free.

No Single-family Dwelling, garage, building, swimming pool, wall, coping, overhang, other structure, or Improvement (excluding drainage ways, driveways, and private roads) shall be erected or placed less than forty (40) feet from any property line of a Lot for a single-story Single-family Dwelling one-story and a partial-story Single-family Dwelling. Any wall or coping may not exceed six (6) feet in height. All enclosures for patios or for concealment purposes and all retaining walls shall be constructed of face brick, stucco frame, stucco mud adobe, burnt adobe, or stucco masonry; and all enclosures for patios or for concealment purposes and all retaining walls shall be constructed and finished to match the Single-family Dwelling in type of material, color, and texture. No wooden, wire, chain-link, or woven metal fences shall be permitted. Any planting used to form a hedge shall be subject to the same setback requirements and height limitations as apply to a wall or coping. In determining the height of such wall, coping, or hedge, the average ground level shall be used.

Declarant and Design Review Committee shall have the right to limit the sizes and dimensions of pools and/or spas placed on the property and within the patio wall.

The Declarant has the right to restrict the amount of water a lot owner may use on a monthly basis. The limitation shall comply with the standards as set by the Arizona Department of Water Resources and shall not exceed 300 gallons per day.

The Declarant and the Design Review Committee shall not be liable in damages to anyone so submitting plans for approval, or to any Owner or Owners of land subject to this Declaration by reason of mistake in judgment, negligence, or nonfeasance 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

Declarant or to the DRC 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.

The Declarant or the Design Review Committee shall have the right to grant variances as to any of the provisions of this Declaration or to waive any such provisions except in the restriction of two story houses as the Declarant or DRC in its sole discretion shall determine, and neither the Declarant nor the DRC shall have any liability to any 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 Declarant or the DRC.

No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between three (3) and eight (8) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them a points twenty-five (25) feet from the intersection of said street property lines; or, if the property corners are rounded, from the intersection of the street property lines extended. No tree shall be permitted to remain within such distance of such intersections, unless the foliage line is maintained at sufficient height to prevent obstruction of lines of visibility.

No pavement cuts may be made on the private streets and roadways within the subdivision without prior written approval from the Design Review Committee. All pavement cuts or damage to the subdivision streets or roadways must be repaired to the same standard as required by Cochise County, as if such pavement cut or damage were done to a public right-of-way.

The Owner is also responsible for any damage to the subdivision streets or roadways and other land in or adjacent to the subdivision done by any contractor or subcontractor during the course of construction of Improvements on the Owner's Lot.

If the damage is not adequately repaired, the Declarant or the Association may make such repairs and the cost of such repair shall be a lien on the Lot whose Owner is directly or indirectly responsible for such damage. Such lien shall also include all costs incurred in enforcing and collecting the lien.

Adequate provisions or facilities shall be established by each Owner to contain all back-flushing, back-washing, and similar drainage within each Lot in a manner such that the water disposal is not discharged onto the streets or roadways or other Lots or Common Areas. Such discharge shall not be allowed to erode the natural landscape of the Lot.

At the time Final Plans are submitted to the Design Review Committee, the Owner shall deposit the sum of \$2,000.00 (the "Deposit") with the DRC.

The Deposit shall be held by the Design Review Committee in a non-interest-bearing account and may be utilized or disbursed by the DRC for:

- Repair of any damage caused directly or indirectly by the Owner to roads, vegetation, entry ways, security facilities or Improvement constructed or controlled by the Declarant or otherwise for the general benefit of the Property;

- Completion of any construction, landscaping, or revegetation on the Lot of the Owner which was not completed by the Owner in accordance with the approved plans;

- Expenses, including legal and consulting fees, incurred in the enforcement of the Declaration with respect to the Owner.

The Deposit, or the un-disbursed portion thereof, shall be refunded to the Owner at such time as the Design Review Committee has made a final inspection and approved the Improvements.

EXHIBIT D

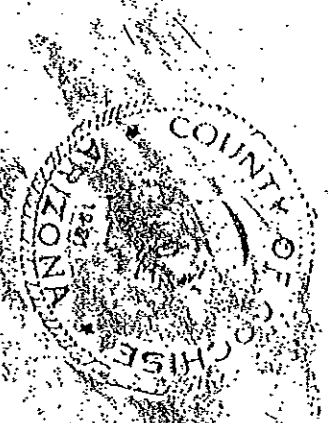
PTA No. 720419

Lots 1, and 2;

The East half of the Northwest quarter; and

The Northeast quarter of Section 19, Township 17 South, Range 19 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;

EXCEPT all the oil, gas and minerals as reserved in Deed recorded in Book 105, Deeds of Real Estate, page 492, records of Cochise County, Arizona;



CERTIFICATION STAMP
STATE OF ARIZONA
COUNTY OF COCHISE
THE FOREGOING INSTRUMENT IS A FULL, TRUE AND
CORRECT COPY AS APPEARS ON RECORD IN THIS OFFICE
FEE No. 030933571
Attested 9/19 20 03
CHRISTINE RHODES
By [Signature] Deputy

030933571