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**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

FOR

**PRESCOTT HIGHLANDS ESTATES
aka Sterling Ridge**

TABLE OF CONTENTS

| | |
|--|---|
| DEFINITIONS..... | 1 |
| Additional Properties | 1 |
| Architectural, Landscaping and Construction Guidelines | 1 |
| Articles..... | 2 |
| Association | 2 |
| Board..... | 2 |
| Committee..... | 2 |
| Common Property..... | 2 |
| Declarant..... | 2 |
| Declaration..... | 2 |
| Developer..... | 2 |
| Development..... | 2 |
| Guest..... | 2 |
| Lot..... | 2 |
| Member..... | 3 |
| Mortgage..... | 3 |
| Owner..... | 3 |
| Plat | 3 |
| Property..... | 3 |
| Transition Date | 3 |
| PLAN OF DEVELOPMENT | 3 |
| Property Subject to the Declaration | 3 |
| Disclaimer of Representation..... | 3 |
| Views Not Guaranteed..... | 4 |
| PERMITTED USES AND RESTRICTIONS | 4 |
| Residential Use | 4 |
| Subdividing..... | 4 |
| Parking..... | 4 |
| Fences | 4 |
| General Upkeep | 5 |
| Sewage | 5 |
| Tanks..... | 5 |
| Animals..... | 5 |
| Construction Permitted | 5 |
| Minimum Livable Area | 5 |
| Plan Approval | 5 |
| Commencement and Completion of Construction | 6 |

| | |
|---|--------|
| Permanent Structure..... | 6 |
| Mail Box | 6 |
| Commercial Activities..... | 6 |
| Signs | 6 |
| Lot Maintenance | 6 |
| Drainage..... | 7 |
| Utility Easements..... | 7 |
| Trash Containers and Collection..... | 7 |
| Diseases and Insects..... | 7 |
| Air-Conditioning Equipment..... | 7 |
| Utility and Service Lines | 7 |
| Burning and Incinerators..... | 7 |
| Nuisances; Construction Activities..... | 8 |
| ARCHITECTURAL CONTROL COMMITTEE..... | 8 |
| Organization..... | 8 |
| Initial Members..... | 8 |
| Terms of Office..... | 8 |
| Appointment and Removal | 8 |
| Application and Approval..... | 8 |
| Waiver..... | 9 |
| Meetings and Compensation..... | 9 |
| Committee Rules | 9 |
| Liability..... | 9 |
| Committee Insurance | 10 |
| THE ASSOCIATION, MEMBERSHIP, AND VOTING RIGHTS | 10 |
| Organization..... | 10 |
| Control of the Association and Maintenance of the Common Property | 10 |
| Board of Directors and Officers..... | 10 |
| Powers and Duties of the Association | 11 |
| Power of Attorney..... | 11 |
| The Association Rules | 12 |
| Personal Liability | 12 |
| Board Insurance | 12 |
| Membership | 12 |
| Voting | 13 |
| Association Finances | 13 |
| Reserves | 13 |
| ASSESSMENTS..... | 13 |
| Creation of Lien and Personal Obligation of Assessments..... | 13 |
| Annual Assessment..... | 14 |



| | |
|--|----|
| Special Assessments | 14 |
| Uniform Rate of Assessment | 14 |
| Commencement of Assessments | 14 |
| Effect of Non-Payment of Assessment; Remedies of the Association | 14 |
| Declarant and Developer Lots | 15 |
| Sale or Transfer | 15 |
| Non-Use or Abandonment | 15 |
| Subordination | 15 |
| COMMON PROPERTY AND DRIVEWAYS | 15 |
| Common Property, Common Area, and Open Space | 16 |
| Common Driveways | 16 |
| Maintenance of Lots and Driveway Easements | 16 |
| Non-Liability | 16 |
| Damage or Destruction of Common Area by Owners | 16 |
| Association Easement | 17 |
| RIGHT TO ADD ADDITIONAL PROPERTIES | 17 |
| MISCELLANEOUS | 17 |
| Interpretation | 17 |
| Notice of Noncompliance | 17 |
| Enforcement | 17 |
| Performance Deposit for Builders | 18 |
| Severability | 18 |
| Rule Against Perpetuities | 18 |
| Waiver | 18 |
| Amendment | 19 |
| Statutory Amendments | 19 |
| Violations and Nuisances | 19 |
| Violation of Law | 19 |
| Remedies Cumulative | 19 |
| Delivery of Notices and Documents | 20 |
| Reference to Covenants in Deeds | 20 |
| Declaration | 20 |
| Gender and Number | 20 |
| Captions and Titles | 20 |
| City of Prescott Land Development Code | 20 |
| Hillside Ordinance | 21 |

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
PRESCOTT HIGHLANDS ESTATES
(aka Sterling Ridge)

THIS DECLARATION of Covenants, Conditions, and Restrictions is made this 14th day of August, 2006, by First American Title Insurance Agency, Inc., an Arizona corporation, as Trustee under Trust No. 5007, as the Declarant. The Developer, Aspen Creek Holdings, LLC, an Arizona limited liability company, joins in this Declaration.

WITNESSETH:

WHEREAS, the Developer named herein, through the above-described trust, desires to develop the real property described below and additional properties which may be acquired or annexed hereafter by it into a planned residential subdivision; and

WHEREAS, for the development of the lands now owned or hereafter acquired, the Developer, through the above-described trust, intends, without obligation, to develop a subdivision upon the real property described below, which, as of the date of recordation of this Declaration, is owned by the Declarant, as Trustee, and shall comprise the "Property"; and it is possible that other lands may, from time to time, be added to the Property to expand and more fully develop the subdivision; and

WHEREAS, a perpetual nonprofit corporation is being formed for the purpose of benefiting the Property and the Owners thereof, which nonprofit corporation is intended, without obligation, to: (a) acquire, construct, operate, manage, and maintain the Common Property, Common Area, Open Space, and facilities; (b) establish, levy, collect, and disburse the assessments and other charges as may be imposed hereunder; and (c) as the agent and representative of the Owners of the Property, administer and enforce the provisions hereof as set forth herein.

NOW, THEREFORE, the Declarant hereby declares, covenants, and agrees as follows:

1. **DEFINITIONS.** The following words, phrases, and terms used in this Declaration shall have the following meanings:
 - 1.1 **Additional Properties** shall mean properties added in accordance with Article 8 hereof.
 - 1.2 **Architectural, Landscaping and Construction Guidelines** means the rules and guidelines adopted by the Committee, as they may be amended or supplemented, and any provisions contained in this Declaration which shall govern the procedures of the Committee.

- 1.3 **Articles** means the Articles of Incorporation of the Association that are filed in the office of the Arizona Corporation Commission, as the Articles may be amended from time to time.
- 1.4 **Association** shall mean and refer to Prescott Highlands Estates Homeowners Association, a perpetual Arizona nonprofit corporation, organized to administer and enforce the Covenants, Conditions, and Restrictions and to exercise the rights, powers, and duties set forth in this Declaration.
- 1.5 **Board** means the Board of Directors of the Association.
- 1.6 **Committee** shall mean Prescott Highlands Estates Architectural Control Committee as described herein.
- 1.7 **Common Property** or **Common Area** or **Open Space** shall mean all real property owned or to be owned by the Association for common use and enjoyment of all or part of the Owners, and any other real property that the Association has the obligation to maintain (including, without limitation, any non-governmentally maintained roads, drainage easements and drainage areas, landscape tracts, detention basins, subdivision signage, etc.), or that the Association may otherwise agree to maintain for the common use and enjoyment of all or part of the Owners; but specifically excluding any shared driveway easement areas reflected on the Plat and on any plat of Additional Properties.
- 1.8 **Declarant** shall mean First American Title Insurance Agency, Inc., an Arizona corporation, as Trustee under Trust No. 5007, its successors, and assigns, if such successors or assigns would acquire more than one undeveloped Lot for the purpose of development.
- 1.9 **Declaration** shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as it may from time to time be amended or supplemented.
- 1.10 **Developer** shall mean and refer to Aspen Creek Holdings, LLC, an Arizona limited liability company.
- 1.11 **Development** means Prescott Highlands Estates aka Sterling Ridge, a planned area development in the City of Prescott, Yavapai County, Arizona, comprised of Lots 1 through 37, and Common Property, Common Area, and Open Space, as reflected on the Final Plat of Prescott Highlands Estates, which was recorded in the office of the Yavapai County Recorder, Yavapai County, Arizona, and such Additional Properties as shall become a part of such Development.
- 1.12 **Guest** means an agent, servant, tenant, licensee, or invitee of an Owner or any person or entity who has acquired any title or interest in a lot by or through an Owner, including a lessee, mortgagee, or any agent, servant, tenant, invitee, or licensee or such person or entity.
- 1.13 **Lot** shall mean and refer to any lot shown upon any recorded subdivision map of the Property, including any Additional Properties.

- 1.14 **Member** means any person or legal entity who is a member of the Association.
- 1.15 **Mortgage** means mortgage, deed of trust, or other security instrument which is a lien on a Lot.
- 1.16 **Owner (s)** shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. Owner shall include the purchaser of a Lot under an executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot merely as a security for the performance of an obligation.
- 1.17 **Plat** shall mean the Final Plat of Prescott Highlands Estates as recorded in the office of the County Recorder of Yavapai County, Arizona, as the same be amended, supplemented, or modified from time to time. The Book and Page of recordation of the Plat shall be provided by subsequent recorded memorandum.
- 1.18 **Property** means all of the Lots, private roadways, if any, and Common Property, Common Area, and Open Space dedicated to the Association, if any, platted on the recorded plats of the Development, and excludes only the streets, other improvements, or other property dedicated to the City of Prescott, if any.
- 1.19 **Transition Date** means that date on which the Association holds its first meeting at which a Board of Directors is elected by the Owners. Such meeting shall take place within ninety (90) days after the Developer gives management of the Association to the Owners or after all Lots in the Development are sold, whichever first occurs.

2. PLAN OF DEVELOPMENT.

- 2.1 **Property Subject to the Declaration.** The Declarant and Developer declare that all of the Property shall be held, sold, and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any Lot subject to this Declaration, each Owner, for himself or itself, his or its heirs, personal representatives, successors, transferees, and assigns, binds himself, his heirs, personal representatives, successors, transfers, and assigns to all of the provisions, restrictions, covenants, easements, charges, conditions, rules, and regulations now or hereafter imposed by this Declaration. In addition, each Owner, by so doing, thereby acknowledges that all restrictions, conditions, covenants, easements, charges, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees, occupants, and transferees thereof. Furthermore, each such Owner fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by all Owners. The Lots and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot, even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.
- 2.2 **Disclaimer of Representation.** While the Declarant and the Developer have no reason to believe that any of the restrictive covenants contained in this Declaration

are, or may be, invalid or unenforceable, the Declarant and Developer make no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks as to the validity and enforceability thereof, and by accepting a deed to a Lot, agrees that the Declarant, the Developer, and the Association shall have no liability with respect thereto.

2.3 **Views Not Guaranteed.** Although certain Lots in the Development currently may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot. Neither the Declarant nor the Developer nor the Association makes any representation or warranty whatsoever, express or implied, concerning the view that any Lot will have whether as of the date this Declaration is recorded or thereafter. Any view that currently exists for a Lot may be impaired or obstructed by further construction within or outside the Development, including, without limitation, by construction of improvements (including landscaping) by the Developer or the Association, construction by third parties and by the natural growth of landscaping. No third party, including without limitation any broker or sales person, has any right to bind the Declarant, the Developer, or the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

3. PERMITTED USES AND RESTRICTIONS.

3.1 **Residential Use.** The Lots in Development shall be single-family residential Lots only, and there may be erected on any one Lot not more than one single family residence in accordance with applicable zoning, and such accessory and auxiliary guest houses, garages, and other structures which are incidental to single-family residential use. No other buildings shall be erected on any of said Lots.

3.2 **Subdividing.** No Lot shall be re-subdivided into smaller Lots nor conveyed or encumbered in less than the full original dimensions of such Lot as shown by the recorded Plat or a plat of any Additional Properties. Nothing herein contained shall prevent the dedication or conveyance of portions of Lots for public utility purposes, in which event the remaining portion of such Lots shall, for the purpose of this provision, be treated as a whole Lot.

3.3 **Parking.** All vehicles and equipment owned by an Owner, or owned by anyone living with or renting or leasing from an Owner, shall be kept in a private garage. No motor vehicle that is under repair or not in operating condition shall be placed or permitted to remain on any street or streets, or any portion of any Lot, or Lots, unless it is within an enclosed garage or structure. Owners shall be responsible for providing a minimum of two (2) off-street parking spaces, which shall be in the Lot driveway, and for seeing that, insofar as possible, the moving traffic street lanes adjacent to their Lots are kept free of parked vehicles.

3.4 **Fences.** There shall be no fencing except for specific purposes such as screening, child containment, animal control, or architectural effect. Plans showing the length,

height, design, material, finishes, and colors of fences must be in compliance with the Architectural, Landscaping and Construction Guidelines and be submitted to and approved in writing by the Committee.

- 3.5 **General Upkeep.** All yard equipment, garbage cans, and service yards shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring parcels and streets. No clotheslines are allowed. All rubbish, trash, or garbage shall be removed from the premises of all Lots and shall not be allowed to accumulate thereon. No antenna or broadcasting tower shall be erected on any of the said Lots, except that a television antenna may be constructed and maintained within the attic of any approved building and a satellite dish may be installed if (a) it is screened so as not to be visible from the street or any neighboring property, and (b) such installation has been specifically approved by the Committee.
- 3.6 **Sewage.** All bathrooms, toilets, or sanitary conveniences shall be connected to sewer lines. There shall not be allowed any outside portable lavatories, outside toilets, or open plumbing.
- 3.7 **Tanks.** No elevated tanks of any kind shall be erected, placed, or permitted on any Lots. No tank shall be installed without the prior approval of the Committee.
- 3.8 **Animals.** No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house pets, shall be maintained on any Lot. All determinations as to what constitutes a reasonable number of and what are generally recognized house pets shall be made by the Committee. No animals shall be allowed to make an unreasonable amount of noise or become a nuisance. Any structure for the care, housing, or confinement of any animal shall be constructed or maintained only with the prior written approval of the Committee. Pets shall be leashed when not confined within a fenced area or residence. Persons walking any pets within the Property shall remove promptly from the Property the excrement of the pet.
- 3.9 **Construction Permitted.** All structures erected must be of new construction, and no buildings or structures may be moved from any other location, other than a point of distribution or manufacture, onto any of said Lots or tracts. All roofs must be of either tile, slate, 40 year or more architectural shingles or similar material approved by the Committee.
- 3.10 **Minimum Livable Area.** All single-family residences constructed shall contain a minimum livable area of 1,800 square feet. The size calculation shall be for square footage on grade level. All square footage requirements shall be exclusive of open porches, pergolas, or attached or detached garages.
- 3.11 **Plan Approval.** No leveling, excavation, grading, planting, landscaping, residence, outbuilding, fence, or wall, or other improvement or installation, shall be commenced, erected, placed, or altered on any Lot, until the plans and specifications therefor, showing the nature, kind, shape, materials, floor plans, and locations shall have been submitted to and approved by the Committee, as provided for in Article 4.

and a copy thereof is finally approved and lodged permanently with the Committee. The Committee shall have the right to refuse to approve any such plans or specifications that are not suitable or desirable in its opinion for aesthetic reasons, or not in accordance with the overall quality of the Property, or any other reason, and in so passing upon such plans and specifications, the Committee shall have the right to take into consideration any relevant factors including, but not limited to, the suitability of the proposed building or other structure, and the material that is to be used, the site upon which it is proposed to be erected, the harmony with the surroundings, and the effect of the proposed structure on the outlook from adjacent or neighboring property. Additionally, plans must comply with City of Prescott requirements.

- 3.12 **Commencement and Completion of Construction.** No garage or similar structure shall be erected on any Lot until construction of the primary single-family residence (complying with this Declaration) shall have been commenced on said Lot, and no garage or shed shall be occupied or used until construction of said single-family residence is finished and ready for occupancy. Any garage or similar structure erected on any Lot shall be of the same design and constructed of the same materials as the permanent residence of said Lot. All construction must be completed within twelve (12) months after commencement. All front-yard landscaping must be installed within ninety (90) days after issuance of final inspection, per approved landscape plan.
- 3.13 **Permanent Structure.** No garage, trailer, mobile home, motor home, motor vehicle, or any temporary structure of any nature may be used temporarily or permanently as a residence of any Lot. Except as may be otherwise permitted by the Committee under the authority granted in Article 4 hereof, all permanent structures shall comply with all minimum yard setback requirements established by the zoning ordinances of the City of Prescott as they may be amended from time to time.
- 3.14 **Mail Box.** Each Owner shall obtain the approval of the Committee of the location, design, and construction of the mail box.
- 3.15 **Commercial Activities.** No hotels, store, multi-family dwelling, boarding house, guest ranch, children's day care, nursing-type facilities, or any other place of business of any kind other than home office activities, and no hospital, sanitarium, or other place for the care or treatment of the physically or mentally sick or for the treatment of disabled animals shall be erected or permitted upon the premises of any Lot, or any part thereof.
- 3.16 **Signs.** No advertising signs, billboards, or unsightly objects shall be erected, placed or permitted to remain on any of said Lots except as may be approved by the Committee or as may be required by law.
- 3.17 **Lot Maintenance.** The Owners of all Lots shall keep the same reasonably clean and clear of weeds and trash, and properly maintain same, so as not to cause unsightly or dangerous condition, and if such Owner should fail after ten (10) days' written notice

from the Association to do so, the Association shall have the right to enter upon such Lot and may cause the same to be cleaned, and charge the actual cost thereof to the Owner of such Lot, and said charges shall be a lien against such Lot. Each Owner shall maintain all landscaping on the Lot, and any landscaping within the road right-of-way adjoining the Lot, except for those areas maintained by the Association.

- 3.18 **Drainage.** No Owner shall divert or cause diversion of the surface water from the street adjacent to his Lot onto any other Lot. No Owner shall interfere with the flow of water in drainage areas or otherwise interfere with natural water flow. The provisions of this paragraph shall be subordinate to the City of Prescott subdivision regulations governing such drainage.
- 3.19 **Utility Easements.** All Lots are subject to a public utilities easement for the purpose of permitting installation and maintenance of public utilities, and no excavation, planting, fence, building, structure, or other barrier or impediment may be placed by the Owner of any Lot or permitted to remain at any point of any public utility easements that would restrict the free use and enjoyment of said easements.
- 3.20 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and, then, only for the shortest time reasonably necessary to effect such collection.
- 3.21 **Diseases and Insects.** No Owner shall permit any thing or condition to exist upon any Lot that shall induce, breed, or harbor infectious plant diseases or noxious insects.
- 3.22 **Air-Conditioning Equipment.** No heating, air conditioning, or refrigeration equipment shall be placed, allowed, or maintained anywhere other than on the ground unless screened or concealed, as approved by the Committee, in such manner that the screening or concealment thereof appears to be part of the integrated architectural design of the building and does not have the appearance of a separate piece or pieces of machinery, fixtures or equipment.
- 3.23 **Utility and Service Lines.** No gas, electric, power, telephone, water, sewer, cable television, or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any Lot, except to the extent, if any underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above-ground switch cabinets and transformers where required.
- 3.24 **Burning and Incinerators.** No open fires or burning shall be permitted on any Lot at any time, and no incinerators or like equipment shall be placed, allowed, or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

3.25 **Nuisances; Construction Activities.** No odors or loud noises shall be permitted to arise or emit from any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive, or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber, and other building materials will be located only within the Lot boundaries in such areas as may be approved in writing by the Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of improvements may be kept only within the Lot boundaries in areas approved by the Committee, which may also require screening of the storage areas. The Committee, in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this section shall not apply to construction activities of the Developer.

4. **ARCHITECTURAL CONTROL COMMITTEE.**

- 4.1 **Organization.** The Committee shall initially be the Developer or shall consist of three (3) members appointed by the Developer. None of the members shall be required to be a Lot Owner or an architect or to meet any other particular qualifications for membership.
- 4.2 **Initial Members.** The initial members of the Committee shall be appointed by the Developer.
- 4.3 **Terms of Office.** Unless the initial members of the Committee have resigned or been removed by the Developer or the Board, their terms of office shall expire at the time all Lots are developed, sold, and recorded, and the appointment of their respective successors. Thereafter, the term of each member of the Committee shall be for a period of three (3) years and until the appointment of his or her successor.
- 4.4 **Appointment and Removal.** The right to appoint and remove all members of the Committee is vested in the Developer until such time as the Developer turns such right over to the Board. Thereafter, the right to appoint and remove all members of the Committee shall be vested fully in the Board; provided, however, that no member may be removed from the Committee by the Board except by the vote or written consent of two-thirds (2/3^{ds}) of all the members of the Board.
- 4.5 **Application and Approval.** Two (2) copies of the complete plans and specifications of any proposed structure or alteration to a structure and the site location therefor must be submitted to the Committee, together with such fee or fees as the Committee determines in its sole discretion to be reasonable or necessary to defray the cost of its review and the professional evaluation of such plans and specifications, if any. At

least one (1) copy of said plans and specifications shall be retained by the Committee. In the event that a written request for such approval is not acted upon within forty-five (45) days after the receipt by the Committee of said request, then such approval will not be required; provided, however, that no structure may be constructed that conflicts with any specifically delineated restriction contained herein or with any applicable zoning or use law.

- 4.6 **Waiver.** The approval by the Committee of any plans, drawings, or specification for any work done or proposed, or for any other matter requiring the approval of the Committee, 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.
- 4.7 **Meetings and Compensation.** The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two (2) regular members at a meeting, or otherwise, shall constitute the act of the Committee. Members of the Committee shall not be entitled to compensation for their services.
- 4.8 **Committee Rules.** The Committee may, from time to time, and in its sole discretion, adopt, amend, and repeal by unanimous vote or written consent, rules and regulations. The Rules may set forth the standards and procedures for the Committee review and guidelines for construction architectural design, placement of buildings, landscaping, color scheme, exterior finishes, materials and similar features which are recommended for use within the Property.
- 4.9 **Liability.** Neither the Committee, nor any member thereof, shall be liable to the Association, any Owner, or to any other person or entity for any damage, loss or prejudice suffered or claimed on account of:
 - 4.9.1 Approval or disapproval of any plans, drawings, or specifications, whether or not defective;
 - 4.9.2 The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
 - 4.9.3 The development of any of the Property, including any Common Property, Common Area, Open Space, or facility; or
 - 4.9.4 The execution and filing of any estoppel certificate, 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 the member.

Without any way limiting the generality of any of the foregoing provisions of this section, the Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Committee for review.

4.10 **Committee Insurance.** The Committee is authorized to and may, prior to the Transition Date, acquire directors and officers insurance or a form of insurance similar thereto, insuring the Committee and its members from claims arising from or relating to Committee conduct authorized herein. Following the Transition Date, the Committee shall acquire insurance.

5. **THE ASSOCIATION, MEMBERSHIP, AND VOTING RIGHTS.**

5.1 **Organization.** The Association is a perpetual nonprofit corporation under the laws of the State of Arizona and is charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted to be inconsistent with this Declaration. In the event of the inconsistency between the Articles or Bylaws and this Declaration, this Declaration shall govern.

5.2 **Control of the Association and Maintenance of the Common Property.** The Association shall become responsible for the maintenance, repair, operation, and improvement of the Common Property, Common Area, Open Space, and any facilities thereon, if any, and shall be responsible for the payment of all costs in connection therewith, including property taxes, insurance premiums, and all utilities used in connection therewith. The Association shall be responsible for the maintenance, repair, and improvement of the drainage easements and street side easements as set forth on the Plat and any plat of Additional Properties. Assessments may be made to the Lot Owners for maintenance of the Common Property, Common Area, Open Space, and drainage easements as set forth in this Declaration and in the Bylaws and for any other purposes set forth herein.

5.3 **Board of Directors and Officers.** Until the Transition Date, all directors and officers of the Association shall be appointed or elected by the Developer. When all Lots in the Development have been sold, the Developer shall call a meeting of Members (Owners) for the purposes of taking over the management of the Association. At such meeting, the Owners shall elect, by a plurality of the votes cast, no fewer than three (3) and no more than five (5) persons to the Board of Directors of said Association, all of whom shall be Owners in the Development. Quorum requirements and election of officers of the Association shall be as set forth in the Bylaws. The meeting at which the new Board of Directors is elected by the Owners shall be known as the "Transition Date." The newly elected Board of Directors shall estimate the expenses necessary to operate, maintain, and improve as desired the Common Property, Common Area, Open Space, and any facilities thereon, and may include an appropriate reserve if the Board determines there is any Common Property, Common Area, Open Space, or facilities thereon that will require reserve funds for repair or replacement. The Board shall assess equally for the payment of said expenses and reserves, if any, shall set up all necessary procedures for collection and disbursement of said funds.

5.4 **Powers and Duties of the Association.** The Association shall have the following powers herein granted or necessarily implied, which it shall exercise in its sole discretion, construing the powers herein granted and implied to the broadest extent consistent with the best interest of the members:

- 5.4.1 Employ, by contract or otherwise, a manager or an independent contractor or a professional management company to oversee, supervise, and follow out the express intention and spirit of this Declaration; and
- 5.4.2 Employ professional counsel and seek advice from such persons and firms such as, but not limited to, landscape architects, recreational experts, architects, planners, biologists, lawyers, accountants; and
- 5.4.3 Employ or contract for water, area maintenance, and renovation of Common Property, Common Area, Open Space, and facilities, if any;
- 5.4.4 Borrow and repay monies giving notes, mortgages, or other security inferior to the rights of existing mortgages, if any, upon such term or terms as it deems necessary; and
- 5.4.5 Create, in its sole discretion, various services and make appropriate charges therefore to the users thereof and/or each individual Owner, in connection with the maintenance and management of the Association's properties, provided that such services shall be available to all Members upon the payment of charges so established, and to avail itself of any rights granted by law without being required to render such services to those members who do not assent to the same charges and to such other rules and regulations as the Association deems proper. In addition, the Association shall have the right to discontinue any service upon non-payment, while the charges remain unpaid, or to eliminate services for which there is inadequate demand or inadequate funds; and be the final judge of all aesthetic matters and acts in its sole discretion without liability to any Member, with the exception of those matters pertaining to architectural control, which shall be the responsibility of the Committee.
- 5.4.6 To, in its sole discretion, bring suit and settle claims, before and after suit, which bind the Owners and Members.

5.5 **Power of Attorney.** Whenever the Association is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do an act, including but not limited to action or acts in connection with the Common Property, Common Area, or Open Space, or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including but

not limited to executing, acknowledging, and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest or by signing a contract for the purchase of a Lot or by succeeding in any other manner to the ownership of Lot, or any interest therein, or a membership in the Association, and that each Owner and Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

- 5.6 **The Association Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the Association Rules. The Association Rules may restrict and govern the use of the Common Property, Common Area, or Open Space, and facilities; provided, however, that the Association Rules may not discriminate among Owners (unless there is determined to be a logical and reasonable necessity for distinguishing the rights, duties, obligations, and benefits of Owners) and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each owner.
- 5.7 **Personal Liability.** No member of the Board, the Developer, the Declarant, or any committee of the Association, or any officer of the Association, or any agent of the Board or Association shall be personally liable to any Owner or Member for any act, omission, error, or negligence of the Association, the Board, its agents, or any other representatives or employees of the Association, or any other committee, or any officer of the Association, provided that such person, committee, or agent has, upon the basis of such information as may be possessed, acted in good faith without willful or intentional misconduct.
- 5.8 **Board Insurance.** The Board is authorized to and may, prior to the Transition Date, acquire directors' and officers' insurance or a form of insurance similar thereto, insuring the Board and its members from claims arising from or relating to Board conduct authorized herein. Following the Transition Date, the Board shall acquire the insurance.
- 5.9 **Membership.** Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot (or tract) that is subject to assessment. A membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of a Lot to a new Owner, or by intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process. Any attempt to make a prohibited transfer of membership shall be void and shall not be reflected upon the books of the Association. The Association shall record the proper transfer of ownership upon the books of the Association, thus effecting the issuance of a new membership to a new Owner. It is the responsibility of the new Owner and prior Owner to notify the Association in writing of the purchase of a Lot and, prior to such notification, the Association is entitled to rely on its records of ownership.

5.10 **Voting.** At all meetings of the Association after the Transition Date, each member shall be entitled to one (1) vote for each Lot owned. Joint owners shall be deemed one (1) Member and may cast only one (1) vote per Lot owned. Voting shall be in accordance with the provisions of the Bylaws.

5.11 **Association Finances.** Prior to the Transition Date the Developer or the Board, and after the Transition Date the Board, shall be entitled to impose and collect assessments and establish reserves, as hereinafter set forth, for the maintenance and replacement of Common Property, Common Areas, Open Space, or facilities. No later than one hundred eighty (180) days after the end of each Association fiscal year, the Board shall provide for an annual financial audit, review or compilation of the Association. Owners or Members are hereby given notice that prior to the Transition Date the Developer will be subsidizing services that the Association is providing. The financial audit, review or compilation shall include a disclosure of the amount by which the Developer is providing or subsidizing services that the Association is or will be obligated to provide. The audit, review or compilation shall be available upon request to the Owners or Members within thirty (30) days after its completion, and such availability shall constitute notice and disclosure to the Owners or Members of the financial condition of the Association.

5.12 **Reserves.** Any reserves collected by the Association or otherwise shall be deposited in a separate reserve bank account or accounts. The responsibility of the Developer, Board or Association shall be only to provide for such reserves as they deem reasonable from time to time, and neither the Developer, Board nor Association shall have any liability to any Owner or Member or to any other person if such reserves prove to be inadequate. In the event that regular assessments are determined to be insufficient to provide for adequate reserves, the Board may initiate a special assessment to accumulate adequate reserves.

6. ASSESSMENTS.

6.1 **Creation of Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

6.1.1 Annual assessments or charges relating to or incurred as a result of the upkeep, repair, maintenance, insurance, or improvement of the Common Property, Common Area, Open Space, and facilities thereon, if any, and a pro rata share of any and all taxes and assessments paid by the Association relating thereto and all Association operating costs.

6.1.2 Special assessments for expenses, maintenance, capital improvements, reserves, payment of taxes, and any other appropriate purpose, such assessments to be established and collected as herein provided.

The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a continuing lien upon the Lot(s) against which each such

assessment is made to the extent permitted by Arizona statute. Each assessment, together with interest, costs, and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of any such Lot at the time when the assessment fell due.

- 6.2 **Annual Assessment.** Until otherwise determined by the Board, the initial annual assessment for any Lot shall be the sum of Three Hundred And No/100 Dollars (\$300.00). The annual assessment for Lots shall be established by the Board. The annual assessment may be increased each year by not more than 20 percent over the assessment for the previous year unless otherwise allowed by Arizona law.
- 6.3 **Special Assessments.** In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, costs and expenses related to Common Property, Common Area, Open Space, and facilities thereon, for reserves and for any other appropriate purpose.
- 6.4 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all similar-type Lots and may be collected on a monthly, quarterly, semiannual, or annual basis. However, the amount of the assessment of any one year and from year to year may vary between undeveloped, developed, and improved Lots.
- 6.5 **Commencement of Assessments.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board.
- 6.6 **Effect of Non-Payment of Assessment; Remedies of the Association.** Each Owner of any Lot shall be deemed to covenant and agree to pay to the Association the assessments specified herein. In the event the Association employs an attorney for the collection of any assessment, whether by suit or otherwise, or to enforce compliance with the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and Member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by Arizona law or without any limitation of the foregoing, by either or both of the following procedures:
 - 6.6.1 **Enforcement by Suit.** The Board may cause a suit to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the

rate of eighteen percent (18%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner.

6.6.2 **Enforcement by Lien.** There is hereby created a claim of lien, with power of sale, on each and every Lot within the Development to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots under these restrictions, together with interest thereon at the legal rate from the date of delinquency, and all costs of collection that may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. The lien set forth herein may be enforced pursuant to applicable Arizona statute or should no applicable Arizona statute exist, any such lien may be foreclosed as a realty mortgage or deed of trust pursuant to Arizona law.

6.7 **Declarant and Developer Lots.** Except as may otherwise be provided herein, Lots owned by the Declarant or the Developer shall not be subject to assessment under the Declaration until conveyed by the Declarant or the Developer to another Owner who is not a successor Declarant or successor Developer. The Developer, however, will be responsible for property taxes on Lots owned or beneficially owned by the Developer.

6.8 **Sale or Transfer.** Sale or transfer of any Lot shall not affect the assessment lien or relieve such Owner or residence from liability for any assessments thereafter becoming due or from the lien thereof, nor shall sale or other conveyance relieve the previous Owner from personal liability for assessments that became due prior to such sale or other conveyance.

6.9 **Non-Use or Abandonment.** No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property, Common Area, Open Space, or abandonment of his or her Lot.

6.10 **Subordination.** An assessment lien shall be junior and subordinate to the lien of any institutional lender's first realty mortgage against an Owner's Lot, and foreclosure of an assessment lien shall not affect or impair the lien of any such institutional realty mortgage. Any institutional mortgage foreclosure purchaser or grantee taking by deed in lieu of foreclosure shall take the Lot free of the assessment lien and charges that have accrued to the date of issuance of a sheriff's deed or deed in lieu of foreclosure, but shall become subject to the assessment lien and all assessments and charges accruing subsequent to the issuance of a sheriff's deed or deed given in lieu of foreclosure. An institutional lender's deed of trust under this section shall be deemed to have, to the extent permitted under Arizona law, rights and remedies equivalent to those granted above to an institutional mortgagee.

7. **COMMON PROPERTY AND DRIVEWAYS.**

- 7.1 **Common Property, Common Area, and Open Space.** All areas designated for use as Common Property, Common Area, and Open Space, if any, on the Plat and any plat of Additional Properties, and easements for Common Property, Common Area, and Open Space, if any, as shown on the Plat and any plat of Additional Properties, shall, so long as owned by the Association, be for the use and benefit of all Members of the Association and their Guests and invitees, including Members by virtue of new land added pursuant to this Declaration. Unless otherwise authorized by a vote of two-thirds (2/3rds) of the Members, these areas shall be left in their natural state, unless used for trails, walkways, driveways, parking areas, appropriate signs, recreational amenities, landscaping, and easements for utilities and/or drainage.
- 7.2 **Common Driveways.** The Lots, as set forth on the Plat and any plat of Additional Properties, contemplate that each Lot is to have vehicular access to the residence by means of a driveway. Some of these driveways will be located wholly within the property lines of the applicable Lot while other Lots may be served by common driveways located wholly or partially upon an adjacent property or the Common Property, Common Area, or Open Space, if any. Each Owner served by a common driveway shall have and is hereby granted a nonexclusive easement for free and unrestricted pedestrian and vehicular access to his property by means of the common driveway. Neither the Association nor any Owner of any Lot over which any portion of a common driveway traverses shall in any way interfere with the easement access thereby. Except with respect to the foregoing easement, the existence of a common driveway shall not affect the ownership of the property over which said driveway easement runs.
- 7.3 **Maintenance of Lots and Driveway Easements.** Each Owner shall at all times maintain the yard and landscaping thereon and the exterior of the structures thereon in neat and clean condition and repair. Any damage or destruction shall be repaired promptly. Easements for driveways shall be maintained in suitable condition for passenger car travel and shall have dust free, hard surfaces. Maintenance expenses for driveways within an easement for common driveways shall be shared equitably by the Owners of the Lots that they service, unless the repairs are necessitated by the acts of a single Owner (for example during construction), in which case that Owner shall be responsible for repairs. If the Owners cannot agree as to the responsibility for, or adequacy of, repairs, the Board shall decide.
- 7.4 **Non-Liability.** The Association shall not be liable for any theft, vandalism, disturbance, unauthorized entrance or other similar occurrence, accident, injury, death, or property damage which may take place on any of the Property.
- 7.5 **Damage or Destruction of Common Area by Owners.** In the event any Common Area is damaged or destroyed by an Owner or any member of his family, such Owner hereby authorizes the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of

the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association, and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

7.6 **Association Easement.** An easement over the Lots and to the extent no owned by the Association, the entirety of the tracts or Common Property, Common Area, and Open Space, is hereby provided for the benefit of the Association in order for it to carry out its duties and responsibilities, including providing necessary utilities and services and providing access for those similar purposes.

8. **RIGHT TO ADD ADDITIONAL PROPERTIES.** The Developer individually or through the Declarant, as Trustee of the trust described herein, at the Developer's election, shall have the exclusive right to extend from time to time the areas subject to this Declaration. Such Additional Properties, when added, shall become part of the Property and the Development. Any new land subject to this Declaration shall be added as follows:

The Developer and the Declarant, their successor, or assigns, shall record in the office of the County Recorder of Yavapai County, Arizona, a supplement to this Declaration (hereinafter called "Supplemental Declaration"), signed by the Declarant and the Developer, which Supplemental Declaration shall (a) describe the new land being subjected to these covenants, and (b) state what additions, deletions, or other changes or modifications have been made in the provisions hereof with respect to such new land.

9. **MISCELLANEOUS.**

9.1 **Interpretation.** The Association, if any, shall have the exclusive right to interpret and construe this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's interpretation of the covenants hereunder shall be final, conclusive, and binding upon all persons and upon the premises.

9.2 **Notice of Noncompliance.** The Board may, but shall not be required to, at any reasonable time, inspect a Lot or improvement and, upon discovering a violation of this Declaration, provide a written notice of noncompliance to the Owner, including a reasonable time limit within which to correct the violation. If an Owner fails to comply within such time period, the Board or its authorized agents may, but shall not be required to, enter the Lot and correct the violation at the expense of the Owner of such Lot, or may take whatever action it deems appropriate, including commencement of an action for specific performance.

9.3 **Enforcement.** Corrective measures shall be initiated by written notice to the Owner by the Board of the condition which requires correction. The Owner shall have a right of hearing and a right of appeal. If the Owner fails to commence and diligently pursue the corrective measures as noticed or finally ordered, the Board may, but shall not be required to, enter, or cause its agent or employee to enter, upon the Lot and

accomplish the corrective measures and the cost thereof shall be assessed against the Lot as a special assessment and may be secured by a lien.

9.4 **Performance Deposit for Builders.** After approval of the Committee, but prior to the start of construction, the designated builder/general contractor shall deposit with the Association an amount to be specified by the Board, but not less than One Thousand Dollars (\$1,000), for each Lot upon which construction is about to commence.

The full amount deposited shall be refunded to the builder/general contractor upon completion of construction, less the amounts, if any, deducted for any fines imposed by the Association for failure to observe and abide by any requirements set forth in this Declaration or in any guidelines provided by the Association. The Association shall provide a current copy of the Declaration and any such guidelines to the builder/general contractor upon payment of the deposit, or earlier upon request.

The Board may establish or revise a schedule of fines from time to time, but generally fines will range from Fifty Dollars (\$50) to Two Hundred Fifty Dollars (\$250) for each offense. The Association may, in its sole discretion, elect to issue an initial verbal warning, and impose fines only if a violation is repeated or continues following such warning.

Should the amount of fines for a given Lot exceed the builder's deposit, the difference will be charged to the Owner as a special assessment on the Lot. Further, in such event, the Association shall advise the Owners of any undeveloped Lots that the builder/general contractor in question failed to observe the contractor Guidelines, and suggest that said Owners may wish to consider retaining a different builder/general contractor when they construct their future homes.

9.5 **Severability.** Invalidation of any of these covenants or restrictions by judgment or court order shall in no ways affect any other provisions, which shall be in full force and effect.

9.6 **Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the perpetuities start to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those that could be used in determining the validity of the challenged interest, plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

9.7 **Waiver.** The Declarant and/or the Developer may, at any time prior to the Transition Date, and the Board and/or the Committee may waive, at their sole discretion, any requirements of this Declaration. Such waiver may materially change the character of the Development or the burdens on the Owners.

9.8 **Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land until December 31, 2040, after which they shall be automatically extended for successive periods of ten (10) years. Except as hereinafter provided, the Declarant and/or the Developer may, at any time prior to the Transition Date, amend this Declaration, which amendment may materially change the character of the Development or the burdens on the Owners. After the Transition Date, the Owners, by a vote of sixty-seven percent (67%) of the Owners, either in person or through a written consent, may amend this Declaration except as hereinafter provided. No amendment to the Declaration shall affect the rights, exclusions, or exemptions granted to the Declarant or the Developer without the Declarant's or the Developer's prior written consent, which consent shall be granted or withheld at the sole discretion of the Declarant or the Developer. Any amendment shall be signed by the Declarant and the Developer or their successors or by the president of the Association and must be recorded. Except as otherwise set forth herein, the Association may not be dissolved unless some other entity has agreed to assume the operation and maintenance responsibility of the Association.

9.9 **Statutory Amendments.** The Association and/or this Declaration may be governed by certain laws, statutes or other governmental regulations (collectively referred to as Governmental Regulations). In the event that any portion of a provision of this Declaration is in violation of a current or future Governmental Regulation, such portion of the provision shall be interpreted as being modified to comply with such Governmental Regulation as though correctly set forth herein and neither the Developer, Board nor Association shall have any duty to record an amended declaration.

9.10 **Violations and Nuisances.** Every act or omission whereby any provision in 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 release sought is for negative or affirmative action, by Declarant, the Developer, the Association, or any Owner or Owners of Lots within the Development. However, any other provision to the contrary notwithstanding, only the Declarant, the Developer, the Association, or the Committee, or the duly authorized agent of any of them, may enforce by self help any of the provisions of this Declaration. The failure to enforce any breach or violation of any of the provisions of this Declaration shall not constitute an abandonment or waiver of any right to enforce such provision in the future or of any of the other covenants herein set forth.

9.11 **Violation of Law.** Any violation of any state, municipal, county, or local law, ordinance, or regulation, pertaining to the ownership, occupation, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

9.12 **Remedies Cumulative.** Each remedy provided by this Declaration is cumulative and not exclusive.



9.13 **Delivery of Notices and Documents.** Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the last known address or addressee.

9.14 **Reference to Covenants in Deeds.** Deeds to and instruments affecting any Lot or any part of the Development may contain the covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and the all heirs, executors, administrators, successors, and assigns.

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

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

9.17 **Captions and Titles.** All captions, title, or headings of the sections in this Declaration are of the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

9.18 **City of Prescott Land Development Code.** The City of Prescott Land Development Code (Amended January 11, 2005) is effective as of the effective date of this Declaration, pursuant thereto:

9.18.1 The City of Prescott (City) or its lawful agents shall have the right, after due notice to the Association, to remove any landscape systems, features or elements that cease to be maintained by the Association; to perform the responsibilities of the Association if the Association fails to do so in compliance with any provisions of the agreements, covenants or restrictions

of the Association or of any applicable City codes or regulations; to assess the Association and/or the individual lot owners for all costs incurred by the City in performing said responsibilities if the Association fails to do so; and/or to avail itself of any other enforcement actions available to the City pursuant to state law or City codes or regulations; and

9.18.2 The Association and Owners shall hold the City harmless from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the City's removal of any landscape systems, features or elements that cease to be maintained by the Association or from the City's performance of the aforementioned operation, maintenance or supervision responsibilities of the Association due to the Association's failure to perform said responsibilities.

9.19 **Hillside Ordinance.** Lots 1, 2, 5, 6, 7, 8, 10, 11, 12, 17, 27, 28, 33, 35, and 36 identified on the Plat have a maximum disturbable building envelope area less than the typical building envelopes created by the setbacks described in the City of Prescott Land Development Code and as shown on the typical setbacks and street side easements detail on sheet 1 of 3 of the Plat. The lot specific disturbable building envelopes are on file in the City of Prescott Building Department. The disturbable building envelopes of the aforementioned Lots cannot exceed 50% of the total lot area.

Should the City of Prescott Land Development Code and/or Hillside Ordinance be revoked or modified which results in deletion or modification of requirements set forth herein, then paragraphs 9.18 and 9.19 shall be deleted or modified in accordance therewith.

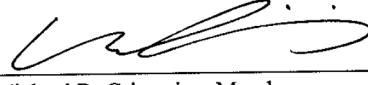
IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the 14th
day of August, 2006.

FIRST AMERICAN TITLE INSURANCE
AGENCY, INC.

By: Deeceal Heathcock
TRUST OFFICER, Authorized Agent

IN WITNESS WHEREOF, the Developer has also executed this Declaration as of the
14 day of August, 2006.

ASPEN CREEK HOLDINGS,, LLC

By: 

Michael R. Crimmins, Member

By: 

Robert Myrick, Member

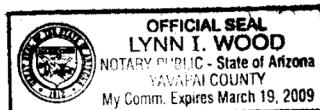
STATE OF ARIZONA)
) ss.
County of Yavapai)

On this 14 day of August, 2006, before me, the undersigned Notary Public, personally appeared David Lauterbach, who acknowledged himself/herself to be the Trust Officer of First American Title Insurance Agency, Inc., an Arizona corporation, and that he/she, as such officer/agent, being authorized so to do, executed the foregoing instrument for the purpose therein contained.


Notary Public

My Commission Expires:

3/19/09



SEAL

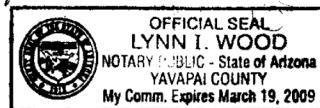
STATE OF ARIZONA)
) ss.
County of Yavapai)

On this 14 day of Aug 15, 2006, before me, the undersigned Notary Public, personally appeared Michael Crimmins, who acknowledged himself to be a member of ASPEN CREEK HOLDINGS, LLC, an Arizona limited liability company, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

Lynn T. Wood
Notary Public

My Commission Expires:

3-19-09



SEAL

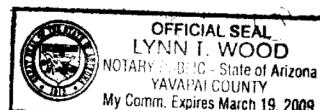
STATE OF ARIZONA)
) ss.
County of Yavapai)

On this 14 day of Aug 15, 2006, before me, the undersigned Notary Public, personally appeared Robert Myrick, who acknowledged himself to be a member of ASPEN CREEK HOLDINGS, LLC, an Arizona limited liability company, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

Lynn T. Wood
Notary Public

My Commission Expires:

3-19-09



SEAL