



**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
JASPER**

Tom H. Wilson, Jr.  
2806 Gertrude Street  
Riverside, California 92506

## Table of Contents

<b>Article I - Creation of the Community.....</b>	<b>1</b>
1.1 Purpose and Intent. ....	1
1.2 Binding Effect. ....	1
1.3 Governing Documents. ....	1
<b>Article II - Concepts and Definitions.....</b>	<b>2</b>
<b>Article III - Use and Conduct .....</b>	<b>5</b>
3.1 Framework for Regulation. ....	5
3.2 Owners' Acknowledgment and Notice to Purchasers. ....	5
3.3 Rule Making Authority. ....	5
3.4 Protection of Owners and Others.....	5
<b>Article IV - Architecture and Landscaping.....</b>	<b>6</b>
4.1 General.....	6
4.2 Architectural Review. ....	7
4.3 Guidelines and Procedures. ....	7
4.4 No Waiver of Future Approvals. ....	9
4.5 Variances. ....	9
4.6 Limitation of Liability. ....	9
4.7 Enforcement.....	9
4.8 Hook-up and Impact Fees. ....	10
<b>Article V - Maintenance and Repair .....</b>	<b>10</b>
5.1 Maintenance of Lots.....	10
5.2 Maintenance of Neighborhood Property.....	11
5.3 Responsibility for Repair and Replacement. ....	11
<b>Article VI - The Association and Its Members.....</b>	<b>12</b>
6.1 Function of the Association. ....	12
6.2 Membership. ....	12
6.3 Voting. ....	12
6.4 Neighborhoods.....	12
<b>Article VII - Association Powers and Responsibilities .....</b>	<b>13</b>
7.1 Acceptance and Control of Association Property.....	13
7.2 Maintenance of Area of Common Responsibility.....	13
7.3 Insurance. ....	14
7.4 Compliance and Enforcement.....	14
7.5 Implied Rights: Board Authority.....	15
7.6 Indemnification of Officers, Directors, and Others. ....	15

7.7	Safety and Security.....	15
7.8	Provision of Services. ....	15
7.9	View Impairment. ....	16
7.10	Relationship with Neighborhood Associations. ....	16
7.11	Facilities and Services Open to the Public. ....	16
<b>Article VIII - Association Finances.....</b>		<b>16</b>
8.1	Budgeting and Allocating Common Expenses. ....	16
8.2	Budgeting and Allocating Neighborhood Expenses. ....	17
8.3	Budgeting for Reserves.....	17
8.4	Special Assessments.....	18
8.5	Benefitted Assessments.....	18
8.6	Commencement of Obligation: Time of Payment. ....	18
8.7	Obligation for Assessments.....	18
8.8	Lien for Assessments.....	19
8.9	Limitation on Increases of Assessments.....	20
8.10	Exempt Property.....	20
8.11	Transfer Fee/Working Capital Assessment. ....	21
<b>Article IX - Expansion of the Community .....</b>		<b>21</b>
9.1	Expansion by Declarant. ....	21
9.2	Expansion by the Association.....	21
9.3	Additional Covenants and Easements.....	22
9.4	Effect of Filing Supplemental Declaration. ....	22
<b>Article X - Additional Rights Reserved to Declarant .....</b>		<b>22</b>
10.1	Withdrawal of Property. ....	22
10.2	Marketing and Sales Activities. ....	22
10.3	Right to Develop.....	22
10.4	Right to Designate Sites for Governmental, and Public Interests.....	22
10.5	Right to Approve Additional Covenants. ....	23
10.6	Right to Approve Changes in Community Standards.....	23
10.7	Right to Transfer or Assign Declarant Rights. ....	23
10.8	Easement to Inspect and Right to Correct.....	23
10.9	Right to Notice of Design or Construction Claims. ....	23
10.10	Exclusive Rights To Use Name of Development. ....	23
10.11	Declarant's Marks.....	23
10.12	Declarant as Attorney in Fact. ....	24
10.13	Termination of Rights.....	24

<b>Article XI - Easements.....</b>	<b>24</b>
11.1 Easements in Common Area .....	24
11.2 Easements of Encroachment. ....	25
11.3 Easements for Utilities. Etc.....	25
11.4 Easements to Serve Additional Property.....	25
11.5 Easements for Maintenance, Emergency and Enforcement. ....	26
11.6 Easements for Lake and Pond Maintenance and Flood Water.....	26
11.7 Easements for Cross-Drainage. ....	26
11.8 Rights to Storm Water Runoff Effluent and Water Reclamation. ....	26
<b>Article XII - Limited Common Areas .....</b>	<b>26</b>
12.1 Purpose.....	26
12.2 Designation.....	27
12.3 Use by Others.....	27
<b>Article XIII - Party Walls and Other Shared Structures .....</b>	<b>27</b>
13.1 General Rules of Law to Apply. ....	27
13.2 Maintenance: Damage and Destruction. ....	27
<b>Article XIV - Dispute Resolution and Limitation on Litigation.....</b>	<b>27</b>
14.1 Prerequisites to Actions Against Declarant. ....	27
14.2 Initiation of Litigation by Association.....	28
14.3 Dispute Notification and Resolution Procedure.....	28
14.4 Claims.....	28
14.5 Mandatory Procedures.....	29
<b>Article XV – Jasper Community Club.....</b>	<b>31</b>
15.1 Membership. ....	31
15.2 Conveyance of Club Facilities. ....	32
15.3 Rights of Access and Parking.....	32
15.4 Limitations of Amendments. ....	32
15.5 Jurisdiction and Cooperation. ....	32
<b>Article XVI - Mortgagee Provisions .....</b>	<b>33</b>
16.1 Notice of Action. ....	33
16.2 Examination of Books.....	33
16.3 Taxes, Assessments and Charges. ....	33
16.4 No Priority.....	33
16.5 Failure of Mortgagee to Respond.....	33
16.6 HUD/VA Approval. ....	33
<b>Article XVII - Private Amenities.....</b>	<b>34</b>



**Article XVIII - Changes in Ownership of Lots ..... 34**

**Article XIX - Changes in Common Area ..... 34**

**19.1 Condemnation. ....34**

**19.2 Partition. ....35**

**19.3 Transfer or Dedication of Common Area. ....35**

**19.4 Actions Requiring Owner Approval.....35**

**Article XX - Amendment of Declaration..... 35**

**20.1 Amendment. ....35**

**20.2 Exhibits. ....36**

**20.3 Term. ....36**

**20.4 Severability.....36**

## **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR JASPER**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") is made this \_\_\_\_\_, 2019, by Jasper EcoDev LLC, an Arizona limited liability company ("Declarant").

### **Article I - Creation of the Community**

#### **1.1 Purpose and Intent.**

Declarant, as owner of the real property described in Exhibit "A," intends by Recording this Declaration to create a general plan of development for the planned community known as Jasper, a master-planned community in Prescott Valley, Arizona. This Declaration provides a flexible and reasonable procedure for the future expansion of Jasper and provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising Jasper. An integral part of the development plan is the creation of Jasper Community Association, Inc., an association comprised of all Lot Owners within Jasper, to own, operate, and/or maintain various common areas and community improvements, and to administer and enforce this Declaration and the other Governing Documents.

This document is prepared pursuant to the Arizona Planned Communities Act, A.R.S. § 33-1801, *et. seq.*, and establishes a planned community as defined therein.

#### **1.2 Binding Effect.**

All property described in Exhibit "A," and any additional property subjected to this Declaration in the future, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Jasper, their heirs, successors, successors-in-title, and assigns.

Unless otherwise provided by Arizona law, this Declaration shall run with the land and have perpetual duration. This Declaration may be terminated only by a Recorded instrument signed by Owners of at least 80% of the Lots, and by otherwise complying with all city, county, or state requirements. In the event of termination, provision shall be made for the continued maintenance of any Common Area. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

This Declaration shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, by any means available at law or in equity, subject to the provisions of Article XV, if applicable.

If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

#### **1.3 Governing Documents.**

Jasper's Governing Documents consist of the following as they may be amended from time to time

(a) Declaration (recorded) - creates obligations and easements which are binding upon the Association and all present and future owners of Lots Supplemental Declaration adds property to Jasper; may impose additional obligations or restrictions on such property;

(b) Articles of Incorporation (filed with Arizona Corporation Commission) - establish the Association as a non-profit corporation under Arizona law;

(c) By-Laws (adopted by the Board of Directors) - govern the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.;

(d) Design Guidelines (adopted by Declarant) - establish architectural standards and guidelines governing all improvements and modifications to Lots and other real property in Jasper, including structures, landscaping, grading and all construction in Jasper;

(e) Use Restrictions (initial set attached as Exhibit "C") - govern use of property, activities, and conduct within Jasper; and,

(f) Board Resolutions (adopted by Board) - establish rules, policies, and procedures for internal governance and Association activities, regulate operation and use of Common Area.

The Governing Documents may be supplemented by additional covenants, restrictions and easements which a Neighborhood Association may administer. In such case, if there is a conflict between any of the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of such Neighborhood Association, the Governing Documents shall control.

Nothing in this Section shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of Jasper from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control.

The Governing Documents apply to all Owners and occupants of Lots, as well as to their respective tenants, guests, and invitees. Any lease on a Lot shall provide that the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents.

The foregoing summary of the Governing Documents is not intended to replace or supplement the express written or implied terms contained in the Governing Documents.

## **Article II - Concepts and Definitions**

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

**"Act"**: The Arizona Planned Communities Act, Arizona Revised Statutes, § 33-1801, et. seq., as it may be amended.

**"Architectural Review Committee"** or **"ARC"**: The committee established to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural controls described in Article IV.

**"Area of Common Responsibility"**: The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

**"Articles of Incorporation"** or **"Articles"**: The Articles of Incorporation of Jasper Community Association, Inc., as filed with the Arizona Corporation Commission, as may be amended.

**"Association"**: Jasper Community Association, Inc., an Arizona nonprofit corporation, its successors or assigns.

**"Base Assessment"**: Assessments levied on all Lots subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Lots.

**"Benefitted Assessment"**: Assessments levied against a particular Lot or Lots for expenses incurred or to be incurred by the Association for the purposes described in Section 8.5.

**"Board of Directors"** or **"Board"**: The body responsible for administration of the Association, selected as provided in the By-Laws and serving the same role as the board of directors under Arizona corporate law.

**"Builder"**: Any Person who purchases one or more Lots or parcels of land within Jasper for further subdivision, development, construction of Dwelling Unit(s), and/or resale in the ordinary course of its business.

**"By-Laws"**: The By-Laws of Jasper Community Association, Inc., as they may be amended.

“Class “B” Control Period”: The period during which the Class “B” Member is entitled to appoint a majority of the Board members. The Class “B” Control Period shall continue for as long as Declarant owns any portion of the property described in Exhibits “A” and “B” or until such time that Declarant, in its discretion, declares an end to Class “B” Control.

“Common Area”: All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of Owners, including such property as may be designated as Common Area by Declarant. The term shall include the Limited Common Area, as defined below, and may include, without limitation, recreational facilities, parks, entry features, signage, landscaped medians, right of ways, lakes, ponds, enhanced and native open space, and trails.

“Common Expenses”: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

“Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing throughout Jasper. Such standard shall be established initially by Declarant and may be more specifically defined in the Governing Documents. Subsequent amendments to such standard shall meet or exceed the standards set by Declarant and the Board during the Class “B” Control Period and the prevailing standard applicable to all of Jasper. The Community-Wide Standard may contain both objective and subjective elements and may evolve as development progresses and as the needs and demands of Jasper change.

“Declarant”: Jasper EcoDev LLC, an Arizona limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described in Exhibits “A” or “B” for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

“Design Guidelines”: The architectural, design, and construction guidelines and review procedures pertaining to Jasper, adopted and administered pursuant to Article IV, as they may be amended.

“Dwelling Unit”: Any building or structure or portion of a building or structure situated upon a Lot and which is intended for use and occupancy as an attached or detached residence for a single family.

“Governing Documents”: A collective term referring to the various documents described in Section 1.3, as each may be amended from time to time.

“Jasper”: The real property located in the Town of Prescott Valley, Yavapai County, Arizona consisting of that described in Exhibit “A,” together with such additional property as is made subject to this Declaration in accordance with Article IX. Exhibit “A” and each Supplemental Declaration which subject property to the Declaration shall provide a legal description of the Common Area included therein, if any. Jasper is intended to be a mixed-use master planned community, ultimately encompassing all of the property described in Exhibit “B” (but, except for the Exhibit “A” property, no portion of the Exhibit “B” property shall be governed hereby unless and until added by Supplemental Declaration).

“Limited Common Area”: A portion of the Common Area primarily benefitting one or more, but less than all, Neighborhoods, as more particularly described in Article XII.

“Lot”: A portion of Jasper, whether improved or unimproved, which may be independently owned and conveyed and on which a Dwelling Unit is intended for development, use, and occupancy. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Dwelling Unit, thereon. The boundaries of each Lot shall be delineated on a Plat.

Prior to Recordation of a subdivision Plat, a parcel of vacant land on which improvements are under construction shall be deemed to contain the number of Lots designated for residential use for such parcel on the applicable preliminary plat, or Declarant’s site plan, whichever is more current. Until a preliminary plat or site plan has been approved, such parcel shall contain the number of Lots set by Declarant in conformance with the Master Plans.

“Master Plans”: The master land use plans for the development of Jasper, as of the date of Recording this Declaration and as they may be amended, updated, or supplemented from time to time. The Master Plans include all of the property described in Exhibit “A” and all or any portion of the property described in Exhibit “B.” The



Master Plans may include subsequent Plats and plans approved by the Town of Prescott Valley, Arizona or other applicable governmental authorities. Inclusion of property on the Master Plans shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described in Exhibit "B" from the Master Plans on the date of Recording this Declaration bar its later submission to this Declaration as provided in Article IX.

**"Member"**: A Person who is a member of the Association pursuant to Section 6.2.

**"Mortgage"**: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

**"Neighborhood"**: A group of Lots designated as a Neighborhood, whether or not governed by a Neighborhood Association, as more particularly described in Section 6.4, for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Lots. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property.

**"Neighborhood Assessments"**: Assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Section 8.2.

**"Neighborhood Association"**: A condominium or other owners association, if any, having jurisdiction over any Neighborhood concurrent with (but subject to) the jurisdiction of the Association. Nothing in this Declaration shall require the creation of a Neighborhood Association.

**"Neighborhood Expenses"**: The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s).

**"Owner"**: One or more Persons who hold the record title to any Lot, but excluding in all cases any Person holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**"Person"**: A human being, a corporation, a partnership, a trust, or any other legal entity.

**"Plat"**: A Recorded engineering survey or other surveys for all, or any portion of Jasper, as amended and supplemented.

**"Private Amenities"**: Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within Jasper, which are privately owned and operated by Persons other than the Association for recreational and related purposes on a club membership basis or otherwise.

**"Record," "Recording" or "Recorded"**: To file, the filing, or filed of record in the Office of the County Recorder of Yavapai County, Arizona or such other place which is designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

**"Special Assessment"**: Assessments levied in accordance with Section 8.4.

**"Supplemental Declaration"**: A Recorded instrument which subjects additional property to this Declaration pursuant to Article IX, identifies Common Area within the additional property, designates Neighborhoods pursuant to Section 6.4, and/or imposes, expressly or by reference, additional restrictions, easements, and obligations on the land described in such instrument.

**"Use Restrictions"**: The initial use restrictions, rules, and regulations set forth in Exhibit "C," as they may be supplemented, modified, or repealed pursuant to Article III.

### Article III - Use and Conduct

#### 3.1 Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for Jasper, a framework of affirmative and negative covenants, easements, and restrictions governing Jasper. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. Therefore, this Article establishes procedures for modifying and expanding the initial Use Restrictions set forth in Exhibit "C." This Article is not intended to apply to or govern Board promulgated rules relating to the use and operation of the Common Area, which the Board may adopt by resolution pursuant to its general powers and authority.

#### 3.2 Owners' Acknowledgment and Notice to Purchasers.

**All Owners are given notice that use of their Lot(s) and the Common Area is limited by the Use Restrictions. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision and that the Use Restrictions may change from time to time as provided under Section 3.3 and that such changes may not be reflected in a Recorded instrument. All purchasers of Lots are on notice that the Association may have adopted changes.**

#### 3.3 Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Use Restrictions. To do so the Board shall send notice to all Owners at least five (5) business days prior to the Board meeting at which such action is to be considered. For this purpose, notice may be sent to each Owner by: U.S. mail; electronic telecommunication (i.e., fax or "e-mail"); or, publication in the community newsletter delivered or mailed to each Owner, provided that such notice is clearly identified under a separate headline in the newsletter. Members shall have a reasonable opportunity to be heard at the Board meeting prior to such action being taken.

Such action shall become effective, after compliance with subsection (c) below, unless Class "A" Members representing a majority of the total votes in the Association and the Class "B" Member, if any, disapprove. The Board shall have no obligation to call a meeting to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. Upon receipt of such petition, the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, the Class "A" Members representing a majority of the total votes in the Association, at a meeting duly called for such purpose, may adopt provisions which modify, cancel, limit, create exceptions to, or expand the Use Restrictions then in effect. Such action shall require the approval of the Class "B" Member, if any.

(c) Prior to any action taken under this Section becoming effective, the Board shall, in any manner permitted in subsection (a) above, send a copy of the new or modified Use Restrictions to each Owner. The effective date shall be not less than 30 days following distribution to Owners.

The Association shall provide, without cost, a single copy of the Use Restrictions then in effect to any requesting Member or Mortgagee. The Association may charge a reasonable fee for additional copies.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

(e) Use Restrictions may be Neighborhood specific. In such case, the references in this Article to Owners or Members shall be deemed to refer to the Owners or Members within the affected Neighborhood(s).

#### 3.4 Protection of Owners and Others.

Except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in Exhibit "C," all Association actions must comply with the following:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly; provided, the Use Restrictions and rules may vary by Neighborhood.

(b) Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside their Dwelling Units of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions with respect to such displays visible from or located outside the Dwelling Unit.

The Association shall not regulate the content of political signs; however, rules may regulate the time, place, and manner of posting such signs (including design criteria).

(c) Activities Within Dwelling Units. The Association shall not interfere with the activities carried on within the confines of Dwelling Units, except it may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling Unit, or that create an unreasonable source of annoyance.

(d) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(e) Allocation of Burdens and Benefits. The Association shall not alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the available Common Area, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(f) Abridging Existing Rights. The Association may not require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

(g) Reasonable Rights To Develop. No action by the Association or Board shall unreasonably impede Declarant's right to develop Jasper in accordance with the Master Plans and rights reserved to Declarant in this Declaration.

The limitations in this Section 3.4 shall only limit rulemaking authority exercised under Section 3.3; they shall not apply to amendments to this Declaration adopted in accordance, with Article XX.

#### **Article IV - Architecture and Landscaping**

##### **4.1 General.**

No structure of thing shall be placed, erected, installed, or posted on Jasper and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within Jasper, except pursuant to approval in compliance with this Article and the Design Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Dwelling Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Dwelling Unit visible from outside the structure shall be subject to approval.

All Dwelling Units constructed on any portion of Jasper shall be designed by and built in accordance with the approved plans and specifications unless Declarant or its designee otherwise approves in its sole discretion.



This Article shall not apply to the activities of Declarant for so long as Declarant owns any property described in Exhibits "A" or "B," nor shall it apply to the Association during the Class "B" Control Period.

#### 4.2 Architectural Review.

(a) By Declarant: New Construction. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for original construction within Jasper. Declarant's rights reserved under this Article shall continue so long as Declarant owns any property described in Exhibits "A" or "B," unless earlier terminated in a written instrument executed and Recorded by Declarant. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and shall owe no duty to any other Person.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate or assign all or a portion of its reserved rights under this Article to any other Person or committee, including the Architectural Review Committee. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through an architectural review committee appointed by the Board (the "ARC"), shall assume jurisdiction over architectural matters. The ARC, when appointed, shall consist of at least three, but not more than five, Persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and such amount, if any, as the Board may establish.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Association or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees: Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other Persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget.

#### 4.3 Guidelines and Procedures.

(a) Design Guidelines. Declarant may prepare Design Guidelines, containing general provisions applicable to all of Jasper, as well as specific provisions which vary from Neighborhood to Neighborhood.

The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Design Guidelines are not the exclusive basis for decisions of the Reviewer, and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines specific to Jasper as long as it owns any portion of Jasper or has a right to expand Jasper pursuant to Section 9.1, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend. Upon termination of Declarant's right to, amend, the ARC shall have the authority to amend the Design Guidelines specific to Jasper with the Board's consent. Any amendments to the Design Guidelines shall be prospective only and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. Subject to the Community-Wide Standard, there shall be no other limitation on the scope of amendments to the

Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within Jasper. In Declarant's sole discretion, the Design Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Except as otherwise specifically provided in the Design Guidelines, no activities shall commence on any portion of Jasper until an application for approval has been submitted to and approved by the Reviewer. Such application shall be in the form required by the Reviewer and shall include information required under the Design Guidelines, such as plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall make a determination on each application after receipt of a completed application and all information required by the Reviewer. The Reviewer may permit or require that an application for approval be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Reviewer approval shall not constitute approval of or waiver of approvals or reviews by any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

Until expiration of Declarant's rights under this Article, the ARC shall notify Declarant in writing within three business days after the ARC has approved an application. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC.

In any event, the Reviewer shall notify the applicant in writing of the final determination on any application within 45 days after its receipt of a completed application and all requested information. In the event that the Reviewer fails to respond in a timely manner, the applicant may provide the Reviewer with written notice of the Reviewer's failure to respond and of the applicant's intent to proceed with the work if the Reviewer does not provide a final determination on the application within 10 days of receipt of such notice. If the Reviewer fails to respond within such 10-day period, approval shall be deemed to have been given, subject to Declarant's right to veto pursuant to this Section. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

As part of any approval, the Reviewer may require that construction commence in accordance with approved plans within a specified time period. If construction does not commence within the required period, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

Notwithstanding the above, landscaping shall be installed, as approved, in the front and side yards of a Lot within 90 days from the date of the initial closing of escrow on the Lot or the issuance of a certificate of occupancy on the Lot, whichever is later. Landscaping on all other portions of the Lot, Visible from Neighboring Property, including the rear yard, shall be installed within 180 days from the date of the initial closing of escrow on the Lot or the issuance of a certificate of occupancy on the Lot, whichever is later. The Reviewer's decision as to the applicability of these installation requirements to any particular portion of a Lot shall be final.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. For example, Builders may submit and receive pre-approval of landscaping or other plans for general application. Such pre-approved plans shall not require resubmission prior to use on a particular Lot.

#### 4.4 No Waiver of Future Approvals.

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute binding precedent in any other matter nor an estoppel or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### 4.5 Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration or the Community-Wide Standard; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the Reviewer may not authorize variances without the written consent of Declarant so long as Declarant owns any portion of Jasper or has the right to annex any property described in Exhibit "B."

#### 4.6 Limitation of Liability.

The standards and procedures in this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Jasper; they do not create any duty to any Person. The Reviewer shall not bear any responsibility for ensuring (a) structural integrity or soundness of approved construction or modifications; (b) compliance with building codes and other governmental requirements; (c) that all Dwelling Units are of comparable quality, value, size, or design; or (d) that improvements will be aesthetically pleasing or otherwise acceptable to neighboring property owners. Declarant, the Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for any claim whatsoever arising out of construction on or modifications to any Lot. In all matters, the Reviewer shall be defended and indemnified by the Association as provided in Section 7.6.

#### 4.7 Enforcement.

Any construction, alteration, or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Association or Declarant, the Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure the nonconformance to the satisfaction of the requester or restore the Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association, Declarant, or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the benefitted Lot and collected as a Benefitted Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any



application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline set forth in the approval, Declarant or the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefitted Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines maybe excluded from Jasper, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither Declarant nor the Association, or their officers and directors, shall be held liable to any Person for exercising the rights granted by this paragraph.

The Association shall be primarily responsible for enforcement of this Article. If, however, in the discretion of Declarant, the Association fails to take appropriate enforcement action, as authorized herein, within a reasonable time period, Declarant, for so long as it owns any property described in Exhibits "A" or "B" to this Declaration, may, but shall not be obligated to, exercise enforcement rights in the same manner as set forth above. In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewer. If the Association or Declarant prevail, they shall be entitled to recover all costs including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

#### 4.8 Hook-up and Impact Fees.

To the extent required by ordinance of the Town of Prescott Valley, or as may be required by the Development Agreement between the Town of Prescott Valley and Declarant dated March 22, 2018, or by any amendment thereto, all hook-up and impact fees (the development rates, fees, and charges) shall be paid by a Builder at the time of issuance of a building permit for each Lot or other portion of the real property in Jasper.

### **Article V - Maintenance and Repair**

#### 5.1 Maintenance of Lots.

Each Owner shall maintain his or her Lot, including the Dwelling Unit and all landscaping and other improvements comprising the Lot, as well as any sidewalk located on or adjacent to the Lot and the interior surface of any perimeter wall or fence, in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, unless some or all of such maintenance responsibility is otherwise assumed by or assigned to (and accepted by) the Association or a Neighborhood Association.

A perimeter wall or fence shall be any fence which serves as a boundary between a Lot and any area which is not a Lot, including Common Area, public streets, or any Private Amenity. The Association may elect to maintain the exterior surface (that portion facing away from the Lot) of all perimeter walls and fences, and, in addition, the Association may elect to maintain all wrought iron portions (both exterior and interior) of any perimeter fence. Absent such election each Owner is responsible for maintaining the interior surface and exterior of all perimeter walls and fences on such Owner's Lot. If the Association shall elect to maintain perimeter walls and fences; if maintenance or repair is made necessary by the actions of the Lot Owner, the costs incurred by the Association may be assessed specifically against the benefitted Lot Owner, in accordance with this Declaration.

Some Lots may contain Declarant installed walls which may include planters (i.e., built-in containers intended for plant material) as a component of the wall. If such walls are not perimeter walls as described above, the Lot Owner shall be responsible for maintaining such walls and planters. If such walls are perimeter walls, the Association may elect to maintain any planters located on the exterior side of the wall and the Owner shall maintain those planters located on the interior side of the wall. Absent an election to maintain by the Association, maintenance of the planters shall be the obligation of the benefitted Lot Owner, which maintenance shall include structural and aesthetic maintenance and keeping and maintaining planting materials in accordance with the Community-Wide Standard.

In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility, the Association may Record a notice of violation and/or perform such maintenance responsibilities and assess all costs incurred as a Benefitted Assessment in accordance with Section 8.5. The Association shall

afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

**5.2 Maintenance of Neighborhood Property.**

A Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

A Neighborhood Association also shall be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of its boundary; provided, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article IV.

Upon resolution of the Board, the Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining, and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, and right-of-way between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by Supplemental Declaration, either by agreement or because, in the opinion of the Board, a Neighborhood Association fails to perform its maintenance responsibility or the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment or a Benefitted Assessment against only the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

**5.3 Responsibility for Repair and Replacement.**

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

By taking title to a Lot, each Owner covenants and agrees to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Lot is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Benefitted Assessment against the benefitted Lot and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. In the event that such repair and reconstruction cannot be promptly undertaken, the Owner shall clear the Lot and maintain it in a neat and attractive condition consistent with the Community-Wide Standard and shall present a timetable for repair and reconstruction to the Board within 90 days of the damaging or destructive event. The Owner shall pay any costs which are not covered by insurance proceeds.

This Section shall also apply to any Neighborhood Association responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Lot. Additional Recorded covenants applicable to any Neighborhood may establish requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lots within such Neighborhood and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

## **Article VI - The Association and Its Members**

### **6.1 Function of the Association.**

The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also shall be the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Arizona law.

### **6.2 Membership.**

Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, member or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

### **6.3 Voting.**

The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Section 8.10.

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member may appoint a majority of the members of the Board during the Class "B" Control Period, as specified in the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents.

The Class "B" membership shall terminate at the end of the Class "B" Control Period.

(c) Exercise of Voting Rights. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice and in the event that more than one such co-Owner casts a vote, the Lot's vote shall be suspended and shall not be included in the final vote tally on the matter being voted upon.

### **6.4 Neighborhoods.**

Every Lot shall be located within a Neighborhood. Unless and until additional Neighborhoods are established, Jasper shall consist of a single Neighborhood. Lots within a particular Neighborhood may be subject to covenants in addition to those set forth in this Declaration and, if required by law or otherwise approved by Declarant, the Owners within the Neighborhood may be members of a Neighborhood Association in addition to the Association.

Exhibit "A" to this Declaration and each Supplemental Declaration submitting additional property to this Declaration initially shall assign the submitted property to a specific Neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to create Neighborhoods or redesignate Neighborhood boundaries.

The Owners within any Neighborhood may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods or may request that the Association provide special services for the benefit of Lots in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Lots within the Neighborhood, the Association shall provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Lot to all



Neighborhoods receiving the same service), shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment.

#### **Article VII - Association Powers and Responsibilities**

##### **7.1 Acceptance and Control of Association Property.**

(a) The Association may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property, subject to the provisions of Sections 16.6 and 19.4.

The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by third parties for the general benefit or convenience of Owners and other residents of Jasper.

(b) Declarant and its designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B." Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. Without the necessity of complying with the procedures set out in Article III, the Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

##### **7.2 Maintenance of Area of Common Responsibility.**

(a) The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which may include, but need not be limited to:

(i) all portions of and structures situated upon the Common Area (including, without limitation, areas designated as open space or as retention areas);

(ii) landscaping within public rights-of-way within or abutting Jasper; and,

(iii) such portions of any additional property as may be dictated by Declarant, this Declaration, any Supplemental Declaration, any Plat of any portion of Jasper, or any contract, covenant, or agreement for maintenance thereof entered into by, or for the benefit of the Association.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(b) The Association shall maintain the Common Area facilities and equipment in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Class "A" Members representing 75% of the votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

(c) The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration or other Recorded covenants or agreements with the owner(s) thereof. Maintenance, repair, and replacement of Limited Common Areas shall be a Neighborhood Expense assessed to the Neighborhood(s) to which such Limited Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.



7.3 Insurance.

The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas, with the amount and type of coverage to be determined by the Board of Directors.

The Board of Directors of the Association may purchase such other insurance as it deems necessary, including but not limited to, Directors and Officers insurance and fidelity bonds.

Owners obligations regarding insurance are detailed in Section 5.3 above.

7.4 Compliance and Enforcement.

(a) The Board may impose sanctions for violation of the Governing Documents after notice and an opportunity for a hearing in accordance with the procedures set forth in the By-Laws. The Board shall establish a range of penalties for such violations, with violations of the Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. Such sanctions may include, without limitation, those otherwise specifically set forth in the Governing Documents, and (i) imposing a graduated range of reasonable monetary fines which shall constitute a lien upon the violator's Lot; (ii) suspending an Owner's right to vote; (iii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; (iv) suspending any services provided by the Association; (v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation; and (vi) levying Benefitted Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

In the event that any tenant or resident of a Lot other than the Owner violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board. For each failure to comply, the amount of said fine shall not exceed the maximum permitted by the Act.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the notice and hearing procedures set forth in the By-Laws:

- (i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules); or
- (ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Benefitted Assessment. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Benefitted Assessment against all Units within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in, such action.

(b) The decision to pursue an enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; or (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interests based on hardship, expense, or other reasonable criteria to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable city and county ordinances, if applicable, and governmental authorities may enforce ordinances within Jasper.

7.5 Implied Rights: Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

7.6 Indemnification of Officers, Directors, and Others.

Subject to Arizona law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation, and Arizona law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

7.7 Safety and Security.

**Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Jasper. The Association may, but shall not be obligated to, maintain or support certain activities within Jasper designed to enhance the level of safety or security which each person provides for himself and his property. Neither, the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within Jasper, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.**

**No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Jasper, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Lot that the Association, its Board and committees and Declarant are not insurers or guarantors of security or safety and that each Person within Jasper assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.**

7.8 Provision of Services.

The Association may provide, or provide for, services and facilities for all or any of the Members and their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Lots. By way of example, such services and facilities might include landscape maintenance, trash collection, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, recycling, any services required by the Town of Prescott Valley or other applicable governmental authorities, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents.

Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

In any contracts or agreements with third parties for the provision of services within Jasper, the Association may assign to the service provider the right to bill Owners directly and to pursue all legal or equitable remedies otherwise available to the Association in the collection of such bills. Any charge billed directly to an Owner in accordance with such a contract between the Association and the service provider shall be a charge and continuing lien in favor of the service provider against each Owner's Lot, enforceable by the service provider or the Association (as per the agreement between the Association and the service provider) in the manner provided for the enforcement of liens for assessments in Article VIII.

**7.9 View Impairment.**

Declarant and the Association make no guarantee or representation that any view over and across the Lots or any open space within Jasper will be preserved without impairment. Declarant and the Association shall not have the obligation to relocate, prune, or thin trees or other landscaping except as set forth in Article V or as otherwise set forth in a covenant or agreement binding the Association. The owner of open space areas shall have the right to add trees and other landscaping from time to time subject to applicable law and the Governing Documents, if applicable. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

**7.10 Relationship with Neighborhood Associations.**

The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Benefitted Assessments to cover the costs, as well as an administrative charge and sanctions.

**7.11 Facilities and Services Open to the Public.**

Certain facilities and areas within the Properties may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, and other neighborhood spots conducive to gathering and interaction, roads, sidewalks, and medians. Declarant may designate such facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Area of Common Responsibility or the Board may so designate at any time thereafter.

**Article VIII - Association Finances**

**8.1 Budgeting and Allocating Common Expenses.**

The Association is authorized hereby to levy Base Assessments equally against all Lots subject to assessment under Section 8.6 to fund the Common Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3. The budget also shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Lots, including Lots reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send notice of the amount of the Base Assessment to be levied pursuant to such budget to each Owner at least 30 days prior to the effective date of such budget. Except as required under Section 8.9, the



budget shall not be subject to Owner approval and there shall be no obligation to send each Owner a copy of the budget or call a meeting for the purpose of considering the budget.

If any proposed budget is disapproved under Section 8.9, or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to Section 8.9 and the notice requirements set forth above.

#### **8.2 Budgeting and Allocating Neighborhood Expenses.**

The Association is authorized hereby to levy Neighborhood Assessments equally against all Lots in the Neighborhood which are subject to assessment under Section 8.6 to fund Neighborhood Expenses; provided, if so specified in the applicable Supplemental Declaration or if so directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended to benefit particular Owners within a Neighborhood (e.g., for exterior maintenance on a structure or for maintenance of landscaping within a cul-de-sac) shall be levied on each of the benefitted Lots in proportion to the benefit received.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Each such budget shall include any costs for additional services or a higher level of services which the Owners in such Neighborhood have approved pursuant to Section 6.4(a) and any contribution to be made to a reserve fund pursuant to Section 8.3. The budget also shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount required to be generated through the levy of Neighborhood and Special Assessments against the Lots in such Neighborhood.

The Board shall cause a copy of the Neighborhood budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner in the Neighborhood at least 30 days prior to the beginning of the fiscal year. Except as required under Section 8.9, budget shall not be subject to Owner approval and there shall be no obligation to call a meeting for the purpose of considering the budget.

If the proposed budget for any Neighborhood is disapproved as permitted under Section 8.9, or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to Section 8.9 and the notice requirements set forth above.

All amounts collected by the Association as Neighborhood Assessments shall be held in trust and expended solely for the benefit of the Neighborhood for which they were collected. Such amounts shall be accounted for separately from the Association's general fund.

#### **8.3 Budgeting for Reserves.**

The Board shall prepare and review periodically a reserve budget for the Area of Common Responsibility and for each Neighborhood for which the Association maintains capital items as a Neighborhood Expense, if any. Such budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. If the Board elects, in the exercise of its business judgment, to fund reserves, it shall include in the Common Expense budget adopted pursuant to Section 8.1 or the Neighborhood Expense budgets adopted pursuant to Section 8.2, as appropriate, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period. So long as the Board exercises business judgment in determining the necessity of a reserve fund, and an adequate amount of reserves, the amount of the reserve fund, if any, shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes and for each Neighborhood. So long as Declarant owns any property described in Exhibits "A" or "B," neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

The Board may enter into agreements with Declarant, on negotiated terms, under which Declarant may obligate itself to provide reserve funds as needed on a "cash basis" in lieu of the Association funding reserves on an accrual basis.

#### 8.4 Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Lots within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Class "A" Members representing at least two-thirds of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

#### 8.5 Benefitted Assessments.

The Association shall have the power to levy Benefitted Assessments against any Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Benefitted Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Association shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Benefitted Assessment under this subsection (b).

The Association may also levy a Benefitted Assessment against the Lots within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior written notice to the Owners of Lots in the Neighborhood and an opportunity for such Owners to be heard before levying any such assessment.

#### 8.6 Commencement of Obligation: Time of Payment.

The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. However, during the time that a Lot is owned by a Builder for the purpose of development and resale in its ordinary course of business, such Lot shall be assessed only 50% of the full Base Assessment rate and 50% of any Special Assessment or Neighborhood Assessment which would otherwise be payable during such period. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in quarterly or monthly installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

#### 8.7 Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any Lot, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents together with interest as herein provided on unpaid amounts. All assessments, together with interest computed from its due date at such rate as the Board may from time to time establish (not to exceed a maximum rate of 18% per annum, and subject to the limitations of Arizona law), reasonable late charges as determined by Board

resolution (as limited by the Act), costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Lot, non-use of facilities or property operated or maintained by the Association, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request from an Owner, Mortgagee, or other Person designated by the Owner, the Association shall furnish a statement setting forth the amount of any unpaid assessment against such Owner's Lot. The statement shall be binding upon the Association, the Board, and the Owners to the extent mandated by Arizona law. If the Association fails to provide such statement within 15 days of its receipt of a written request, any lien for unpaid assessments then due shall be extinguished to the extent mandated by Arizona law. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

(b) Declarant's Option to Fund Budget Deficits. During the Class "B" Control Period, Declarant may satisfy its obligation for assessments on Lots which it owns either by paying such assessments in the same manner as any other Owner or by paying the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

During the Class "B" Control Period, if Association shall fail or be unable to levy or collect assessments, then Declarant shall have the right, but not the obligation, to advance such sums as a loan to Association to bear interest and to be repaid as hereinafter set forth. If Declarant makes such a loan, it shall be entitled to immediate reimbursement on demand from the Association for the amounts advanced, plus interest thereon at the Wall Street Journal Prime Rate plus two percent (2%).

(c) Surpluses. Any surplus assessments collected by Association may be allocated towards the next year's Common Expenses or, in Association's sole and absolute discretion, to the creation of reserves, whether or not budgeted. Under no circumstances shall Association be required to pay surplus assessments to Owners.

#### 8.8 Lien for Assessments.

Subject to any limitations imposed by Arizona law, all assessments and other charges of the Association authorized in this Article or elsewhere in this Declaration shall constitute a lien against the Lot against which they are levied from the time such assessments or charges become due until paid. The lien shall also secure payment of interest (subject to the limitations of Arizona law), late charges (as limited by the Act), and costs of collection (including attorneys' fees, lien fees and administrative costs). Such lien shall be superior to all other liens, except those liens deemed by Arizona law to be superior. The lien created by this Article shall have priority over any lien for assessments asserted by any other community or property owners' association, including, without limitation, any Neighborhood Association. The Association may enforce such lien, when any assessment or other charge is delinquent, by suit, judgment, and foreclosure; provided, if enforcement proceedings are not instituted within three years after the full amount of the assessment or other charge becomes due, the lien (but not the personal obligation of the subject Owner) shall be deemed extinguished.



The Association may assign its lien rights to third parties, including service providers as described in Section 7.8.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the foreclosure. The subsequent Owner to the foreclosed Lot shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.6, including such acquirer, its successors and assigns.

#### 8.9 Limitation on Increases of Assessments.

Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations, the Board may not impose a Base Assessment or Neighborhood Assessment that is more than 20% greater than such assessments for the immediately preceding fiscal year without the approval of a majority of the Class "A" Members subject to the applicable assessment. Approval may be indicated by vote or written consent.

An emergency situation is any one of the following;

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain Jasper or any part of them for which the Association is responsible where a threat to personal safety on Jasper is discovered; or
- (c) an extraordinary expense necessary to repair or maintain Jasper or any part of them for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing and distributing the pro forma budget pursuant to Section 8.1. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Notice of such resolution shall be provided to the Members along with the notice of such assessment.

The Association's capital expenditures for any fiscal year, other than for repair or replacement, may not exceed 20% of the budgeted Common Expenses: for the current fiscal year without the approval of a majority of the Class "A" Members. Approval may be indicated by vote or written consent.

#### 8.10 Exempt Property.

The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) all Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;
  - (b) any other property not subject to this Declaration;
  - (c) any property dedicated to and accepted by any governmental authority or public utility;
- and
- (d) property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants in-common.

In addition, both Declarant and the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).



**8.11 Transfer Fee/Working Capital Assessment.**

The first Owner of a Lot (other than the Declarant or a Builder) and each successive Owner thereafter shall pay to the Association upon acquiring title to the Lot a transfer fee of one quarter of one percent (.25%) of the total purchase price of the Lot together with any improvements, including any Dwelling Unit, thereon (the "Working Capital Assessment"). The Association shall use the working capital exclusively to support maintenance and improvements to Jasper, and acquisition, improvement, administration, and maintenance of property owned by the Association and used primarily for members' benefit. More particularly and without limitation the Association shall use funds from the working capital assessment to pay operating expenses, to pay off loans advanced to cover operating expenses and to purchase and maintain property and capital improvements including the clubhouse facility.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, Declarant's determination regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this Section 8.11. The Working Capital Assessment will be in addition to, not in lieu of, any other assessments levied in accordance with this Article 8 and will not be considered an advance payment of such assessments.

The Working Capital Assessment hereunder shall be deposited into the purchase and sale escrow and will be due and payable to the Association therefrom immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Declarant during the Class "B" Control Period, and thereafter the Board, has the power to waive the payment of any Working Capital Assessment. The Declarant during the Class "B" Control Period, and thereafter the Board, has the power to amend the Working Capital Assessment. The levy of any amended Working Capital Assessment will be effective only upon the Recording of a written notice, signed by the Declarant during the Class "B" Control Period or by a duly authorized officer of the Association, setting forth the amount of the Working Capital Assessment and the Lots to which it applies.

**Article IX - Expansion of the Community**

**9.1 Expansion by Declarant.**

Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand the community pursuant to this Section shall expire when all property described in Exhibit "B" has been subjected to this Declaration. Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

Declarant reserves the right, but not the obligation, to annex additional property not described in Exhibits "A" or "B" to the extent not prohibited under the Act.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

**9.2 Expansion by the Association.**

The Association also may subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Members representing 67% of the Class "A" votes in the Association present in person (or by absentee ballot per A.R.S. §33-1812) at a meeting duly called for such purpose, and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent is required. Any such Supplemental

Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is required.

**9.3     Additional Covenants and Easements.**

Declarant may subject by Supplemental Declaration any portion of Jasper to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

**9.4     Effect of Filing Supplemental Declaration.**

A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

**Article X - Additional Rights Reserved to Declarant**

**10.1     Withdrawal of Property.**

Declarant reserves the right to amend this Declaration so long as it has a right unilaterally to annex additional property pursuant to Section 9.1, without prior notice and without the consent of any Person, for the purpose of removing property then owned by Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for Jasper. If the property so removed is owned by the Association, the Association shall convey such property to Declarant upon the request of Declarant.

**10.2     Marketing and Sales Activities.**

Notwithstanding any provision in this Declaration, including Exhibit "C," to the contrary, Declarant and Builders may construct and maintain upon portions of the Common Area and other property owned by Declarant or the Builder such facilities, activities, and things as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model Lots, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and Builders may park vehicles in areas other than garages or driveways, including on streets. Declarant and Builders shall have easements for access to and use of such facilities at no charge. Builder's rights under this Section 10.2 are subject to Declarant's approval. Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all roads, trails, and walkways within Jasper as Declarant may, in its sole discretion, deem appropriate for its marketing and sales activities.

**10.3     Right to Develop.**

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

Each Person acquiring an interest in Jasper acknowledges that Jasper is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Neighborhood in which such Person holds an interest, or (b) changes in the Master Plans as it relates to property outside the Neighborhood in which such Person holds an interest.

**10.4     Right to Designate Sites for Governmental, and Public Interests.**

For so long as Declarant owns any property described in Exhibits "A" or "B," Declarant may designate sites within Jasper for government, education, or religious activities and interests, including without limitation, fire,

police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. Subject to the approval requirements set forth in Section 19.4, the sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

10.5 Right to Approve Additional Covenants.

No Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of Jasper without Declarant's review and written consent. Any instrument Recorded without such consent shall be void and of no force and effect unless subsequently approved by written consent signed by Declarant and Recorded.

10.6 Right to Approve Changes in Community Standards.

No amendment to or modification of any Use Restrictions or Architectural Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

10.7 Right to Transfer or Assign Declarant Rights.

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written, Recorded instrument signed by Declarant. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.8 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of Jasper, including Lots, and a perpetual non-exclusive easement of access throughout Jasper to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise.

10.9 Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Jasper in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the Owner to discuss the Owner's concerns and conduct their own inspection.

10.10 Exclusive Rights To Use Name of Development.

No Person shall use the name "Jasper" or any derivative of such name or its logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Jasper" in printed or promotional matter where such term is used solely to specify that particular property is located within Jasper and the Association shall be entitled to use the words "Jasper" in its name.

10.11 Declarant's Marks.

Any use by the Association of names, marks, or symbols of Declarant or any of its affiliates (collectively "Declarant Marks") shall inure to the benefit of Declarant and shall be subject to Declarant's periodic review for quality control. The Association shall enter into, license agreements with Declarant, terminable with or without cause and in a form specified by Declarant in its sole discretion, with respect to permissive use of certain Declarant Marks. The Association shall not use any Declarant Mark without Declarant's prior written consent.



10.12 Declarant as Attorney in Fact.

To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of the Governing Documents, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of the Governing Documents. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

10.13 Termination of Rights.

The rights contained in this Article shall continue for as long as Declarant owns any property described in Exhibits "A" and "B", or until Declarant Records a written statement that all sales activity has ceased.

**Article XI - Easements**

11.1 Easements in Common Area.

Declarant grants to each Owner a non-exclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the Board's right to:
  - (i) adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
  - (ii) suspend the right of an Owner to use facilities within the Common Area:
    - (A) for any period during which any charge against such Owner's Lot remains delinquent; and
    - (B) for a period not to exceed 30 days for a single violation of the Governing Documents, or for a longer period in the case of any continuing violation, after notice and a hearing pursuant to the By-Laws;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
  - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
  - (v) permit use by Persons other than Owners, their families, lessees, and guests;
  - (vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Sections 16.6 and 19.4; and
  - (vii) create, enter into agreements with, and grant easements to tax-exempt organizations.

(d) the rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, social invitees, and occupants of his or her Lot, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of the lease.

#### 11.2 Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

#### 11.3 Easements for Utilities. Etc.

(a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property described in Exhibit "A" or "B" of this Declaration, and grants to the Association and all utility providers designated by Declarant perpetual non-exclusive easements throughout all of Jasper to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve Jasper and other portions of Jasper, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights, and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on (i) the payment of reasonable consideration and (ii) installation at a specified location, if the installation is not to be made within a utility easement dedicated on a recorded plat.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B." The location of any such easement shall be subject to the written consent of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the burdened property. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work.

#### 11.4 Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

**11.5 Easements for Maintenance, Emergency and Enforcement.**

Declarant grants to the Association easements over Jasper as necessary to fulfill the maintenance responsibilities described in Section 7.2, including any easements over Lots as may be necessary for maintenance of the perimeter walls or fencing. Such easements shall include the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and to enforce the Governing Documents. Such right may be exercised by the duly authorized agents and assignees of the Association and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner.

Declarant grants to the Association an easement and the right to enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorney fees, shall be assessed against the violator as a Benefitted Assessment.

**11.6 Easements for Lake and Pond Maintenance and Flood Water.**

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and the successors, assigns and designees of each shall have an access easement over and across any of Jasper abutting or containing bodies of water to the extent reasonably necessary to exercise the rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within 100 feet of bodies of water within Jasper, in order to (a) temporarily flood and back water upon and maintain water over such portions of Jasper; (b) alter in any manner and generally maintain the bodies of water within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

**11.7 Easements for Cross-Drainage.**

Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of Jasper; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of Jasper without the consent of the Owner(s) of the affected property, the Board, and Declarant as long as it owns any property described in Exhibits "A" or "B" to the Declaration.

**11.8 Rights to Storm Water Runoff Effluent and Water Reclamation.**

Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within Jasper, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over Jasper for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section may not be amended without the consent of Declarant and the rights created in this Section shall survive termination of this Declaration.

**Article XII - Limited Common Areas**

**12.1 Purpose.**

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities,

landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.

**12.2     Designation.**

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots and/or Neighborhoods, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Class "A" Members representing a majority of the total votes in the Association, including a majority of the votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, any such assignment or reassignment shall also require Declarant's written consent.

**12.3     Use by Others.**

The Association may, upon approval of a majority of the Owners of Lots in the Neighborhood(s) or board of directors of the Neighborhood Association for the Neighborhood(s) to which any Limited Common Area is assigned, permit Owners of Lots in other Neighborhoods to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Area.

**Article XIII - Party Walls and Other Shared Structures**

**13.1     General Rules of Law to Apply.**

Each wall, fence, driveway, or similar structure built as a part of the original construction on a Lot, other than a perimeter wall or fence as provided in Section 5.1, which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

**13.2     Maintenance: Damage and Destruction.**

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and is not repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**Article XIV - Dispute Resolution and Limitation on Litigation**

**14.1     Prerequisites to Actions Against Declarant.**

Prior to filing a civil action, undertaking any action in accordance with Section 14.4, or retaining an expert for such actions against Declarant, or any builder or sub-contractor of any portion of Jasper, the Board shall notify and meet with the Members to discuss the alleged problem or deficiency. Moreover, prior to taking any action, the



Board shall notify the potential adverse party of the alleged problem or deficiency and provide such party a reasonable opportunity to inspect and repair the problem.

**14.2 Initiation of Litigation by Association.**

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Members entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

**14.3 Dispute Notification and Resolution Procedure.**

Declarant, the Association and its officers, directors, and committee members, Owners, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article such as contractors, subcontractors, suppliers, architects, engineers, brokers and any other Person providing materials or services in connection with the construction of any improvement upon or benefiting Jasper (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving Jasper, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 14.4 ("Claims") shall be resolved using the procedures set forth in Section 14.5 in lieu of filing suit in any court.

**14.4 Claims.**

As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to Jasper including without limitation;

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;
- (iii) the use or condition of Jasper or,
- (iv) the design or construction of improvements within Jasper, other than matters of aesthetic judgment under Article IV, which shall not be subject to review.

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.5:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain equitable-relief (e.g., temporary restraining order, injunction, or specific performance) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Articles III, IV, and V of this Declaration (relating to creation and maintenance of community standards);

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.5(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

#### 14.5 Mandatory Procedures.

(a) Notice. Any person (including Association) with a Claim (the "Claimant") shall notify the Declarant and all other parties in writing of the Claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

(b) Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the parties shall meet at a mutually acceptable place within Jasper to discuss the Claim. At such meeting or at such other mutually agreeable time, the Declarant and Declarant's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing the same in a manner deemed appropriate by Declarant (provided that Declarant shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the dispute is resolved as provided in this subsection. The parties shall negotiate in good faith in an attempt to resolve the Claim. If Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the property that is the subject of the Claim to take and complete corrective action.

(c) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in subsection (b) above shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of Jasper for which Declarant is not otherwise obligated under applicable law. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing executed and recorded by Declarant.

(d) Mediation. If the parties to the Claim fail to resolve it pursuant to the procedures described in subsection (b) above within ninety (90) days after delivery of the Claim Notice, the matter shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (except as such procedures are modified by the provisions of this subsection) or such other mediation service selected by Declarant. The person who delivered the Claim Notice shall have until one hundred twenty (120) days after the date of delivery of the Claim Notice to submit the Claim to mediation. If the person who delivered the Claim Notice fails to timely submit the Claim to mediation, then the Claim shall be deemed waived and abandoned and Declarant shall be relieved and released from any and all liability relating to the Claim. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against Declarant, Association, or Owner(s) without complying with the procedures described in this subsection.

(i) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in Maricopa County or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim, consistent with the Construction Industry Mediation Rules of the American Arbitration Association. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Claim,

provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Notwithstanding the foregoing, applicable contractors, subcontractors, suppliers, architects, engineers, brokers and any other person providing materials or services in connection with the construction of any improvement upon or benefiting Jasper designated by Declarant may attend mediation sessions and may be made parties to the mediation. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

(e) Arbitration. Should mediation pursuant to subsection (d) above not be successful in resolving any Claim, then the person who delivered the Claim Notice shall have ninety (90) days after the date of termination of the mediation to submit the Claim to binding arbitration. If timely submitted, such claim or dispute shall be resolved by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this subsection. If the person who delivered the Claim Notice fails to timely submit the Claim to arbitration within the ninety (90) day period, then the Claim shall be deemed waived and abandoned and Declarant shall be relieved and released from any and all liability relating to the Claim. A person with any Claim may only submit such Claim in arbitration on such person's own behalf. No person may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class, collective, or other representative action. The Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this subsection, and waive the right to have the Claim resolved by a court, including the right to file a legal action as the representative or member of a class or in any other representative capacity. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this subsection, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in Maricopa County.

(ii) Arbitrator. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in Jasper. The parties to the Claim shall meet to select the arbitrator within ten (10) days after service of the demand for arbitration on all respondents named therein.

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (a) witness lists; (b) expert witness designations; (c) expert witness reports; (d) exhibits; (e) reports of testing or inspections of the property subject to the Claim, including destructive or invasive testing; and (f) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in this Article. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.



(vi) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(vii) Arbitration Award. Unless otherwise agreed by the parties, the arbitrator shall render a written arbitration award within thirty (30) days after conclusion of the arbitration hearing. The arbitrator's award may be enforced as provided for by applicable law.

(viii) Arbitration Expenses. The arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The arbitrator shall not award any punitive damages. The arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by, the party against whom the claim is made. The arbitrator shall assess the costs of the proceedings (including the fees of the arbitrator) against the non-prevailing party.

**(f) WAIVERS. NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF JASPER, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XIV AND WAIVES THE RIGHT TO PURSUE ANY CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE XIV. SPECIFICALLY, AND WITHOUT LIMITATION, EACH SUCH PERSON WAIVES THE RIGHT TO SUBMIT A CLAIM IN ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS AND TO HAVE SUCH CLAIM ARBITRATED AS A CLASS, COLLECTIVE, OR OTHER REPRESENTATIVE ACTION AND ALSO WAIVES THE RIGHT TO HAVE THE CLAIM RESOLVED BY A COURT, INCLUDING THE RIGHT TO FILE A LEGAL ACTION AS THE REPRESENTATIVE OR MEMBER OF A CLASS OR IN ANY OTHER REPRESENTATIVE CAPACITY. THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE XIV, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF JASPER, EACH OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.**

(g) Statutes of Limitation and Repose. Nothing in this Article XIV shall be considered to toll, stay, reduce or extend any applicable statute of limitation or repose.

(h) Required Consent of Declarant to Modify. This Article XIV may not be amended except in accordance with Article XX of this Covenant and with the express written consent of the Declarant.

#### **Article XV – Jasper Community Club**

##### **15.1 Membership.**

Every Owner, shall be a member of the Jasper Community Club ("Club"). The terms of, and rights afforded by, membership in the Club are subject to the Membership Plan for Jasper Community Club ("Membership Plan") including provisions regarding suspension and expulsion from the Club, payment of membership initiation fees, dues, and other fees, and the Club's rules and policies. Additional membership categories, affording additional rights in the Club and its facilities, may be available to Owners subject to the terms of the Membership Plan and any qualification requirements imposed by the owner or operator of the Club. Other than the rights afforded by the Membership Plan, no additional rights or privileges are afforded any Owner by virtue of owning a Lot in Jasper.



By virtue of taking title to a Lot, each Owner agrees, on behalf of itself, its heirs, personal representatives, and successors-in-title to the Lot, to pay initiation fees and periodic dues to the Club regardless of such Owner's use or nonuse of the Club's facilities and to comply with the terms of the Membership Plan as long as such Owner owns property in Jasper. Each Owner's membership in the Club shall be effective immediately upon taking title to a Lot and shall continue so long as such Owner owns real property in Jasper, subject to all of the provisions of the Membership Plan. Owners shall not be required to pay periodic dues until the clubhouse is finished and the Town of Prescott Valley issues a certificate of occupancy.

The owner of the Club shall have the right to sell memberships in the Club to individuals who are not Owners.

No Owner or any other Person, by virtue of membership in the Club, acquires any ownership interest, beneficial interest, or other vested interest whatsoever in the Club, but only the privileges of using and enjoying the Club's facilities in accordance with Membership Plan and any rules for the Club, which are subject to change from time to time.

Each Owner is obligated to pay dues, plus any transaction, privilege or sales tax that may be imposed by any governmental authority, to the Club in such amount determined in accordance with the Membership Plan. The obligation to pay dues to the Club and the benefits of membership in the Club shall run with the title to the Lot and shall be binding on all subsequent Owners of the Lot. In the event an Owner is 90 or more days delinquent in Club dues, upon written notification from the Club, the Association shall pay such dues on behalf of the Owner. Any such amounts paid by the Association shall be levied as a Benefitted Assessment against such Owner in accordance with Section 8.5.

#### 15.2 Conveyance of Club Facilities.

Some or all of the facilities of the Club may be offered to the Association in Declarant's or the Club owner's discretion, subject to such terms as Declarant or the Club owner may determine. In the event any of the Club facilities are conveyed to the Association, the Association shall maintain such facilities as Common Area at its expense. Use and enjoyment of such facilities will be limited to Association Members, their family members and guests, and to those Persons set forth in the instrument conveying the facilities to the Association.

#### 15.3 Rights of Access and Parking.

There is hereby established for the benefit of the Club and its members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within Jasper reasonably necessary to travel between an entrance to Jasper and the Club and over those portions of Jasper (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Club. Without limiting the generality of the foregoing, members of the Club and guests and invitees of the Club shall have the right to park their vehicles on the roadways located within Jasper at reasonable times before, during, and after functions held by or at the Club to the extent that the Club has insufficient parking to accommodate such vehicles.

#### 15.4 Limitations of Amendments.

In recognition of the fact that the provisions of this Article are for the benefit of the Club, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting the Club, may be made without the written approval of the Club owner. The foregoing shall not apply, however, to amendments made by Declarant.

#### 15.5 Jurisdiction and Cooperation.

It is Declarant's intention that the Association and the Club shall cooperate to the maximum extent possible in the operation of Jasper and the Club. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Architectural Guidelines. The Association shall have no power to promulgate restrictions or rules other than those set forth in Exhibit "C" affecting activities on or use of the Club without the prior written consent of the Club owner.

## Article XVI - Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

### 16.1 Notice of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days after notice by the Association to the Owner of such violation; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

### 16.2 Examination of Books.

The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

### 16.3 Taxes, Assessments and Charges.

All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law will relate only to the individual Lot and not to any other portion Jasper.

### 16.4 No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

### 16.5 Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

### 16.6 HUD/VA Approval.

During the Class "B" Control Period, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the Mortgage on any Lot: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; dedication, conveyance, or mortgaging of Common Area; or material amendment of this Declaration. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section. If the approval of either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs is requested pursuant to this Section and the agency whose approval is requested does not disapprove the action by written notice to the Association, Declarant, or other Person requesting its approval within 30 days after the delivery of the approval request to the appropriate agency, the action in question shall be deemed approved by such agency,

#### **Article XVII - Private Amenities**

Access to and use of any Private Amenity is strictly subject to the rules and procedures of the owner of such Private Amenity, and no Person gains any right to enter or to use any Private Amenity by virtue of membership in the Association, ownership of a Lot, or occupancy of a Dwelling Unit.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of the Private Amenities. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument executed by the Record owner of the Private Amenity.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

#### **Article XVIII - Changes in Ownership of Lots**

To facilitate the Association's compliance with the Act's resale disclosure requirements, any Owner, other than Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Board written notice at least 14 days prior to the pending sale or transfer. The written notice shall include the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require to comply with the Act's notice and statement requirements.

The Association shall charge the Owner the fees described in A.R.S. §33-1806(C) or such increased amount as may be permitted in the future to pay for the costs incurred in preparing the statement and information required by the Act. In particular, the Association shall charge four hundred dollars (\$400) to compensate for the costs incurred in the preparation and delivery of a statement or other documents furnished pursuant to §33-1806 for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property. In addition, the Association shall charge a rush fee of not more than one hundred dollars (\$100) if the rush services are required to be performed within seventy-two hours after the request for rush services. Finally, if the Owner requests an update, the Association shall charge a statement or other documents update fee of fifty dollars (\$50) if thirty days or more have passed since the date of the original disclosure statement or the date the documents were delivered. The Association shall revise these fees to conform with any changes in the law.

Notwithstanding a transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board.

#### **Article XIX - Changes in Common Area**

##### **19.1 Condemnation.**

Whenever any part of the Common Area shall be taken by any authority having the power of eminent domain (or conveyed by the Board under threat of condemnation), the Board shall determine, in the exercise of its business judgment, whether each Owner shall be entitled to notice thereof. The Board may convey Common Area under threat of condemnation only if approved in writing by at least 67% of the Class "A" Members in the Association and Declarant, as long as Declarant owns any property described in Exhibits "A" or "B."

The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within 60 days after such takings, Declarant, so long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and at least 67% of the total Class "A" Members in the



Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

19.2 Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

19.3 Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by Section 19.4.

19.4 Actions Requiring Owner Approval.

If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs is insuring or guaranteeing the Mortgage on any Lot, then the following actions shall require the prior approval of Members representing not less than two-thirds (2/3) of the total Class "A" votes in the Association and the consent of the Class "B" Member, if such exists: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; and dedication, conveyance, or mortgaging of Common Area. Notwithstanding anything to the contrary in Section 19.1 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes consistent with the intended use of the Common Area, without the approval of the membership.

**Article XX - Amendment of Declaration**

20.1 Amendment.

This Declaration may be amended at any time by the Recording of an instrument executed and acknowledged by (a) Declarant acting alone and at any time; or by (b) the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved (i) by Declarant or, after the end of the Class "B" Control Period, the Board and (ii) by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the Class "A" votes in the Association. During the Class "B" Control Period, no amendment will be effective without the written consent of the Declarant. Each Owner is advised that, in accordance with this section 20.1, Declarant has the unilateral right to amend this Declaration for any purpose. Jasper will be developed over many years. Changes in the Declarant's plans for Jasper will occur. The Declarant may elect to modify, remove or add to the terms and provisions of this Declaration to respond to such changes and actual or perceived changes in market or other conditions. Accordingly, each Owner and the Association should anticipate that modifications, amendments and/or changes will be made to the terms and provisions of this Declaration unilaterally by the Declarant as determined in Declarant's sole and absolute discretion. Such modifications, amendments and/or changes could result in material changes in the character of the development or the burdens on existing owners.

Notwithstanding the 67% specification above, the percentage of votes necessary to amend a specific clause of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be presumed conclusively that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.



Any procedural challenge to an amendment must be made within six months of its Recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Nothing in this Article shall be construed to permit termination of any easement created in this Declaration or a Supplemental Declaration without the consent of the holder of such easement.

20.2 Exhibits.

Exhibits "A" and "B," attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is incorporated by this reference and may be amended pursuant to this Article or as provided in Article III.

20.3 Term.

This Declaration shall be effective upon the date it is Recorded and shall remain in effect until January 1, 2069, after which it shall be automatically extended for successive periods of ten (10) years unless a written instrument terminating this Declaration and signed by Owners of not less than seventy-five percent (75%) of the Lots and by such Owners' first Mortgagees has been Recorded within the year preceding the end of the initial term or any extended term of this Declaration.

20.4 Severability.

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

**IN WITNESS WHEREOF**, the undersigned Declarant has executed this Declaration the date and year first written above.

Jasper EcoDev LLC, an Arizona limited liability company

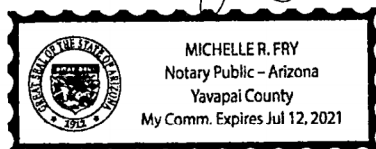
By: \_\_\_\_\_  
Name: Jason J. Gisi  
Title: Manager



STATE OF ARIZONA     )  
  ) ss.  
County of Yavapai     )

The foregoing instrument was acknowledged before me this August 20, 2019 by Jason J. Gisi, Manager of Jasper EcoDev LLC, an Arizona limited liability company, on behalf of the company.

My commission expires: July 12, 2021



Michelle R. Fry  
Notary Public

## **EXHIBIT "A"**

### **Land Initially Submitted**

Lots 1 through 362 inclusive, Tracts A-Z inclusive and the two Right of Ways North and South of the Iron King Trail, Jasper Phase 1, according to the plat of record recorded in the office of the Yavapai County Recorder at \_\_\_\_\_  
\_\_\_\_\_.

## **EXHIBIT "B"**

### **Legal Description**

A parcel of land lying within Sections 4 and 9, Township 14 North, Range 1 West, of the Gila and Salt River Meridian, Yavapai County, Arizona, more particularly described as follows:

**BEGINNING** at the northeast corner of said Section 9, a 3-inch brass cap on a 1-inch iron pipe stamped APS Co. RLS 16292 4 3 9 10, from which the northwest corner of said Section 9, a 3-inch brass cap on a 1-inch iron pipe, bears North 87°58'40" West (basis of bearing), a distance of 5269.69 feet;

**THENCE** along the east line of said Section 9, South 01°21'59" West, a distance of 2403.28 feet, to the northerly line of Iron King Trail Right-of-Way, recorded in Book 43, pages 277-279, Yavapai County Records (Y.C.R.), and a point hereby designated as Point "A" for future reference in this description;

**THENCE** leaving said east line, along said northerly line, South 60°54'10" West, a distance of 554.09 feet, to the beginning of a curve;

**THENCE** westerly along said curve to the right, having a radius of 1859.83 feet, concave northerly, through a central angle of 77°30'00", a distance of 2515.66 feet, to the curves end;

**THENCE** North 41°35'50" West, a distance of 1355.82 feet, to the beginning of a curve;

**THENCE** northwesterly along said curve to the left, having a radius of 1482.36 feet, concave southwesterly, through a central angle of 62°26'01", a distance of 1615.28 feet, to the curves end;

**THENCE** South 75°58'09" West, a distance of 86.48 feet, to the west line of said Section 9;

**THENCE** leaving said northerly line, along said west line, North 01°15'00" East, a distance of 1020.88 feet, to the northwest corner of said Section 9, also being the southwest corner of said Section 4;

**THENCE** leaving said west line, along the west line of said Section 4, North 00°22'44" East, a distance of 4995.99 feet, to the southerly line of Old Highway 89, recorded Book 3995, page 489, Y.C.R., and Book 4001, page 28, Y.C.R., and a point hereby designated as Point "B" for future reference in this description;

**THENCE** leaving said west line, along said southerly line, North 73°33'40" East, a distance of 475.88 feet, to the north line of said Section 4;

**THENCE** leaving said southerly line, along said north line, South 89°37'48" East, a distance of 2184.98 feet, to the north quarter corner of said Section 4;

**THENCE** continuing along said north line, South 89°38'07" East, a distance of 2640.47 feet, to the northeast corner of said Section 4;

**THENCE** leaving said north line, along the east line of said Section 4, South 00°31'29" West, a distance of 5285.80 feet, to the **POINT OF BEGINNING**.

### **TOGETHER WITH**

**COMMENCING** at said Point "A";

**THENCE** along the east line of said Section 9, South 01°21'59" West, a distance of 116.02 feet, to the southerly line of said Iron King Trail Right-of-Way, and the **POINT OF BEGINNING**;

**THENCE** continuing South 01°21'59" West, a distance of 2512.61 feet, to the southeast corner of said Section 9, a 3-inch Town of Prescott Valley brass cap stamped LS 22752 S 9 10 15 16;

**THENCE** leaving said east line, along the south line of said Section 9, North 89°01'21" West, a distance of 5259.07 feet, to the southwest corner of said Section 9;

**THENCE** leaving said south line, along the west line of said Section 9, North 01°15'00" East, a distance of 4003.37 feet, to the southerly line of said Iron King Trail Right-of-Way;

**THENCE** leaving said west line, along said southerly line, North 75°58'09" East, a distance of 113.80 feet, to the beginning of a curve;

**THENCE** easterly along said curve to the right, having a radius of 1382.36 feet, concave southerly, through a central angle of 62°26'01", a distance of 1506.32 feet, to the curves end;

**THENCE** South 41°35'50" East, a distance of 1355.82 feet, to the beginning of a curve;

**THENCE** easterly along said curve to the left, having a radius of 1959.83 feet, concave northerly, through a central angle of 77°30'00", a distance of 2650.92 feet, to the curves end;

**THENCE** North 60°54'10" East, a distance of 495.27 feet, to the **POINT OF BEGINNING**.

#### **TOGETHER WITH**

**COMMENCING** at said Point "B";

**THENCE** along the west line of said Section 4, North 00°22'44" East, a distance of 104.47 feet, to the northerly southerly line of said Old Highway 89, and the **POINT OF BEGINNING**;

**THENCE** leaving said northerly line, continuing North 00°22'44" East, a distance of 33.15 feet, to the northwest corner of said Section 4;

**THENCE** leaving said west line, along the north line of said Section 4, South 89°37'48" East, a distance of 109.72 feet, to the northerly line of said Old Highway 89;

**THENCE** leaving said north line, along said northerly line, South 73°33'40" West, a distance of 114.62 feet, to the **POINT OF BEGINNING**.

#### **EXCEPT THE FOLLOWING PARCEL**

A parcel of land lying within Section 4, Township 14 North, Range 1 West, of the Gila and Salt River Meridian, Yavapai County, Arizona, more particularly described as follows:

**COMMENCING** at the southeast corner of said Section 4, a 3-inch brass cap on a 1-inch iron pipe stamped APS Co. RLS 16292 4 3 9 10, from which southwest corner of said Section 4, a 3-inch brass cap on a 1-inch iron pipe bears North 87°58'40" West (basis of bearing), a distance of 5269.69 feet;

**THENCE** along the east line of said Section 4, North 00°31'29" East, a distance of 3833.32 feet;

**THENCE** leaving said east line, North 89°28'31" West, a distance of 246.52 feet, to the **POINT OF BEGINNING**;

**THENCE** North 89°28'31" West, a distance of 100.00 feet;

**THENCE** North 00°31'29" East, a distance of 100.00 feet;

**THENCE** South 89°28'31" East, a distance of 100.00 feet;

**THENCE** South 00°31'29" West, a distance of 100.00 feet, to the **POINT OF BEGINNING**.

Subject to existing right-of-way and easements.



## EXHIBIT "C"

### Initial Use Restrictions

The following restrictions shall apply to all of Jasper until such time as they are amended, modified, repealed or limited pursuant to Article III of the Declaration.

(a) General. Jasper shall be used only for residential and related purposes. Related purposes may include, without limitation, offices for any management agent or agents retained by the Association and business offices for Declarant or the Association consistent with this Declaration and any Supplemental Declaration.

When used in these Use Restrictions, the phrase "Visible from Neighboring Property" shall mean, with respect to any given object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of the neighboring property at an elevation no greater than the elevation of the base of the object being viewed, except where the object is visible solely through a wrought iron fence and would not be visible if the wrought iron fence were a solid fence.

(b) Animals and Pets. No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of Jasper, except that for each Dwelling Unit there shall be permitted a reasonable number of usual and common household pets, as determined in the Board's discretion. Pets which are permitted to roam free, or, in the Association's sole discretion, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Owners or residents of any portion of Jasper shall be removed upon the Board's request at the Owner's expense. If the Owner fails to honor such request, the Board may cause the pet to be removed at the Owner's expense. No pets shall be kept, bred, or maintained for any commercial purpose.

(c) Business Use. No business or trade shall be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as:

- (i) the existence or operation of the business activity is not apparent or detectable by sight (including signage), sound, or smell from outside the Dwelling Unit;
- (ii) the business activity conforms to all zoning requirements for Jasper;
- (iii) the business activity does not cause parking or other traffic problems within Jasper, as determined in the Board's discretion, or involve door-to-door solicitation of residents of Jasper; and
- (iv) the business activity is consistent with the residential character of Jasper and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of Jasper, as may be determined in the sole discretion of the Board.

The foregoing limitations shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities, provided that such activities may not be held on any one Lot more than once in any three-month period and, when held, may not exceed three consecutive days in duration.

"Business" and "trade" shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

This Section shall not apply to any activity conducted by Declarant or a Person approved by Declarant with respect to its development and sale of Jasper or its use of any Lots which it owns within Jasper, including the development and operation of apartments or of a timeshare or similar program. Additionally, this Section shall not apply to any activity conducted by the Association.

(d) Notwithstanding the prohibition of conducting a business contained in subsection (c), an Owner shall have a limited right to lease a Dwelling Unit as described herein. For purposes of this Declaration, "Leasing," is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

(i) No Owner shall enter into a lease, rental agreement, or other similar conveyance of use of a Dwelling Unit during the first twelve (12) months of ownership of that unit.

(ii) Short term rentals are prohibited. All leases shall have a term of six months or greater.

(iii) Boarding houses are prohibited. Dwelling Units may be leased only in their entirety. No fraction or portion may be leased.

(iv) No structure on a Lot other than the primary residential Dwelling Unit shall be leased or otherwise occupied for residential purposes, except that a casita on a Lot, if any, may be occupied but not independently leased.

(v) There shall be no subleasing of Dwelling Units or assignment of leases. All leases shall be in writing.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board or its designee by the Owner within ten days of execution of the lease. The Owner must make available to the lessee copies of the Governing Documents. The Board may adopt reasonable rules and regulations regulating leasing and subleasing.

Declarant may modify these leasing restrictions by Supplemental Declaration for lots located within certain Neighborhoods.

(e) Wildlife. Capturing, killing, or trapping wildlife is prohibited within Jasper, except in circumstances imposing an imminent threat to the safety of Persons or pets or with respect to rodents (e.g. rats and mice) and common garden pests (e.g. gophers).

(f) Firearms. The discharge of firearms within Jasper is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

(g) Nuisances. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within Jasper or which results in unreasonable levels of sound or light pollution.

(h) Garages. Garage doors shall remain closed at all times except when entering and exiting the garage. Detached garages are prohibited.

(i) Exterior Lighting. Excessive exterior lighting on any Lot is prohibited. Owners shall follow A.R.S. Title 49, Chapter 7, Light Pollution, Section 49-1101 et. seq.; Yavapai County Planning and Zoning Ordinance, Section 603, Light Pollution Control, and Town of Prescott Valley Zoning Ordinance, Article 13-26a, Outdoor Lighting Requirements. However, the Board in its sole discretion shall determine whether any exterior lighting is excessive.

(j) Storage of Goods. Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Area (except by the Association), or, if not in active use, any portion of a Lot which is visible from outside the Lot is prohibited.

(k) Occupants Bound. All provisions of the Governing Documents shall apply to all occupants, guests, and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the provisions of the Governing Documents and shall be responsible for all violations caused by such occupants, notwithstanding the fact that such occupants of a Lot are also fully liable and may be sanctioned for any violation.

(l) Prohibited Conditions. The following conditions, structures, or activities are prohibited on any Lot.

- (i) Casitas (except as initially constructed by Declarant or approved by Declarant as part of the initial construction of a Dwelling Unit on a Lot);
- (ii) Dogs runs and animal pens of any kind, if such structures are Visible from Neighboring Property;
- (iii) Shacks or other structures of a temporary nature on any Lot except as may be authorized by Declarant during the initial construction of improvements within Jasper. Temporary structures used during the construction or repair of a Dwelling Unit or other improvements shall be removed immediately after the completion of construction or repair;
- (iv) Permanent basketball goals, basketball standards, or backboards which are or would be Visible from Neighboring Property; provided, portable basketball goals may be used on a Lot without prior approval, but must be stored so as not to be Visible from Neighboring Property overnight or otherwise when not in use;
- (v) Freestanding flagpoles higher than the rooftop of Member's Dwelling Unit; provided, flags may also be displayed using a bracket or other approved device mounted to the Dwelling Unit so long as the size of the flag displayed does not exceed that of a standard United States flag (as determined in the Board's discretion and as may be set forth in a Board rule); no more than two flags may be displayed at once;
- (vi) Compost piles or containers and statues.

In any event, and notwithstanding the above list of prohibited conditions, as set forth in Article IV, any structure, improvement, or thing proposed for construction, erection, installation, or placement on a Lot requires prior Reviewer approval unless otherwise specifically exempt under the Design Guidelines.

(m) Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Lots.

No noxious, illegal, or offensive activity shall be carried on upon any portion of Jasper, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants and invitees of other Lots.

(n) Signs. No sign shall be erected within Jasper, except those required by law, including posters, circulars, and billboards; provided, the following types of signs may be erected on a Lot without the Board's written consent: (i) residential identification signs of a face area of 75 square inches or less for identification of the occupant and its address, in a style designated by the Design Guidelines or approved by the ARC; (ii) one temporary sign of customary size, as determined by the ARC, for the purpose of advertising the Lot for sale or rent; (iii) one temporary sign identifying the Person installing landscaping on the Lot, but only during the period that such installation is in progress; and (iv) security signs of a face area of 75 square inches or less, in a style and location designated by the Design Guidelines or approved by the ARC. This restriction shall not apply to entry, directional, and marketing signs installed by Declarant or a Builder. The Board and Declarant shall have the right to erect signs as they, in their discretion, deem appropriate.

(o) Subdivision of Lot and Time-Sharing. No Lot shall be subdivided or its boundary lines changed except with the Board's prior written approval; provided, however, Declarant, its successors and assigns hereby expressly reserve the right unilaterally to subdivide, change the boundary line of, and replat any Lot(s) that Declarant, its successors and assigns may own.

No Lot shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years. However, Declarant hereby reserves the right for itself and its assigns to operate such a program.

(p) Holiday Decorations. Owners may display holiday decorations located or visible from outside their Dwelling Units if the decorations are of the kinds normally displayed in single family residential



neighborhoods, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed in season only from November 1 to January 31 and, during other times of the year, from one week before to one week after any nationally recognized holiday.

(q) Antennas and Satellite Dishes. No antenna, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside the Dwelling Unit, except those devices whose installation and use is protected under federal law or regulations (generally, certain antennae under one meter in diameter). Notwithstanding such protection, an application for such an antenna or other device must be submitted to the Architectural Review Committee for approval and approval will be granted only if:

(i) First, the antenna or other device is designed for minimal visual intrusion (i.e., is located in a manner that minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and

(ii) Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (i.e., without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).

The Architectural Review Committee shall consider any such application on an expedited basis.

(r) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are pre-approved by the ARC or specifically permitted under the Design Guidelines, or as required by the applicable governing jurisdiction. Such containers shall not be Visible from Neighboring Property except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(s) Pool Equipment. All pool equipment stored on any Lot shall be screened so as to be neither Visible from Neighboring Property nor able to be seen through any wrought iron fence.

(t) Unightly or Unkempt Conditions. All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of Jasper.

Woodpiles or other material shall be stored in a manner so as not to be Visible from Neighboring Property and not to be attractive to rodents, snakes, and other animals and to minimize the potential danger from fires. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of Jasper. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on Jasper, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace.

(u) Landscaping. Pursuant to Section 4.3 of the Declaration, initial landscaping shall be installed, as approved, in the front and side yards of a Lot within 90 days from the date of the initial closing of escrow on the Lot or the issuance of a certificate of occupancy on the Lot, whichever is later. Initial landscaping on all other portions of the Lot, including the rear yard, shall be installed within 180 days from the date of the initial closing of escrow on the Lot or the issuance of a certificate of occupancy on the Lot, whichever is later.

(v) Vehicles and Parking. The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

No vehicle may be left upon any portion of Jasper except in a garage, driveway, or other area designated by the Board. No person shall park any recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, stored vehicles, and unlicensed vehicles or inoperable vehicles within Jasper other than in enclosed garages; provided, however, boats may be kept or stored on a Lot so long as they are not Visible from Neighboring



Property and commercial vehicles not exceeding one ton in weight may be parked and kept in a driveway. This Section shall not apply to emergency vehicle repairs.

Notwithstanding the above, for purposes of cleaning, loading, unloading, and short term parking, recreational vehicles may be parked on Jasper for 72 hours per calendar month. Owners must obtain a recreational vehicle permit for such short term parking from the Association office. The use of golf carts is prohibited within Jasper.

(w) Wetlands, Lakes, and Other Water Bodies. All wetlands, lakes, ponds, and streams within Jasper, if any, shall be aesthetic amenities only, and no other active use of lakes, ponds, streams, or other bodies of water within Jasper is permitted. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to Jasper.

(x) Solar Equipment. No solar heating equipment or device is permitted, outside the Dwelling Unit except such devices whose installation and use is protected by federal or Arizona law. Notwithstanding such protection, an application for such equipment or device must be submitted for approval under Article IV prior to installation and approval will be granted only if:

(i) First, such equipment or device is designed for minimal visual intrusion when installed (i.e. is located in a manner which minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and

(ii) Second, the equipment or device complies to the maximum extent feasible with the Design Guidelines within the confines of the applicable governmental regulations.