

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
THE RANCH at Prescott Unit Two, Townhomes

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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE RANCH at Prescott Unit Two, Townhomes

THIS DECLARATION is made on the 30th day of July, 1985, by Bullwhacker Associates, a limited partnership, (herein referred to as the "Declarant").

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of the real property located in Yavapai County, Arizona, which is described on Exhibit A attached hereto; and

WHEREAS, Declarant intends to develop Townhouses (as that term is hereinafter defined) on said real property and desires to impose certain easements, restrictions, covenants and conditions on said real property to protect the value and desirability of said property;

NOW, THEREFORE, the Declarant hereby declares that all of the real property described on Exhibit A attached hereto shall be held, sold and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with said real property and be binding on all parties having any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1. "Architectural Committee" means the committee established by the Board of pursuant to Section 2.4 of this Declaration.

Section 1.2. "Architectural Committee Rules" means the rules adopted by the Architectural Committee, as such rules may be amended from time to time.

Section 1.3. "Articles" means the Articles of Incorporation of the Association which have been or will be filed in the Office of the Corporation Commission of the State of Arizona, as such Articles may be amended from time to time.

Section 1.4. "Association" means THE RANCH at Prescott Unit Two, Townhomes Homeowners Association, an Arizona nonprofit corporation, its successors and assigns.

Section 1.5. "Association Rules" means the rules and regulations adopted by the Association, as such rules may be

amended from time to time.

Section 1.6. "Board" means the Board of Directors of the Association.

Section 1.7. "Bylaws" means the bylaws of the Association, as such bylaws may be amended from time to time.

Section 1.8. "Common Area" means all real property, and all Improvements located thereon, and access easements shown thereon owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot to a Purchaser is described as follows:

Tracts A and B, THE RANCH at Prescott Unit Two, Townhomes.

Section 1.9. "Declarant" means Bullwhacker Associates, a limited partnership, its successors and any person or entity to whom it may expressly assign its rights under this Declaration; provided, however State Savings Mortgage Company, an Ohio Corporation shall become the Declarant if it succeeds to the ownership of all or any part of the Property.

Section 1.10. "Declaration" means the covenants, conditions and restrictions herein set forth in this entire document, as such Declaration may be amended from time to time.

Section 1.11. "First Mortgage" means any mortgage or deed of trust with first priority over any other mortgage or deed of trust.

Section 1.12. "First Mortgagee" means the holder of any First Mortgage.

Section 1.13. "Improvement" means buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, planting, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 1.14. "Lot" means any parcel of real property designated as a lot on the Plat.

Section 1.15. "Member" means any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

Section 1.16. "Owner" means the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or

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(ii) a lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section *et seq.*, the Trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement the beneficiary of any such trust shall be deemed to be the Owner.

Section 1.17. "Plat" means the plat of survey of THE RANCH at Prescott Unit Two, Townhomes, which plat has been recorded with the County Recorder of Yavapai County, Arizona, in Book of Maps, page , and all amendments thereto.

Section 1.18. "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules and Architectural Committee Rules.

Section 1.19. "Property" or "Project" means the real property described on Exhibit A attached to this Declaration together with all buildings and other Improvements located thereon, and all easements, rights and appurtenances belonging thereto.

Section 1.20. "Purchaser" means any person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot.

Section 1.21. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of no more than three (3) persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 1.22. "Single Family Residential Use" means the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county, or municipal rules and regulations.

Section 1.23. "Townhouse" means any portion of a building situated upon a Lot which is designed and intended for independent ownership for use and occupancy as a residence by a Single Family and which is connected by a party wall to another portion of the same building which portion is also designed and intended

for independent ownership for use and occupancy as a residence by a Single Family.

Section 1.24. "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II

ASSOCIATION

Section 2.1. Rights, Powers and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration.

Section 2.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a board of directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and the Bylaws.

Section 2.3. 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. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner. 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 by the Board, 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 2.4. Architectural Committee. The Board shall establish an Architectural Committee consisting of not less than three (3) members appointed by the Board to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board.

Section 2.5. Master Association. The Project is a part of a master planned community known as THE RANCH at Prescott. The Project shall be subject to the future restrictions, easements, and all other conditions of THE RANCH at Prescott Master Plan as approved or amended by the Yavapai County Board of Supervisors, and the future Master Declaration, Articles of Incorporation, and Bylaws, (Master Association Documents) of THE RANCH at Prescott.

ARTICLE III

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MEMBERSHIP

Section 3.1. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 3.2. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

ARTICLE IV

VOTING RIGHTS

Section 4.1. Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to twelve (12) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of (a) when the votes entitled to be cast by Class A members exceeds the votes entitled to be cast by the Class B member, or (b) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

Section 4.2. Joint Ownership. When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he 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 and said votes shall be deemed void.

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Section 4.3. Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the chief executive officer, if any, of such corporation, partnership or association shall have the power to vote the membership, and if there is no chief executive officer, then the board of directors or general partner of such corporation, partnership or association shall designate who shall have the power to vote the membership.

Section 4.4. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current, and for a period not to exceed sixty (60) days for any infractions of the Project Documents.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) special assessments and (3) extraordinary assessments. The annual supplemental, special and extraordinary assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 5.2. Purpose of the Assessments. The assessments levied by the Association shall be used exclusively for the upkeep, maintenance and improvement of the Common Area and such portions of the Lots, and such portions of the improvements located thereon, as the Association is obligated to maintain under Section 9.2 of this Declaration and for promoting the recreation, health, safety and welfare of the Owners and residents of Lots.

Section 5.3. Maximum Annual Assessment.

(a) Until July 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment for each Lot shall be One Thousand Eight Hundred Dollars (\$1,800.00).

(b) From and after July 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the membership, increase the maximum annual assessment during each fiscal year of the Association by an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1967 = 100), or in the event said Index ceases to be published, by any index designated by the Board as a substitute therefore.

(c) From and after July 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment may be increased by an amount greater than the maximum increase allowed pursuant to 5.3(b) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. Written notice of any meeting called for such purpose shall be sent to all Members not less than thirty (30) days not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Not such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(d) The Board may fix the annual assessment in any amount not in excess of the maximum annual assessment.

Section 5.4. Special Assessments. In addition to the annual and supplemental assessments authorized above, the Board may cause the Association to levy, in any assessment year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose. Special assessments shall be paid on such dates and in such installments as may be determined by the Board.

Section 5.5. Extraordinary Assessments. In addition to annual, supplemental and special assessments, the Association may levy an assessment against an Owner, and such Owner's Lot, for the following expenses: **1742 PAGE 286**

(a) Any expenses caused by the misconduct of such Owner;

(b) Any expense incurred by the Association pursuant to Section 9.5 of this Declaration as a result of the Owner's failure to maintain his Lot, and the Improvements located thereon, in accordance with the terms of this Declaration;

(c) Any expense incurred by the Association pursuant to Section 9.4 of this Declaration as a result of damage or destruction of the Common Area by an Owner or as a result of the interference by an Owner with the activities of the Association in connection therewith;

(d) Any expense incurred by the Association pursuant to Section 9.2 of this Declaration;

(e) If the premiums for insurance obtained by the Association on the Lots, and the Improvements located thereon, pursuant to Section 11.1(b) of this Declaration are not billed directly to each Owner, then each Owner shall be assessed his proportionate share of the cost of such insurance as determined by the Board based upon the value of the Improvements insured and such other factors as the Board may deem proper in making such allocations;

(f) Any insurance premiums paid by the Association for and on behalf of any Owner who fails to pay any insurance premium billed directly to him pursuant to Section 11.5 of this Declaration.

(g) All costs incurred by the Association enforcement of the provisions of the Project Documents against an Owner, including but not limited to attorneys' fees and court costs.

Section 5.6. Date of Commencement of Annual Assessmental Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 5.7. Effect of Nonpayment of Assessmental Remedies of the Association. Any assessment, or any installment of an assessment, not paid within thirty (30) days after the assess-

ment, or the installment of the assessment, first became due shall bear interest from the due date at such rate as may be fixed from time to time by the Board. In addition, if any assessment, or any installment of an assessment, is not paid within ten (10) days after it becomes due and payable, the Owner who has failed to pay such assessment shall be obligated to pay a late charge in such amount as may be established from time to time by the Board. Any assessment, or any installment of an assessment, which is delinquent shall become a continuing lien on the Lot against which such assessment was made. The lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (1) the name of the delinquent Owner as shown on the records of the Association, (2) the legal description, street address and number of the Lot against which the claim of lien is made, (3) the amount claimed as of the date of the recording of the notice including interest, lien recording fees and reasonable attorneys' fees, (4) the name and address of the Association. In the event the Association records a Notice of Claim of Lien against a Lot, the Owner of such Lot shall be obligated to pay to the Association a lien fee in such amount as may be established from time to time by the Board. The Association's lien shall have priority over all liens or claims created subsequent to the recordation of the Notice of Claim of Lien except for tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens which are specifically described in Section 5.11 of this Declaration.

Before recording a lien against any Lot the Association shall make a written demand to the defaulting Owner for payment of the delinquent assessments together with interest and reasonable attorneys' fees, if any. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section 5.10 until all delinquent assessments, interest, lien fees and reasonable attorneys' fees have been paid in full whether or not all of such accounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection of any delinquent assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent assessments and such action may be brought without waiving any lien securing any such delinquent assessments or (b) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase,

acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 5.8. Subordination of the Lien to Mortgages. The lien of the Association for delinquent assessments, interest and reasonable attorneys' fees provided for on this Declaration shall be subordinate to the lien of any First Mortgage. Any sale or transfer of Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer, but any assessments or charges against the Lot which accrued prior to such sale or transfer shall remain the obligation of the Owner of the Lot at the time when such assessments and charges became due and payable. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 5.9. Exemption of Owner. No Owner of a Lot may exempt himself from liability for annual, special, supplemental, or extraordinary special assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.

Section 5.10. Maintenance of Reserve Fund. Out of the annual assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements on the Lots as the Association is obligated to maintain under Section 9.2 of this Declaration.

Section 5.11. No Offsets. All annual, special, supplemental and extraordinary assessments shall be payable in accordance with the provisions of this Declaration, and no offsets against such assessments shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

Section 5.12. Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

ARTICLE VI

PERMITTED USES AND RESTRICTIONS

Section 6.1. Residential Use. All Lots shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any Lot. Nothing herein shall be deemed to prevent the leasing of a Lot to a Single Family from

time to time by the Owner thereof, subject to all of the provisions of the Project Documents. Any Owner who leases his Lot shall promptly notify the Association and shall advise the Association of the term of the lease and the name of each lessee. All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property without the prior written approval of the Architectural Committee.

Section 6.2. Animals. No animals, birds, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any property and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be visible from Neighboring Property. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section 6.2, a particular animal is a generally recognized house or yard pet, or nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be final and shall be enforceable to the same extent as other restrictions in this Declaration.

Section 6.3. Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other forms of electromagnetic radiation shall be erected, used or maintained outdoors on any property, whether attached to a building or structure or otherwise, unless approved by the Architectural Committee.

Section 6.4. Utility Service. Except as approved in writing by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

Section 6.5. Improvements and Alterations. No Improvements, alterations, repairs, excavation, landscaping or other work which in any way alters the exterior appearance of any Lot or the Improvements located thereon, from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to a Purchaser, shall be made or done without the prior written approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, landscaping, residence or other structure (except for Improvements initially constructed by the Declarant) shall be com-

menced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Committee. No change or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee. Its decision shall be final and no Owner or other parties shall have recourse against the Architectural Committee for its refusal to approve any such plans and specifications or plot plan, including lawn area and landscaping.

Section 6.6. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time on any portion of the Property for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

Section 6.7. Trucks, Trailers, Campers and Boats. No mobile home, motor home, trailer, truck, camper, truck with a camper shell, boat, boat trailer or similar vehicle or equipment shall be parked, kept, placed, maintained, constructed, reconstructed, serviced or repaired upon any street (public or private), Lot, Common Area or other property; provided, however, that the provisions of this Section 6.7 shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee.

Section 6.8. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any Lot, Common Area, street (public or Private) or other property so as to be Visible From Neighboring Property; provided however, the provisions of this Section 6.8 shall not apply to emergency repairs. Without the written approval of the Board, no automobile, motorcycle, motorbike, or other motor vehicle shall be parked upon any street (public or private) within the Project.

Section 6.9. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property, and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. No nuisance shall be permitted to exist or operate upon any property so as to be offensive or detrimental to any other property or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes shall be located, used or placed on any property.

Section 6.10 Trash Containers and Collection. No garbage or trash shall be placed or kept on any property except in cover-

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ed containers of a type, size and style which are approved by the Architectural Committee. 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. The Board shall have the right to require all Owners to place their garbage or trash containers at a specific location for collection or to require all Owners to subscribe to a trash collection service. All rubbish, trash and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area.

Section 6.11. Clothes Drying Facilities. Outside clothes lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any property.

Section 6.12. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures, or other improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Property.

Section 6.13. Restriction on Further Subdivision and Time Shares. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owners, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board. Neither the ownership nor occupancy of any Lot shall be in time shares. No owner shall transfer, sell, assign or convey any time share in his Lot and any such transaction shall be void. "Time Share" as used in this Section 6.13 shall mean the right to occupy a Lot or any one of several Lots during five (5) or more separated time periods of less than thirty (30) days per period over a period of at least five (5) years, including renewable options, whether or not coupled with an estate or interest in a Lot or a specified portion of a Lot.

Section 6.14. Signs. No signs whatsoever (including, but not limited to, commercial, advertising, "for sale", "for rent", "open house", political and similar signs) shall be erected or maintained anywhere on the Property including but not limited to, the inside or outside of windows in any building located on the Property, except:

- (a) Such signs as may be required by legal proceedings;
- (b) Not more than one (1) residential identification sign with a total face area of one hundred forty-four (144) square inches or less for each Lot; and
- (c) Such signs as may be approved from time to time by the Board or the Declarant.

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Section 6.15. Declarant's Exemption. Notwithstanding any other provision of the Project Documents, it shall be expressly permissible for the Declarant or its duly authorized agents, employees and representatives to maintain during the period of construction and sale of Lots such facilities, structures and signs as are necessary or convenient, in the sole opinion of the Declarant, to the sale of the Lots, including, but without limitation, a business office, storage area, construction yards, construction trailer, model units or homes and sales offices.

Section 6.16. Mineral Exploration. No property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

Section 6.17. Diseases and Insects. No thing or condition which could induce, breed or harbor infectious plant diseases or noxious insects shall be allowed to exist on any Lot, Common Area or other property within the project.

ARTICLE VII

EASEMENTS

Section 7.1. 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 utilities, including, but not limited to, water, sewers, gas, telephone, electricity and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary police and other necessary facilities and equipment on the Common Area.

Section 7.2. Easement for Encroachments. The Declarant presently intends to construct Townhouses on the Lots, with one Townhouse located on each Lot. In the event a Townhouse constructed on a Lot encroaches upon or overhangs another Lot or the Common Area, a valid easement for such encroachment or overhang and for the maintenance of same, so long as it stands, shall and does exist. In the case of an overhang, such easement shall include an easement for drainage or water runoff from such overhang. In the event a building containing Townhouses is partially or totally destroyed and then rebuilt, the Owners agree that encroachments and overhangs on adjacent Lots due to construction shall be permitted and that a valid easement for said encroachments and overhangs and the maintenance thereof shall exist.

Section 7.3. Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their family, guests, tenants and invitees for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same form time to time may exists upon the Common Area and for vehicular traffic over, through and across

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such portions of the Common Areas as from time to time may be paved and intended for such purposes, and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

Section 7.4. Association's Right of Entry. During reasonable hours, the Association, any member of the Architectural Committee, any member of the Board or any authorized representative of them, shall have the right to enter upon and inspect any Lot, excluding the interior of any residence located thereon, for the purpose of making inspections to determine whether the provisions of the Project Documents are being complied with by the Owner or occupants of said Lot.

Section 7.5. Association's Easement for Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purposes of repairing, maintaining and replacing the Common Area including, without limitation, and those portions of the Lots which the Association is obligated to maintain under Article IX of this Declaration, and performing any maintenance or repairs which the Association elects to perform pursuant to Section 9.6 hereof.

ARTICLE VIII PROPERTY RIGHTS

Section 8.1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- a) the right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and all facilities located thereon;
- b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- c) the right of the Association to suspend an Owner's right to use the recreational facilities for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Project Documents;
- d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by the Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by members present in person or by proxy at a meeting duly called for such purpose.

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e) the right of Declarant and its agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to the non-exclusive use, without charge, of the Common Area for maintenance of sales facilities, and display and exhibit purposes.

Section 8.2. Delegation of Use. Any Owner may delegate, subject to the project Documents, his right of enjoyment to the Common Area, and the facilities located thereon, to the member of his family, his tenants, his guests or invitees, provided such delegation is for a reasonable number of persons and at reasonable times. An Owner who has made such a delegation of rights shall not be entitled to the use or enjoyment of the Common Area for so long as such delegation remains in effect.

Section 8.3. Limitations. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from such Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.

ARTICLE IX

MAINTENANCE

Section 9.1. Maintenance of Common Area by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval of the Owners being required, take such actions as the Board deems necessary in order to maintain, repair, replace, preserve and protect the Common Area including, without limitation, any of the following:

a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon the Common Area (to the extent that such work is not done by a governmental entity, if any, responsible for maintenance and repair of such area);

b) Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, or driveway and parking area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and repair of such area);

c) Replace injured and disease trees or other vegetation in the Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

d) Place and maintain upon the Common Area such signs as the Board may deem appropriate for the proper identification,

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use and regulation thereof.

Section 9.2. Maintenance by Association of Landscaping on Lots. The Association shall maintain, repair and replace the landscaping on the Lots except for landscaping which is located within individual yard or patio areas or any other area enclosed by a fence or wall. In the event the need for maintenance, repair or replacement of any portion of the Lots which are to be maintained by the Association pursuant to this section 9.2 is caused by the willful or negligent act of an Owner, his family, guests, invitees or animals for whom he is legally responsible under Arizona law, the Association shall cause the maintenance or repair to be performed, and the cost of such maintenance or repair shall be levied against such Owner, and his Lot, by the Association as an extraordinary assessment pursuant to Section 5.6 of this Declaration.

Section 9.3. Maintenance of Lots By Owners. Each Owner shall be solely responsible for the maintenance, repair and replacement of all improvements located on his Lot (except for the landscaping to be maintained by the Association pursuant to Section 9.2 of the Declaration) including; without limitation, the following:

- a) The exterior of his Townhouse including, without limitation, the roofs and exterior paint;
- b) The interior of his Townhouse including the interior of any yard, patio, garage or other area enclosed by a fence or wall and the contents thereof, and any air conditioning unit, heating unit, hot water heater and other fixtures and equipment which service his individual Townhouse. This obligation shall include, without limitation, the maintenance, repair and replacement of windows, doors, and all interior surfaces of the Townhouse, including, without limitation, floors, ceilings, interior wall surfaces, sheet rock (plaster board) or wall coverings;
- c) Any fixtures or pipes within his Townhouse and any utility lines or pipes from the Lot line to his Townhouse;
- d) Such landscaping as is located within any individual yard or patio area or any other area enclosed by a fence or wall.

No Owner of a Lot shall do any work which will impair the structural integrity of the building in which his Townhouse is located or which will adversely affect any other Townhouse or the Common Area. No Owner shall perform any maintenance or repair work which would alter the exterior appearance of his Townhouse without the prior written approval of the Architectural Committee.

Section 9.4 Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection

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therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be levied against such Owner and his Lot by the Association as an extraordinary assessment pursuant to Section 5.6 of this Declaration.

Section 9.5. Termite and Pest Control. The Association shall have the right, but not the obligation, to perform, or contract to have performed on behalf of the Association, termite and pest control service for the Lots, and the Improvements located thereon, except for the interior of the Townhouse located thereon. In the event the Association exercises its right under the Section 9.5 to provide termite and pest control service to the Lots, the cost of such service shall be a common expense of the Association and shall be assessed to the Owners as part of the annual assessment levied by the Association. If the Association does not exercise its right under this Section 9.5 to provide termite and pest control service to the Lots, then each Owner shall be responsible for performing, or contracting to have performed, such termite and pest control service for his Lot as is necessary to keep his Lot, and the Improvements located thereon, free from termites and pest infestation.

Section 9.6 Nonperformance by Owners. If any Owner fails to maintain any portion of his Lot, and the Improvements located thereon, which he is obligated to maintain under the provisions of the Project Documents, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be levied against such Owner and his Lot by the Association or an extraordinary assessment pursuant to Section 5.6 of this Declaration.

Section 9.7. Payment of Utility Charges. Each Townhouse shall be separately metered for water, sewer and electrical service, and all charges for such service to the Townhouses shall be the sole obligation and responsibility of the Owner of each Lot. All bills for water, sewer and electrical service to the Common Area shall be billed to the Association, and the Association shall be responsible for the payment of such charges. The cost of water, sewer and electrical service to the Common Area shall be a common expense of the Association and shall be included in the budget of the Association.

ARTICLE X

PARTY WALLS

Section 10.1. Rights and Duties of Adjoining Owners. The rights and duties of Owners of Lots with respect to party walls placed on the boundary line between separate Lots, including a wall dividing separate Townhouses, shall be governed by the following provisions:

- (a) Each of the adjoining Owners shall assume the

burden and be entitled to the benefit of the restrictive covenants contained in this Declaration, and to the extent not inconsistent with this Declaration, the general rules of law regarding party walls shall be applied;

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the adjoining Owners of such wall in proportion to the use thereof, without prejudice, however, to the right of any Owner to require a larger contribution from the adjoining Owner under any rule of law regarding liability for negligent or willful acts or omissions;

(c) In the event any party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

(d) Notwithstanding any other provision of this Article X, an Owner who, by his negligent or willful act, causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

(e) The right of any Owner to contribution from any other Owner under this Article X shall be appurtenant to the land and shall pass to such Owners and their successors in title;

(f) In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Townhouse in any manner which requires the extension or other alteration of a party wall shall first obtain the written consent of the adjoining Owner;

(g) Notwithstanding any other provision of the Article, no party wall shall be altered penetrated or modified in any way whatsoever; provided, however, that nothing set forth herein shall prevent the Owner or Occupant of a Townhouse from hanging pictures, works of art or other decorative items from a party wall;

(h) In the event of a dispute between Owners with respect to the repair or the rebuilding of a Party wall or with respect to sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as made from time to time to be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the Owners, and the third by the two so chosen, or, if the arbitrators do not agree as to the selection of the third arbitrator within five (5) days, then by any Judge of the Superior Court of Yavapai County,

Arizona. A determination of the matter signed by any two of the arbitrators shall be binding upon the Owners who shall share the cost of the arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt or request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators;

(i) The provisions of his Article shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting the party wall except such as took place while he was an Owner.

ARTICLE XI

INSURANCE

Section 11.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

(b) Property insurance on the Improvements located on the Lots insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Lots, and all Improvements located on the Lots, as determined by the Board; provided however, that the total amount of insurance after application of any deductibles shall not be less than one hundred (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from a property policy;

(c) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and all other portions of the Property which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

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(d) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(e) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, and the directors and officers thereof, or the Owners;

(f) The Insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(1) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(2) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(3) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgages or beneficiaries under deeds of trust;

(4) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(5) Statement of the name of the insured as "THE RANCH Homeowners Association";

(6) For policies of hazard insurance, a standard mortgagee providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

(g) If there is a steam boiler in connection with the Common Area, boiler explosion insurance evidenced by the standard form of boiler machinery insurance policy and providing coverage in the minimum amount of \$50,000.00 per accident per location;

(h) If the Property is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended;

(i) "Agreed Amount" and "Inflation Guard" endorsements.

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Section 11.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 11.3. Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, without limitation, any management agent to whom the Association has delegated some or all of the responsibility for the handling of such funds. The total amount of fidelity bond coverage shall be based upon the best business judgement of the Board, and shall not be less than the greater of (i) the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association of the management agent, as the case may be, at any given time during the term of each bond, (iii) the sum equal to three months assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

(a) The fidelity bonds shall name the Association as an obligee;

(b) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;

(c) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association and each First Mortgagee.

Section 11.4. Payment of Premiums for Insurance on Common Area. The premiums for any insurance obtained by the Association covering the Common Area pursuant to Section 11.1(a) of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

Section 11.5. Payment for Premiums for Insurance on Lots. With respect to premiums for insurance obtained by the Association pursuant to Section 11.1(b) of this Declaration, the Association may either (i) pay the premiums, in which case the amount of such premiums shall be included in the budget of the Association and each Owner shall be assessed his proportionate share of such premium in accordance with Section 5.6 of this

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Declaration, or (ii) direct the insurer, or his agent, to bill each Owner directly for the portion of the premium applicable to the insurance for the Improvements located on such Owner's Lot which are insured under the policy obtained by the Association. If the Association elects to have the premium for such insurance billed directly to the Owners, and if any Owner fails to pay, when due, his proportionate share of the premium for such insurance, the Association may pay such Owner's share of the premium and such amount paid by the Association shall be assessed against such Owner's Lot as an extraordinary assessment in accordance with Section 5.6 of this Declaration.

Section 11.6. Insurance Obtained by Owners. Each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense covering his personal property and fixtures in his Townhouse and providing personal liability coverage to the extent such insurance is not obtained by the Association.

Section 11.7. Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association, and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 11.8 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area. With respect to any loss to any Lot, or the Improvements located thereon, which is covered by property insurance obtained by the Association, the loss shall be adjusted with the Owner of said Lot and the proceeds shall be payable to said Owner and any holders of liens on said Lot as their interests may appear.

Section 11.8. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

ARTICLE XII

RIGHTS OF FIRST MORTGAGES

Section 12.1. Limitation on Right of First Refusal. If the Project Documents are amended to include a right of first

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refusal, such right of first refusal shall not impair the rights of a First Mortgagee to:

- (a) Foreclose or take title to a Lot pursuant to the remedies provided in the mortgage;
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagee; or
- (c) Sell or lease a Lot acquired by the mortgagee.

Section 12.2. First Mortgagee Not Liable for Prior Assessments. Any First Mortgagee or any other party acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims of unpaid assessment and charges against the Lot which become payable prior to the acquisition of such Lot by the First Mortgagee or other party. Any assessments and charges against the Lot which accrue prior to its such sale or transfer shall remain the obligation of the defaulting owner of the Lot.

Section 12.3. First Mortgagee's Right of Inspection of Records. Any First Mortgagee will, upon written request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

Section 12.4. Limitation on Partition and Subdivision. No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

Section 12.5. Prior Written Approval of First Mortgagees. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each Lot covered by such First Mortgage) or Owners (other than the sponsor, developer or builder) of the individual Lots have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection (a));

- (b) Change the method of determining the obligations,

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assessments, dues or other charges which may be levied against a Lot Owner;

(c) By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, and the improvements located thereon, the maintenance of the Common Area, party walks or fences and driveways, or the upkeep of lawns and plantings in the Project;

(d) Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

Section 12.6. Implied Approval of First Mortgagee. With respect to any provision of the Project Documents which requires the approval of First Mortgagees, a First Mortgagee shall be deemed to have approved a proposed action if such First Mortgagee fails to submit a response to any written request for approval of the proposed action within thirty (30) days after the request is made.

Section 12.7. Notification to First Mortgagee of Default by Owner. A First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by an Owner of the Lot subject to the mortgage of any obligation under the Project Documents which is not cured within sixty (60) days.

Section 12.8. Insurance Proceeds and Condemnation Awards. No Owner, or any other party, shall have priority over any rights of a First Mortgagee of a Lot pursuant to its mortgage in the case of a distribution to the mortgagor of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 12.9. Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Project Documents, the provisions of this Article shall prevail, provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Project Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the project, or (iii) certain actions of the Association as specified in Section 12.5, of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant shall in no event be deemed a waiver of the right to do so thereafter.

Section 13.2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 13.3. Duration. The covenants and restrictions of this Declaration (as the same may be amended from time to time pursuant to the provisions of Section 14.4. hereof) shall run with and bind The Property for a term of twenty (20) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 13.4. Amendment by Owners. Subject to the provisions of Article XIII of this Declaration, this Declaration may be amended at any time prior to the termination of the Class B membership in the Association by an instrument signed by Owners representing more than fifty percent (50%) of the total authorized votes in the Association. After the termination of the Class B membership, this Declaration may be amended by an instrument signed by Owners representing seventy-five percent (75%) or more of the total authorized votes in the Association. Any amendment must be recorded.

Section 13.5. Amendment by Board or Declarant. Notwithstanding anything to the contrary in this Declaration, the Board or the Declarant so long as the Declarant owns any Lot in the Project shall have the right to amend this Declaration, without obtaining the approval or consent of any other Owner or mortgagee, in order to (i) conform the Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration, or (ii) comply with any condition imposed by any leading institution as a condition to lending funds upon the security of any Lot.

Section 13.6. Violations and Nuisance. 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, by Declarant, the Association or any Owner.

Section 13.7. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation,

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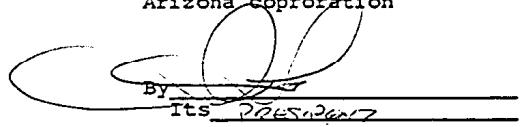
pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 13.8. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

Dated this 30th day of July 1985.

BULLWHACKER ASSOCIATES, an
Arizona limited partnership

By: LEE-MURPHY LIMITED, an
Arizona corporation

By 
Its John Lee

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before
me this 30 day of July, 1985, by John Lee,
the general partner of Bullwhacker Ranch, an Arizona partner-
ship, on behalf of the partnership.

Susan Handel nee. Favour
Notary Public

My Commission Expires:

My Commission Expires May 29, 1988

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SEARCH

EXHIBIT A

THE RANCH
at Prescott

Legal Description
Unit TWO-Town Homes

Beginning at the Southeast corner of the Southwest Quarter of the Southeast Quarter of Sec. 31, T. 14 N., R. 1 W., GSRBM; thence N. 00° 33' 35" E. 270.00' to the point of curvature of a curve to the left; thence, S. 74° 20' 24" W. along the chord of said curve a distance of 125.69' to the TRUE POINT OF BEGINNING. (Said curve having a delta of 32° 26' 22", a radius of 225.00', a tangent of 65.45', and a length of 127.39').

Thence, along the arc of a curve to the Left having a length of 111.17', a delta of 28° 18' 37", a radius of 225.00', a tangent of 56.75', a chord bearing of S. 43° 57' 53" W., and chord length of 110.05';

thence, S. 80° 40' 00" W. a distance of 140.00';

thence, S. 43° 15' 00" W. a distance of 130.00';

thence, S. 05° 00' 00" W. a distance of 250.00';

thence, S. 37° 50' 00" W. a distance of 70.00';

thence, S. 84° 50' 00" W. a distance of 175.00';

thence, N. 28° 00' 00" W. a distance of 410.00';

thence, N. 41° 45' 00" W. a distance of 50.00';

thence, N. 48° 15' 00" E. a distance of 185.00';

thence, along the arc of a curve having a length of 117.44', a delta of 28° 56' 40", a radius of 232.47', a tangent of 60.00', a chord bearing of N. 62° 43' 20" E., and a chord length of 116.19';

thence, N. 77° 11' 40" E. a distance of 234.48';

thence, along the arc of a curve having a length of 254.47', a delta of 59° 23' 20", a radius of 245.50', a tangent of 140.00', a chord bearing of S. 73° 06' 40" E., and a chord length of 243.23';

thence, S. 43° 25' 00" E. a distance of 50.00';

thence, along the arc of a curve having a length of 34.23', a delta of 78° 27' 47", a radius of 25.00', a tangent of 20.41', a chord bearing of S. 82° 38' 54" E., and a chord length of 31.62' to the TRUE POINT OF BEGINNING.

Containing 5.803± acres

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